

SCOTUS: Terry v. United States

Description

On June 14, 2021, the United States Supreme Court (SCOTUS), in *Terry v. United States* examined whether crack offenders who do not trigger a mandatory minimum qualify for resentencing under [The First Step Act of 2018](#). SCOTUS unanimously held they do not.

Facts

In 1986, Congress established mandatory minimum sentences for cocaine convictions that treated crack offenses much more harshly than those involving powder form. The law established three tiers of penalties. The first imposed a ten-year minimum sentence for individuals who possessed at least fifty grams of crack or five kilograms of powder. Tier two imposed a five-year mandatory minimum for those found to have at least five grams of crack or 500 grams of powder. It also established a third tier for “possession with intent to distribute” an unspecified amount and did not carry a mandatory minimum. In 2008, Tarahick Terry was convicted under tier three for possession with intent to distribute an unspecified amount of crack cocaine. Based upon prior criminal convictions, Terry was considered a “career offender” and sentenced to just over 15 ½ years imprisonment.

In 2010, Congress reformed the sentencing guidelines with passage of the [Fair Sentencing Act](#), increasing the thresholds for crack offenses and reducing the disparity between crack and powder offenses. This change, however, was not retroactive until the passage of the [First Step Act](#) in 2018, giving certain crack offenders an opportunity to receive a reduced sentence. Upon enactment, Terry sought resentencing on the ground that he was convicted of a crack offense modified by the Fair Sentencing Act. The district court denied his motion which was affirmed by the Eleventh Circuit.

SCOTUS Opinion

In a unanimous decision, SCOTUS held that under the First Step Act a crack offender is only eligible for a sentence reduction if convicted of a crack offense *that triggered a mandatory minimum sentence*.

The Court noted that an offender is only eligible for a sentence reduction under the First Step Act if they previously received a “sentence for a covered offense.” 404(b), 132 Stat. 5222. The Act defines this as “a violation of a Federal criminal statute, the statutory penalties for which were modified by” certain provisions in the Fair Sentencing Act. The Court correctly pointed out that Terry was convicted of an offense that did not carry a mandatory minimum and was not modified by the Act. As a result, the Court determined that Terry’s conviction was not a “covered offense” under the Act and, therefore, not eligible for resentencing.

Takeaways

No mandatory minimum means no resentencing. Only federal crack cocaine convictions that carry tier one and two penalties are eligible for resentencing under the First Step Act, not tier three.

Terry v. United States, 593 U.S. __ (2021)

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