

In the
United States Court of Appeals
For the Seventh Circuit

No. 21-2615

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

WILLIAM G. CURTIS,

Defendant-Appellant.

Appeal from the United States District Court for the
Northern District of Indiana, Hammond Division.
No. 2:98-cr-00078-JTM-APR-3 — **James T. Moody**, *Judge*.

ARGUED NOVEMBER 8, 2022 — DECIDED MAY 1, 2023

Before SYKES, *Chief Judge*, and WOOD and SCUDDER, *Circuit Judges*.

WOOD, *Circuit Judge*. William Curtis is serving several consecutive sentences for his connection to a drug conspiracy involving crack cocaine. The present case arose when he moved for resentencing under the First Step Act, which permits retroactive sentencing relief for certain drug offenders. The district court found that Curtis was eligible for resentencing on some of his drug offenses and reduced the associated terms of

imprisonment. But the court refused to consider resentencing with respect to several firearms offenses, because it concluded that those offenses were not covered by the Act, were not grouped with Curtis's eligible drug offenses at the original sentencing hearing, and therefore were not eligible for resentencing.

Curtis appeals, arguing that the district court took too narrow a view of its discretion to conduct a resentencing review. Such a review, he contends, may encompass a defendant's entire sentencing package, including offenses that are neither covered by the First Step Act nor grouped with covered offenses. We agree with Curtis in part; a district court does have discretion under the First Step Act to reduce an aggregate sentence, even if part of that sentence rests on offenses that are neither covered by the Act nor grouped with a covered offense. But because we find that Curtis's consecutive sentences for the firearms convictions were not part of a package, we affirm the district court's decision to disregard them in its resentencing decision.

I

Curtis was convicted in 2000 on a multicount indictment for his part in a crack-cocaine distribution enterprise, including his role in two shootings that were linked to it. Counts One, Two, and Six (the "Drug Conspiracy Counts") were for conspiracy to possess crack cocaine with the intent to distribute, employing juveniles in furtherance of the conspiracy, and possession of crack cocaine with intent to distribute. Counts Three and Four (the "Firearms Counts") were for causing the death of another with a firearm in furtherance of the conspiracy. Count Seven charged a violation of 18 U.S.C. § 924(c) for carrying a firearm in relation to a drug trafficking crime.

Count Five of the indictment applied only to Curtis's co-defendant, and so we do not address it here.

Curtis's Presentence Investigation Report (PSR) grouped the Drug Conspiracy Counts, see U.S.S.G. §§ 3D1.1–3D1.4, and calculated an adjusted offense level of 40; it grouped the Firearms Counts separately and calculated an adjusted offense level of 43 for them, with any terms of imprisonment to run consecutively. Finally, because section 924(c) convictions feature a five-year mandatory minimum sentence to be served consecutively, see 18 U.S.C. § 924(c)(1)(A), and are always grouped separately, U.S.S.G. § 3D1.1(b)(1), Count Seven was also in its own group.

A few more words about grouping are helpful in understanding Curtis's argument. The Sentencing Guidelines dictate that "[a]ll counts involving substantially the same harm shall be grouped together into a single Group." U.S.S.G. § 3D1.2. Offenses should be grouped when they "involve the same victim and the same act or transaction," when the elements of the offenses overlap, or "[w]hen the offense level is determined largely on the basis of the total amount of harm or loss, the quantity of a substance involved, or some other measure of aggregate harm." *Id.* Grouping acknowledges that "[s]ome offenses that may be charged in multiple-count indictments are so closely intertwined with other offenses that conviction for them ordinarily would not warrant increasing the guidelines range." *United States v. Morgano*, 39 F.3d 1358, 1379 (7th Cir. 1994) (alteration in original) (quoting the introductory commentary of Chapter 3 of the Guidelines). The grouping rules are one way in which the Guidelines adopt real-offense sentencing, as opposed to the charge-offense system.

Curtis objected to several parts of the PSR: he contested his involvement in one of the homicides; he challenged the offense level for his Drug Conspiracy Counts; and he argued that there was insufficient evidence for the section 924(c) Count. But the judge overruled those objections, reiterated that the applicable advisory sentencing ranges and offense levels were those found in the PSR, and set out four, distinct ranges that would apply to Curtis: “360 months to life, plus two consecutive life terms, plus an additional 60 months consecutive to any other sentence imposed.” The sentencing court rejected Curtis’s request for a downward departure on any of those sentences. Curtis did not object to the PSR’s grouping decisions.

In the end, Curtis was sentenced to life imprisonment on Count One and a term of 480 months on Counts Two and Six, to be served concurrently. In addition, he was sentenced to two consecutive life sentences on Counts Three and Four, and another consecutive 60 months on Count Seven. We affirmed the resulting overall sentence on appeal, finding sufficient evidence to connect Curtis to both the drug conspiracy and the related homicides. See *United States v. Curtis*, 324 F.3d 501, 502–03 (7th Cir. 2003).

These matters stood until Congress enacted the First Step Act of 2018, which provides relief from some federal drug sentences. Part of the Act addresses the sentencing disparities between powder and crack cocaine by providing retroactive sentencing relief for those convicted of crack-cocaine offenses. Section 404 permits a district court to “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.” Pub. L. 115-391, 132 Stat. 5194, 5222 (2018). A “covered

offense” is defined as a “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.” *Id.* Sections 2 and 3 of the Fair Sentencing Act of 2010 increased the number of grams of crack cocaine necessary for a mandatory ten-year sentence and eliminated the five-year mandatory minimum for simple possession of crack cocaine. See Pub. L. 111-220, 124 Stat. 2372, 2372 (2010).

Curtis filed a motion for relief under these provisions of the First Step Act. Although this motion typically would have been assigned to the judge who presided over his trial, in this case it was given to a new judge because of the retirement of the original judge. Where it makes a difference, we refer to the court that heard Curtis’s First Step Act motion as the “district court” and to the original court as the “sentencing court.”

The district court agreed that in some respects Curtis was eligible for resentencing, and it accordingly reduced his term of imprisonment for the Drug Conspiracy Counts to 293 months on each count, to be served concurrently. But the court took the position that resentencing was not authorized for the Firearms Counts and the section 924(c) Count, because they were not defined as covered offenses by the First Step Act, and in addition they “could not be grouped” with a covered offense.

On appeal, Curtis contends that the district court was incorrect to rely so rigidly on the grouping rules when it considered his eligibility for resentencing under the First Step Act. He insists that his whole sentence should be treated as “a single sentencing package” and, as so understood, as a sentence subject to adjustment under the Act.

II

Typically “[w]e review the discretionary denial of a sentence-reduction motion for an abuse of discretion.” *United States v. Fowowe*, 1 F.4th 522, 526 (7th Cir. 2021). But where the matter includes issues of statutory interpretation, as here, our approach is *de novo*. *United States v. Shaw*, 957 F.3d 734, 738 (7th Cir. 2020).

The primary question on appeal is whether and when a district court is authorized to reduce a defendant’s sentence under the First Step Act for offenses that are not covered by the Act in so many words. This turns on what it means, as the Act puts it, for a court to have “imposed a sentence for a covered offense” such that the sentence can then be reduced. Pub. L. 115-391, 132 Stat. 5194, 5222 (2018). The Supreme Court’s guidance in *Concepcion v. United States* informs our analysis of this issue, but it is not decisive. See 142 S. Ct. 2389, 2401–02 (2022) (describing the effect of the resentencing provisions of the First Step Act). The present case does not require us to consider the scope of district court discretion once resentencing is underway; we must instead determine which portions of a defendant’s sentence can be reexamined in the first place.

We do not approach this question on a clean slate. In *United States v. Hudson*, we held that, upon a threshold determination that a defendant was eligible for resentencing, a court could issue a sentence reduction even for a non-covered offense if it was grouped with covered offenses. 967 F.3d 605, 610 (7th Cir. 2020). We said that Hudson’s “eligibility ‘to have a court consider whether to reduce the previously imposed term of imprisonment’ covers the [non-covered] offense, because that offense was grouped with Hudson’s covered offenses for sentencing, and the resulting aggregate sentence

included Hudson's sentences for both the [non-covered] and covered offenses." *Id.* (quoting *Shaw*, 957 F.3d at 735). We added that "[e]xcluding non-covered offenses from the ambit of First Step Act consideration would, in effect, impose an extra-textual limitation on the Act's applicability" because the statute did not constrain its application to grouped and non-covered offenses. *Id.*

Hudson's reasoning rests on the principle that "[m]ultiple terms of imprisonment are treated under federal law as a single, aggregate term of imprisonment." *Id.* at 611. District courts must be able to consider both covered and non-covered offenses if they are grouped, because there is no way to untangle the aggregate term of imprisonment. Applying that reasoning to offenses like Curtis's, which are neither covered by the First Step Act nor grouped with a covered offense, we conclude that the key question is whether the sentence can be characterized as an aggregate sentence.

If the district court has imposed a single, integrated sentence that blends punishment for a covered offense with punishment for a non-covered offense, such that the term "sentence" applies to both offenses, the court has the discretion to consider resentencing for an offense that is not covered by the First Step Act. The operative question is whether there is reason to think that, at the time of sentencing, the two sentences were interdependent. One way—perhaps the most common way—to show interdependence would be to see if the counts were grouped for sentencing. But the fact that the Sentencing Guidelines do not call for grouping of the offenses is not wholly determinative. That would be inconsistent with the overall character of the Guidelines as advisory only. There could be other indicia in the record, such as statements made

at the time of sentencing or evidence that the court intended to issue one global sentence of an appropriate length. See, *e.g.*, *Dean v. United States*, 137 S. Ct. 1170, 1178 (2017) (contemplating that a district court might issue a below-Guidelines sentence for a predicate offense to account for a lengthy, consecutive, mandatory minimum sentence).

Offenses can be related at the guilt phase in ways that are distinct from their integration for sentencing purposes. Curtis elides the distinction between these two trial phases when he argues on appeal that his firearms offenses were “inextricably linked” to the covered crack-cocaine offenses because “three elements in the firearms charges were predicated upon the crack conspiracy” and “the jury was required to find Mr. Curtis guilty of the crack conspiracy in Count One in order to convict him in Counts Three and Four.” This argument falls short.

The inquiry is not about the connection between the counts for the purposes of conviction; it is about the connection between the offenses for purposes of sentencing. Curtis’s sentencing record does not demonstrate any connection between his covered drug offenses and his non-covered firearms offenses. The sentencing judge’s remarks make this clear. At the sentencing hearing, the court explained at length why it was not departing below a life sentence for the Firearms Counts. Curtis argued for a downward departure because he was not the shooter in either murder, but the sentencing court was not persuaded to go below the life sentence. Nowhere in that explanation did the sentencing court refer to Curtis’s drug offenses or suggest that the life sentences for the firearms offenses were related to or predicated on Curtis’s underlying convictions for the crack-cocaine conspiracy. The record

is devoid of any of the indicia of interdependence that might support the idea that the court imposed one global, blended sentence on Curtis.

We conclude that the district court responsible for Curtis's First Step Act motion did not abuse its discretion when it declined to consider imposing a reduced sentence for Curtis's firearms offenses. The record shows that his three consecutive sentences on the Firearms Counts and the Section 924(c) conviction were distinct and disaggregated from his sentences for the covered crack-cocaine offenses. Though the district court erred in assuming that it lacked authority to impose a reduced sentence simply because the firearms offenses could not be grouped with the drug offenses, that error was harmless. The only sentence that was aggregated with a conviction covered by the First Step Act was Curtis's sentence for the Drug Conspiracy Counts, and therefore only that sentence could be examined for resentencing under the First Step Act.

III

We AFFIRM the judgment of the district court.