

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-7857

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DIRRICK DELONT LUCAS,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of Virginia, at
Harrisonburg. Michael F. Urbanski, Chief District Judge. (5:03-cr-30095-MFU-1)

Submitted: June 21, 2021

Decided: August 6, 2021

Before GREGORY, Chief Judge, and FLOYD and RUSHING, Circuit Judges.

Vacated and remanded by unpublished per curiam opinion.

Juval O. Scott, Federal Public Defender, Lisa M. Lorish, Assistant Federal Public
Defender, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Charlottesville, Virginia,
for Appellant. Thomas T. Cullen, United States Attorney, S. Cagle Juhan, Assistant United
States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Charlottesville,
Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Dirrick Delont Lucas appeals the district court's order denying his motion for sentence reduction pursuant to § 404(b) of the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194 ("First Step Act"). The Government has filed an unopposed motion to remand this appeal to the district court. We grant the Government's motion, vacate the district court's order denying Lucas' motion for sentence reduction, and remand to the district court for further proceedings.

Section 2 of the Fair Sentencing Act of 2010, Pub. L. No. 111-220, 124 Stat. 2372 ("FSA") "reduced the penalties for specific cocaine-[base-]related offenses punishable under 21 U.S.C. § 841(b)(1)(A) and (b)(1)(B)." *United States v. Venable*, 943 F.3d 187, 188 (4th Cir. 2019). In relevant part, the FSA "changed the drug weight threshold that triggers a mandatory statutory sentencing range of ten years to life from 50 grams to 280 grams." *United States v. McDonald*, 986 F.3d 402, 404 (4th Cir. 2021). The FSA went into effect on August 3, 2010. *Dorsey v. United States*, 567 U.S. 260, 270 (2012). Because the district court sentenced Lucas before the FSA's effective date, the new drug weight thresholds did not apply at his initial sentencing.

In 2018, Congress passed the First Step Act, which, among other things, made the FSA retroactive to all sentences imposed prior to the FSA's effective date. Section 404 of the First Step Act provides that "[a] court that imposed a sentence for a covered offense may, on motion of the defendant, . . . impose a reduced sentence as if sections 2 and 3 of the [FSA] . . . were in effect at the time the covered offense was committed." First Step Act § 404(b), 132 Stat. at 5222. A "covered offense" is a federal crime, committed before

August 3, 2010, for which the penalties were modified by section 2 or 3 of the FSA. First Step Act § 404(a), 132 Stat. at 5222.

We review a district court’s decision to deny relief under § 404(b) of the First Step Act for abuse of discretion. *United States v. Jackson*, 952 F.3d 492, 497, 502 (4th Cir. 2020). In the First Step Act context, we require a sentencing judge to (1) “accurately recalculate the Guidelines sentenc[ing] range”; (2) “*correct* original Guidelines errors and apply intervening case law made retroactive to the original sentence”; and (3) “consider the [18 U.S.C.] § 3553(a) factors to determine what sentence is appropriate.” *United States v. Collington*, 995 F.3d 347, 355 (4th Cir. 2021).

As the Government now concedes, Lucas’ revocation sentence exceeds the new statutory maximum sentence, and the district court abused its discretion by denying a sentence reduction. *See Collington*, 995 F.3d at 356. Accordingly, we grant the Government’s motion, vacate the district court’s order denying Lucas’ motion, and remand for further proceedings.

Although we deny as moot Lucas’ motions to accelerate case processing, the mandate shall issue forthwith so the district court may proceed without delay. We dispense with oral argument because the facts and legal conclusions are adequately presented in the materials before this court and argument would not aid the decisional process.

VACATED AND REMANDED