

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 22-6006**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

KALVIN MARSHALL,

Defendant - Appellant.

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Appeal from the United States District Court for the Eastern District of Virginia, at  
Richmond. Henry E. Hudson, Senior District Judge. (3:02-cr-00225-HEH-RCY-2)

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Submitted: June 23, 2022

Decided: June 28, 2022

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Before WYNN and QUATTLEBAUM, Circuit Judges, and FLOYD, Senior Circuit Judge.

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Affirmed by unpublished per curiam opinion.

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Kalvin Marshall, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Kalvin Marshall appeals the district court's order granting in part his motion for a sentence reduction under the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194. We affirm the district court's order. We review a district court's decision whether to grant a reduction under the First Step Act for abuse of discretion. *United States v. Jackson*, 952 F.3d 492, 497 (4th Cir. 2020). Under § 404(b) of the First Step Act, “[a] court that imposed a sentence for a covered offense may . . . impose a reduced sentence as if sections 2 and 3 of the Fair Sentencing Act of 2010 . . . were in effect at the time the covered offense was committed.” 132 Stat. at 5222. A “covered offense” is “a violation of a federal criminal statute, the statutory penalties for which were modified by section 2 or 3 of the Fair Sentencing Act of 2010, that was committed before August 3, 2010.” *United States v. Gravatt*, 953 F.3d 258, 260 (4th Cir. 2020); see First Step Act, § 404(a), 132 Stat. at 5222. Even if the defendant is eligible for First Step Act relief, the district court has discretion to determine whether to reduce the defendant's sentence. *Gravatt*, 953 F.3d at 261; see First Step Act, § 404(c), 132 Stat. at 5222.

In *United States v. Chambers*, we held that “when imposing a new sentence” under the First Step Act, “a court does not simply adjust the statutory minimum; it must also recalculate the Guidelines range.” 956 F.3d 667, 672 (4th Cir. 2020) (internal quotation marks omitted). Furthermore, “any Guidelines error deemed retroactive . . . must be corrected in a First Step Act resentencing.” *Id.* at 668. We also held that “the [18 U.S.C.] § 3553(a) sentencing factors apply in the § 404(b) resentencing context,” and a court “may consider post-sentencing conduct” in determining whether to exercise its discretion to

reduce a sentence. *Id.* at 674. Additionally, “the First Step Act does not constrain courts from recognizing Guidelines errors,” *id.* at 668, or “preclude the court from applying intervening case law,” *id.* at 672, in making its discretionary determination.

We have clarified that, in a First Step Act case, “when a [district] court exercises discretion to reduce a sentence, the imposition of the reduced sentence must be procedurally and substantively reasonable.” *United States v. Collington*, 995 F.3d 347, 358 (4th Cir. 2021). This requires a district court to “consider a defendant’s arguments, give individual consideration to the defendant’s characteristics in light of the § 3553(a) factors, determine—following the Fair Sentencing Act—whether a given sentence remains appropriate in light of those factors, and adequately explain that decision.” *Id.* at 360. We emphasized “that the court’s explanation must be sufficient to allow for meaningful appellate review and to promote the perception of fair sentencing.” *Id.* at 360 n.6 (internal quotation marks omitted); *see also United States v. Webb*, 5 F.4th 495, 499 (4th Cir. 2021).

Our review of the record discloses that the district properly recalculated Marshall’s revised Guidelines range, adequately addressed the 18 U.S.C. § 3553(a) factors, and sufficiently explained its reasons for imposing a sentence above the revised advisory Guidelines range. Thus, we conclude that the district court did not abuse its discretion and we affirm the district court’s order. We deny Marshall’s motions to appoint counsel and for summary reversal and we dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

*AFFIRMED*