NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted August 22, 2023*
Decided September 11, 2023

Before

MICHAEL B. BRENNAN, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

No. 22-1569

UNITED STATES OF AMERICA, *Plaintiff-Appellee*,	Appeal from the United States District Court for the Southern District of Illinois.
v.	No. 3:06-CR-301460-NJR
BYRON BLAKE, *Defendant-Appellant*.	Nancy J. Rosenstengel, *Chief Judge*.

O R D E R

Byron Blake, a federal prisoner, appeals an order granting him partial relief on his motion under section 404(b) of the First Step Act of 2018. In its ruling, the district court reduced his 420-month prison term to 360 months. But Blake argues that the court

* This appeal is successive to case no. 20-2145 and under Operating Procedure 6(b) is decided by the same panel. We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

should have retroactively applied some of our recent decisions and revised some of its enhancements under the Sentencing Guidelines. Because the district court did not need to apply our decisions retroactively and Blake forfeited his other arguments, we affirm.

We have reviewed Blake's sentence twice already. The first time occurred after a jury found him guilty of conspiracy to distribute and to possess with intent to distribute crack cocaine and of distribution of base and powder cocaine. *See* 21 U.S.C. §§ 846, 841(a)(1), 841(b)(1). In calculating his offense level under the Sentencing Guidelines, the district court applied enhancements for a prior drug conviction, 21 U.S.C. § 851, for his leadership role, U.S.S.G. § 3B1.1(a), and for obstruction of justice, U.S.S.G. § 3C1.1. It then imposed a below-guidelines sentence of 420 months' imprisonment. On direct appeal, we upheld the sentence, noting that the district court's finding that Blake was responsible for distributing at least 1.5 kilograms of crack was "reasonable." *United States v. Blake*, 286 F. App'x 337, 340 (7th Cir. 2008).

The second time occurred after Blake moved, in 2019, for a sentence reduction under section 404 of the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194, 5222. The parties agreed that Blake was eligible for a reduction because he had committed a "covered offense," but the government urged the court to deny any reduction because of the nature of the offense and the danger Blake posed to the community. The court ruled that relief was not warranted. On appeal, we remanded and instructed the district court to address the changes to the statutory penalties for Blake's offenses and determine the applicable guidelines range, which depended partly on the drug quantity. *See United States v. Blake*, 22 F.4th 637, 639 (7th Cir. 2022).

The district court reconsidered Blake's motion. First, it identified the new, lower penalties that applied to the relevant counts (10 years to life, as opposed to the previous 20 years to life). Then it revised certain calculations under the Sentencing Guidelines: It explained that it would not attribute to Blake the amount of cocaine base attributable to his codefendant (500 grams), but that it found Blake responsible for more than 2.8 but less than 25.2 kilograms of crack cocaine. Adding enhancements for leadership, his prior drug conviction, and obstruction of justice, the advisory prison term was now 360 months to life. After weighing mitigating factors, such as Blake's family support, the educational programming he enrolled in, the prison jobs he held, and the lack of disciplinary action against him, the court reduced his sentence to 360 months' imprisonment on the counts to which the First Step Act applied.

On appeal, Blake first argues that the court erred by not retroactively applying the rule of *United States v. Barnes*, 602 F.3d 790 (7th Cir. 2010), to attribute to him the same drug quantity as to his codefendant. (Doing so would have resulted in a

guidelines range of 235 to 293 months). In *Barnes*, which we decided after Blake was originally sentenced, we held that a district court cannot attribute different drug quantities to codefendants if the record is identical for each. *Barnes*, 602 F.3d at 796–97. But the First Step Act does not require district courts to apply intervening judicial decisions, *see United States v. Fowowe*, 1 F.4th 522, 532 (7th Cir. 2021). Thus, the court did not err by declining to apply *Barnes*. And the court acted within its discretion to conclude that the record differed with respect to Blake and his codefendant because Blake was his codefendant's supplier.

Next, Blake challenges the court's decision to apply two enhancements. He first contests the sentencing enhancement for being a leader or organizer. But Blake did not raise concerns about this enhancement in his motion for a reduced sentence (or on direct appeal, for that matter). He has thus forfeited the issue, subjecting it to the highly deferential plain-error standard of review. *See United States v. Smith*, 54 F.4th 1000, 1007 (7th Cir. 2022). Seen through that lens, we will not disturb the finding, now settled for fifteen years: The district court knew that in his two prior trips to this court Blake never contested the finding and thus had no reason to revisit it sua sponte. Similarly, Blake argues that the court should have retroactively applied *United States v. Ruth*, 966 F.3d 642 (7th Cir. 2020), and recalculated the statutory sentencing parameters without the enhancement for his prior drug conviction. But again, he forfeited this argument by not raising it in the district court. And the court did not plainly err, because as stated above, it need not have applied an intervening judicial decision.

Blake next argues that the court on remand should have sua sponte allowed him to amend his motion for a reduced sentence. He contends that his former counsel, who drafted his motion, inadequately represented him. Blake forfeited this argument too: About two months passed between our remand and the court's new order. In that time, Blake never sought leave to further amend the motion, and he gives us no reason for his silence. The court thus did not err in following our mandate and reconsidering Blake's previously filed motion as presented by counsel. *See Blake*, 22 F.4th at 644.

Finally, the court need not have considered Blake's efforts at rehabilitation since he first moved for a reduced sentence. True, more than two years had passed between the time when Blake moved for a reduced sentence and when the court issued its order on remand. But when assessing whether and how much to reduce a defendant's sentence under the First Step Act, a court need not consider post-sentencing conduct. *See Fowowe*, 1 F.4th at 529. The court here did so anyway, discussing, among other factors, the prison jobs Blake has held and his family's support. But it was not obligated to consider additional facts pertaining to Blake's rehabilitation. *Id.*

We have considered Blake's other arguments, but he has not developed them enough to warrant further comment.

AFFIRMED