



("Guidelines") in effect at the time, Lott's final offense level was 28. Lott was in criminal history category VI, and his Guidelines sentencing range was 140-175 months on the drug and gun possession counts of conviction with a mandatory 60-month consecutive sentence for the § 924(c) offense. The court imposed a sentence of 120 months' imprisonment on the drug and gun possession counts, which represented a variance below the Guidelines range, plus the consecutive term of imprisonment of 60 months, for a total sentence of 180 months' imprisonment. Our Court of Appeals affirmed. See United States v. Lott, 240 F. App'x 992, 995 (3d Cir. 2007).

On August 19, 2008, this court granted Lott's unopposed motion for a reduction in sentence under 18 U.S.C. § 3582(c) and Amendments 706 and 711 of the Guidelines, which reduced the offense levels for most crack offenses. Under the Amendments, Lott's final offense level was reduced to 26, producing an amended Guidelines range of 120-150 months' imprisonment, plus 60 consecutive months on the § 924(c) conviction. The court sentenced Lott to a term of imprisonment of 103 months on the drug and gun possession counts plus 60 consecutive months on the § 924(c) conviction, for a total sentence of 163 months' imprisonment. This new sentence reflected a proportional reduction for the downward variance

granted at Lott's original sentencing in 2005 and was consistent with the version of the Guidelines in place at that time.

On January 19, 2012, the court granted in part and denied in part Lott's motion to reduce his sentence pursuant to 18 U.S.C. § 3582(c) and Amendment 750 to the Guidelines, which again lowered the base offense levels applicable to most crack offenses. Under this Amendment, Lott's base offense level was 24 and his Guidelines range was reduced to 100-125 months' imprisonment on the crack and gun possession convictions. The court imposed a sentence of 100 months' imprisonment on Lott's crack and gun possession convictions plus 60 consecutive months' imprisonment on the § 924(c) conviction, for a total sentence of 160 months' imprisonment. The court declined Lott's request for a further reduction below the amended Guidelines range because of the variances he had previously received due to changes to the Guidelines and because of Lott's extensive disciplinary record while incarcerated. See U.S.S.G. § 1B1.10(b)(2)(A) & cmt. n.3 (2012).

Lott completed his term of imprisonment on November 1, 2015. On October 4, 2017, after a hearing, the court found that Lott had violated the terms of his supervised release based on his arrest in Philadelphia for retail theft and defiant trespass. The court imposed a new four-year term of supervised

release and directed that Lott reside at a residential reentry center for the first six months of that four-year period.

Regrettably, Lott was against before the court. On October 23, 2018, after a hearing, the court found that Lott had again violated the terms of his supervised release based on an arrest in Abington, Montgomery County, for aggravated assault, robbery, and other offenses and his subsequent guilty plea to certain of the charges. As a consequence, the court revoked Lott's supervised release and sentenced him to a term of imprisonment of two years to be followed by a one-year term of supervised release. Lott's current projected release date is May 31, 2020.

## II

Section 404 of the First Step Act makes retroactive Sections 2 and 3 of the Fair Sentencing Act of 2010, Pub. L. 111-220, 124 Stat. 2372, 2372 (2010). See First Step Act, § 404. The Fair Sentencing Act of 2010 was enacted in response to widespread criticism of the relatively harsh treatment of crack cocaine offenses compared to offenses involving powder cocaine. See Dorsey v. United States, 567 U.S. 260, 268-69 (2012). Prior to passage of the Fair Sentencing Act, federal law provided for a five-year mandatory minimum sentence for a defendant convicted of distributing five grams or more of cocaine base and a ten-year mandatory minimum sentence for a

defendant convicted of distributing 50 grams or more of cocaine base. See 21 U.S.C. §§ 841(b)(1)(A), (b)(1)(B) (2009). Section 2 of the Fair Sentencing Act increased the drug quantities necessary to trigger these mandatory minimums. Specifically, it increased the amount triggering the five-year mandatory minimum from five grams or more to 28 grams or more and the amount triggering the ten-year mandatory minimum from 50 grams or more to 280 grams or more. See Dorsey, 567 U.S. at 269.

The First Step Act permits a court that imposed a sentence for a "covered offense" to exercise its discretion to "impose a reduced sentence as if sections 2 and 3 of the Fair Sentence Act of 2010 . . . were in effect at the time the covered offense was committed." First Step Act, § 404(b). 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 . . . that was committed before August 3, 2010." Id. § 404(a).

The parties agree here that the First Step Act lowers the statutory maximum sentence applicable to Lott's crack offense and thus lowers the maximum sentence for a violation of supervised release applicable to that count. Specifically, given Lott's conviction for possessing with intent to distribute 22.5 grams of crack, he was previously subject to a mandatory

minimum of five years' imprisonment and a maximum sentence of 40 years on that count. 21 U.S.C. § 841(b)(1)(B) (2009). Under the First Step Act, Lott is no longer subject to any mandatory minimum and would face a maximum sentence of 20 years' imprisonment. See 21 U.S.C. § 841(b)(1)(C).

Section 404(c) of the First Step Act provides that a sentence reduction is discretionary. Thus, while a court may reduce a sentence if the First Step Act has lowered the statutory penalties for an offense and, by extension, the penalties for a violation of supervised release, the plain language of the Act does not require it do so.

Given the record presented here, we decline to exercise our discretion to reduce Lott's sentence. First, Lott was subject to a maximum term of five years' imprisonment for the revocation of his supervised release on his § 924(c) conviction. The term of imprisonment of two years to be followed by a one-year term of supervised release that this court imposed for Lott's 2018 violation of supervised release falls well below this applicable statutory maximum. Because of Lott's extensive criminal history, the five-year mandatory minimum previously applicable to Lott's crack offense fell far below both his original Guidelines range as well as his amended Guidelines range and thus played no role in this court's sentencing determinations. Moreover, as noted above, Lott

previously received significant reductions in his term of imprisonment on his crack offense pursuant to 18 U.S.C. § 3582(c)(2) and the retroactive amendments to the Guidelines. Finally, we cannot ignore his unacceptable conduct while on supervised release.

In support of his motion, Lott cites vocational and behavioral programming that he completed in 2019 while incarcerated on his most recent violation of supervised release. While we commend Lott on these accomplishments, we do not find that they warrant a reduction in Lott's sentence given the factors discussed above.

This court finds that no hearing on Lott's motion is necessary. The First Step Act does not mandate a hearing. Rule 43(b)(4) of the Federal Rules of Criminal Procedure provides that a defendant need not be present for a "proceeding [that] involves the correction or reduction of sentence under Rule 35 or 18 U.S.C. § 3582(c)." A resentencing under the First Step Act occurs pursuant to § 3582(c)(1)(B) and thus is subject to Rule 43(b)(4).

Accordingly, the motion of Lott for a reduction in sentence pursuant to the First Step Act will be denied.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	
v.	:	
	:	
AQUIL LOTT	:	NO. 04-786

ORDER

AND NOW, this 13th day of January, 2020, for the reasons set forth in the accompanying Memorandum, it is hereby ORDERED that the motion of defendant for imposition of a reduced sentence pursuant to the First Step Act (Docs. ## 143, 148) is DENIED.

BY THE COURT:

/s/ Harvey Bartle III

J.