

NONPRECEDENTIAL DISPOSITION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 January 19, 2023*

Decided January 20, 2023

Before

FRANK H. EASTERBROOK, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 22-1050

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

PIERRE DAWSON,
Defendant-Appellant.

Appeal from the United States District
Court for the Northern District of
Illinois, Eastern Division.

No. 02 CR 688

Elaine E. Bucklo,
Judge.

ORDER

Pierre Dawson appeals the denial of his motion for a sentence reduction under Section 404(b) of the First Step Act. The district court determined that he was ineligible for a reduction based on his powder-cocaine convictions. Dawson argues that the court erred in finding him ineligible because, although he was convicted only for powder-

* We have agreed to decide the case without oral argument because the appellant's brief and the 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).

cocaine offenses, he was also held responsible for crack cocaine at sentencing. But eligibility under the Act is determined by the defendant's statute of conviction, and so we affirm.

In 2004, a jury convicted Dawson of two counts for conspiring to distribute large quantities of powder cocaine, 21 U.S.C. §§ 841(a)(1), 846. In applying the Sentencing Guidelines, the district court held Dawson responsible for 90 kilograms of crack cocaine, in addition to the powder cocaine that led to his conviction. The court sentenced him to 360 months' imprisonment. We affirmed Dawson's sentence, and Dawson's later motions for collateral relief under 28 U.S.C. § 2255 and 18 U.S.C. § 3582(c)(2) were unsuccessful.

Almost 20 years later, Dawson moved to reduce his sentence under Section 404(b) of the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194. The Act allows district courts to reduce defendants' sentences for crack-cocaine convictions "as if" provisions of the Fair Sentencing Act of 2010, Pub. L. No. 111-220, 124 Stat. 2372, regarding crack cocaine "were in effect at the time the covered offense was committed." District courts review motions for reduced sentences under § 404(b) of the First Step Act in two steps. The resentencing court first determines whether the moving defendant is eligible for a sentence reduction. *United States v. Clay*, 50 F.4th 608, 611 (7th Cir. 2022). If so, the court then decides whether it should reduce the defendant's sentence. *Id.* The district court denied Dawson's motion at step one, citing *United States v. Shaw*, 957 F.3d 734, 735 (7th Cir. 2020), in which we held that a court determining eligibility "needs to look only at a defendant's statute of conviction." Because Dawson was convicted of two offenses involving powder cocaine, the statutory penalties for which were not modified by the Fair Sentencing Act, the court determined that he was ineligible.

On appeal, Dawson acknowledges that he was convicted of only powder-cocaine offenses and that those convictions do not make him eligible for a sentence reduction. Still, he argues that he is eligible because, in applying the advisory Sentencing Guidelines (which included conduct related to the crime of conviction) the district judge held him responsible for trafficking crack cocaine. But eligibility is based "only" on his "statute of conviction." *Shaw*, 957 F.3d at 735. Thus, Dawson is ineligible.

Dawson alternatively argues that *Shaw* no longer applies because it conflicts with the Supreme Court's recent decision in *Concepcion v. United States*, 142 S. Ct. 2389 (2022). We disagree. The petitioner in *Concepcion* pleaded guilty to a crack-cocaine offense and was eligible for a sentence reduction. *Id.* at 2396–97. The issue before the Court was the

scope of what resentencing judges could consider in ruling on First Step Act motions brought by defendants who are eligible for a reduction, *see United States v. King*, 40 F.4th 594, 595–96 (7th Cir. 2022), not whether a movant is eligible for a sentence reduction in the first instance. To be eligible, a movant must—like the defendant in *Concepcion*, but unlike Dawson—have been convicted of a “covered offense.” *See* First Step Act, § 404(a). Because *Concepcion* left *Shaw* intact, Dawson’s appeal is foreclosed.

AFFIRMED