

NONPRECEDENTIAL DISPOSITION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 May 4, 2023*
Decided May 8, 2023

Before

ILANA DIAMOND ROVNER, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 22-2066

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

LAWRENCE O. DANIELS,
Defendant-Appellant.

Appeal from the United States District
Court for the Southern District of Illinois.

No. 3:08-CR-30185-NJR

Nancy J. Rosenstengel,
Chief Judge.

ORDER

Lawrence Daniels, who is serving a 370-month prison sentence for multiple crack-cocaine and firearm-possession offenses, challenges the district court's denial of his motion for a sentence reduction under the First Step Act of 2018. We affirm.

* We granted the parties' joint motion to waive oral argument and have agreed to decide the case on the briefs and the record. FED. R. APP. P. 34(f).

Daniels was convicted by a jury in 2009 of seven charges: three counts of distributing cocaine base, 21 U.S.C. § 841(a)(1), two counts of possessing with intent to distribute cocaine and cocaine base, *id.*, one count of unlawfully possessing a firearm as a felon, 18 U.S.C. §§ 922(g)(1), 924(e)(1), and one count of possessing a firearm during a drug trafficking crime, *id.* § 924(c)(1)(A). Daniels already had a lengthy criminal history, and the court sentenced him as a career offender and an armed career criminal to 370 months' imprisonment (within the guideline range of 360 months to life) followed by 5 years' supervised release.

In 2019 Daniels moved, *pro se*, under § 404 of the First Step Act, Pub. L. No. 115–391, 132 Stat. 5194 (2018), for a sentence reduction based on his cocaine-base offenses that, he argued, were covered by the Act and required a shorter sentence. The district court denied the motion because Daniels was sentenced as an armed career criminal and, thus, his offense level under the Guidelines did not change.

On appeal, we granted the government's motion to vacate the judgment and remand the proceedings. Relying on *United States v. Hudson*, 967 F.3d 605 (7th Cir. 2020), we accepted the government's concession that Daniels was eligible for a discretionary sentence reduction on all counts because he had been convicted of at least one covered offense under § 404 of the First Step Act. *See* No. 19-2506 (7th Cir. Sept. 29, 2020).

In the district court, Daniels, now represented by counsel, amended his motion for a sentence reduction, reiterating that his three convictions under § 841(b)(1) were "covered offenses" under § 404(b) of the First Step Act. He also argued that he was incorrectly sentenced as an armed career criminal, because a recent decision of ours, *United States v. Haney*, 840 F.3d 472 (7th Cir. 2016), indicated that his two burglary convictions, which had been used as predicate offenses under the Armed Career Criminal Act ("ACCA"), no longer counted as "violent felonies" for purposes of the enhancement. *See* 18 U.S.C. § 924(e).

The district court denied Daniels's motion. The court agreed with Daniels that he was eligible for a sentence reduction because his cocaine-base offenses were "covered" under the First Step Act (because they were committed before August 2010 and their statutory penalties had been modified by the Fair Sentencing Act). But the court pointed out that the Fair Sentencing Act did not change the guideline range for Daniels's other offenses, leaving unaffected his range of 360 months to life, given his status as a career offender convicted of a § 924(c) offense. *See* U.S.S.G. §§ 4B1.1(c), 4B1.4(c)(2); 18 U.S.C. § 924(c)(1)(A), (e). The court then determined that the sentencing factors under 18 U.S.C.

§ 3553(a) weighed against any reduction, citing Daniels's extensive criminal history and his continued violations in prison, consisting of assault with a serious injury, possessing a weapon, and fighting with another person.

On appeal, Daniels challenges the district court's refusal to reduce his sentence despite acknowledging that some of his charges qualified as covered offenses under the First Step Act. He argues that the court's reliance on his criminal background in its discussion of the sentencing factors amounted to personal bias against him and violated his right to be free from cruel and unusual punishment.

Motions for reduced sentences under § 404 of the First Step Act are reviewed in two parts: First, the resentencing court determines whether the defendant is eligible for relief, and then, if eligible, whether the sentence should be reduced. *United States v. Clay*, 50 F.4th 608, 611 (7th Cir. 2022). When deciding whether to reduce the sentence of an eligible defendant, the court may consider the § 3553(a) sentencing factors, the current Guidelines, the defendant's post-sentencing conduct, and other relevant information about the defendant's history and conduct. *Id.* at 612 (citations omitted). We review this determination for abuse of discretion. *United States v. Fowowe*, 1 F.4th 522, 526 (7th Cir. 2021).

The district court acted well within its discretion to deny Daniels's motion. Even though three of his offenses met the eligibility threshold for relief under the First Step Act, the court appropriately grounded its ruling in the relevant § 3553(a) factors, alluding to Daniels's lengthy criminal history and continued violations in prison. Contrary to Daniels's suggestion, it is not cruel and unusual punishment for a sentencing court to exercise its discretion and conclude that no reduction is warranted, even if a defendant is otherwise eligible for relief under the First Step Act. Lastly, the court's references at sentencing to his criminal history do not reflect bias. *See Liteky v. United States*, 510 U.S. 540, 555 (1994). Indeed, nothing in this record calls the court's performance into question.

AFFIRMED