

NONPRECEDENTIAL DISPOSITION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 February 14, 2023*

Decided February 15, 2023

Before

DIANE P. WOOD, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

No. 22-2418

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

JOSEPH HARPER,
Defendant-Appellant.

Appeal from the United States
District Court for the Western District of
Wisconsin.

No. 18-cr-166-wmc-1

William M. Conley,
Judge.

ORDER

Joseph Harper appeals the denial of his motion for relief under the First Step Act of 2018. We affirm.

* The United States filed a notice of noninvolvement and is not participating in this appeal. After examining the appellant's brief and the record, we have concluded that the case is appropriate for summary disposition. *See* FED. R. APP. P. 34(a)(2).

In April 2019, Harper pleaded guilty to conspiring to distribute 500 grams or more of a mixture or substance containing a detectable amount of cocaine. *See* 21 U.S.C. §§ 841(a)(1), 846. In his plea agreement, Harper agreed that he had a prior state conviction for a “serious drug felony.” Because the government filed a notice of enhancement under 21 U.S.C. § 851, Harper was therefore subject to a statutory-minimum, ten-year sentence. In July 2019, the district court sentenced Harper to 144 months in prison—a substantial downward variance from the guidelines range of 360 months to life. Harper did not appeal his sentence or conviction.

In June 2022, Harper moved for relief under the First Step Act, which narrowed the category of offenses that can trigger a ten-year statutory minimum sentence under § 841(b)(1)(B). *See* Pub. L. No. 115-391, § 401(a)(2)(B), 132 Stat. 5194, 5220–21 (2018); *United States v. Godinez*, 955 F.3d 651, 654–55 (7th Cir. 2020). The Act, which was enacted in December 2018, changed the triggering predicate crime from a “felony drug offense” to a “serious drug felony.” Harper argued that his prior conviction did not qualify as a “serious drug felony” under the Act, so he should not have been subject to the § 851 enhancement.

The district court denied the motion for two reasons. First, Harper, having been sentenced after the Act’s enactment, already received its benefits at sentencing; and if not, he should have raised the argument at that time or at least on direct appeal. Second, Harper, in challenging the § 851 enhancement, misapprehended the particular conviction that formed the basis of the enhancement: the pertinent conviction was not the Dane County conviction that Harper had identified, but instead one from Milwaukee County for cocaine possession with intent to distribute.

On appeal Harper argues that the district court misunderstood which prior conviction led to the § 851 enhancement, and he insists he did not receive the First Step Act’s benefits because the court relied upon a non-qualifying prior conviction. But nothing in the record bears this out. To the contrary, the § 851 notice, plea agreement, plea hearing transcript, and Harper’s sentencing memorandum all invoke the Milwaukee County conviction. To the extent Harper suggests that the sentencing transcripts would show otherwise, he did not provide us with those transcripts, as required. *See* FED. R. APP. P. 10(b)(2). Regardless, we agree with the district court that the normal process to challenge a potential sentencing error is by direct appeal or collateral review. *See United States v. Martin*, 21 F.4th 944, 946 (7th Cir. 2021). Harper was not entitled to short-circuit this process.

AFFIRMED