

TIME

SCOTUS Hears Case That Could Impact Sentencing For Many ‘Low-Level’ Crack Cocaine Offenders

Madeleine Carlisle

May 3, 2021

On Tuesday, the U.S. Supreme Court will hear *Terry vs. United States*, the last case of its term, which could determine whether people imprisoned for possessing small amounts of crack cocaine will be eligible for reduced sentences. A bipartisan coalition of Senators, attorneys general and advocacy groups have all weighed in, urging the highest court to extend relief to low level offenders.

The petitioner in the case, 33-year-old Tarahrick Terry, was sentenced to 15.5 years in prison after he pleaded guilty in 2008 to possessing 3.9 grams of crack cocaine. He petitioned for a reduced sentence in 2019 under the First Step Act—which Congress had passed a year earlier in an attempt to redress racially discriminatory sentencing laws of the 1980s—but was denied by the Atlanta-based 11th U.S. Circuit Court of Appeals.

The circuit court ruled that the First Step Act only covered high and mid-level crack offenders—not low-level ones like Terry. Judges in the Third, Sixth and Tenth Circuits have ruled the same in similar cases, but judges in the First and Fourth Circuits have disagreed.

“This circuit split is untenable,” Terry’s legal team argues in his petition, pointing out “geography alone now determines” whether “countless” people serving low-level crack cocaine convictions can apply for sentence reduction.

Portions of the First Step Act of 2018 took aim at the Anti-Drug Abuse Acts of 1986, which established the infamous 100-to-1 powder to crack cocaine ratio—meaning possession of 500 grams of powder cocaine brought a comparable sentence to the mandatory minimum for 5 grams of crack. (Crack and powder cocaine are derived from the same chemicals, but crack cocaine is processed with additives that make it a solid “rock” shape.)

The laws furthered mass incarceration and disproportionately impacted impoverished people and people of color—community groups often overpoliced to begin with—as crack cocaine has historically been more accessible to poorer Americans. A 2019 *Asbury Park Press* and *USA Today Network* study of nationwide arrest records and federal drug convictions found that a majority of crack users in the U.S. have historically been white, yet Black Americans were sent to federal prison nearly seven times more often for crack offenses from 1991 to 2016.

Read more: *Want to Win the War on Drugs? Portugal Might Have the Answer*

Crack cocaine possession is usually sentenced in three tiers: A is the highest amount and generally carries a sentencing range of ten years to life; tier B is mid-level amounts and generally carries a range of 5 to 40 years; and C is everybody else—all low level offenders—and generally carries a range of zero to 20 years.

In 2010, Congress passed the Fair Sentencing Act and raised the amounts an individual needed to be charged with possessing to qualify for tier A sentencing from 50 grams and above to 280 grams and above, and B tier from between 5 and 50 grams to between 28

and 280 grams. (In essence, this reduced the disparity between crack and powder cocaine possession charges from 100-to-1 to 18-to-1, but did not eliminate it entirely.)

The Act wasn't retroactive, however, meaning many people sentenced between 1986 and 2010 under more punitive laws remained in prison, and serving disproportionately long sentences. Congress attempted to remedy this blind spot in 2018 by including a provision in the First Step Act that extended the Fair Sentencing Act to people sentenced before 2010. Once former President Trump signed the bill into law, people who had been sentenced for crack cocaine possession in tier A or tier B became able to apply for a reduced sentence.

But because the Fair Sentencing Act never actually mentioned tier C, it has remained a matter of legal dispute as to whether the First Step Act also extended relief to people like Terry, who was sentenced at that tier. In other words, *Terry vs. United States* asks whether people who were arrested before 2010 carrying the smallest amounts of crack cocaine should be allowed to apply for sentencing relief akin to people who were caught carrying much larger amounts. The 11th Circuit ruled that they cannot.

Like the First Step Act itself, Terry's petition has garnered a bipartisan coalition of support. Four lead sponsors of the First Step Act in the Senate—Republicans Sen. Chuck Grassley and Sen. Mike Lee and Democrats Sen. Dick Durbin and Sen. Cory Booker—have filed a brief in his favor. “Had Congress intended to exclude individuals with low-level crack cocaine offenses from relief, Congress of course could have done so,” the Senators wrote.

The ACLU and the NAACP Legal Defense and Education Fund filed a brief disagreeing with the 11th Circuit, arguing that granting low level offenders eligibility for sentencing reduction furthers Congress's goal of “correcting the long-recognized and widely criticized racial disparities caused by the crack powder differential.” And conservative groups like the American Conservative Union, the Cato Institute and Americans For

Prosperity Foundation—which has the backing of Republican mega-donor Charles Koch—have also filed briefs urging the court to grant him eligibility.

“We’re undergoing a mass rethinking of drug policy and sentencing policy in the country. And this case is an important part of that rethinking,” says Vikrant Reddy, a senior fellow at the Charles Koch Institute who consulted on the Americans for Prosperity Foundation brief.

When the Supreme Court first took up the case in 2020, the Trump Administration’s Justice Department argued that Terry and other tier C offenders didn’t qualify for re-sentencing. But on March 15 the Biden Administration reversed that position. Arguments were rescheduled in response, which is why the case is being heard in May, even though oral arguments usually end in April.

“This case is about whether individuals who have languished in prison for committing low-level crack offenses deserve a chance at a second chance more than a decade after they were originally sentenced,” the Americans for Prosperity Foundation argues in its brief in support of Terry. “We believe the answer must be ‘yes.’”