

United States Court of Appeals
For the Eighth Circuit

No. 24-2296

United States of America

Plaintiff - Appellee

v.

Alexander Faulkner

Defendant - Appellant

Appeal from United States District Court
for the District of Minnesota

Submitted: October 21, 2025

Filed: September 8, 2026

Before COLLOTON, Chief Judge, LOKEN and BENTON, Circuit Judges.

LOKEN, Circuit Judge.

This appeal again raises the question whether a nonretroactive change in the law can serve as an extraordinary and compelling reason to reduce a defendant's sentence by granting what is known as compassionate release relief under 18 U.S.C. § 3582(c)(1)(A)(i). The district court, reviewing Alexander Faulkner's fifth motion for such relief, assumed without deciding that such relief may be available but denied Faulkner's claim on harmless error grounds. Faulkner appeals. After oral argument,

the Supreme Court decided Rutherford v. United States, 146 S. Ct. 1320, 1326 (2026), and we decided United States v. Loggins, 181 F.4th 883, 887 (8th Cir. 2026), decisions highly relevant to the merits issue the district court did not decide. We affirm the district court’s harmless error ruling but also note that our decision in Loggins appears to establish that, at least in this circuit, a nonretroactive change in the law cannot serve as an extraordinary and compelling reason to reduce a defendant’s sentence under 18 U.S.C. § 3582(c)(1)(A)(i).

I. Procedural History

In September 2015, a jury found Faulkner guilty of being a felon in possession of a firearm and ammunition in violation of 18 U.S.C. § 922(g)(1). The district court¹ sentenced him to 280 months imprisonment, applying an Armed Career Criminal Act (ACCA) enhancement based on his four prior “violent felony” convictions for burglary and drug offenses. The ACCA imposes lengthy mandatory prison terms on certain defendants who have previously committed three “violent felon[ies] or [serious drug offense[s]]” on separate occasions. 18 U.S.C. § 924(e)(1).

Two of Faulkner’s prior offenses were 1996 drug conspiracy convictions that were charged in the same indictment. The district court found they were serious drug offenses committed on separate occasions and therefore counted them as two qualifying prior convictions under the ACCA, consistent with our decision in United States v. Harris, 794 F.3d 885, 887 (8th Cir. 2015) (“Whether prior offenses were committed on different occasions is among the recidivism-related facts” that need not be admitted or proved to a jury) (cleaned up). On appeal, the government conceded that Faulkner’s 1982 Illinois burglary conviction no longer qualified. We affirmed, concluding he still had three qualifying convictions -- his 1984 burglary conviction

¹The Honorable Joan N. Ericksen, United States District Judge for the District of Minnesota.

and the two 1996 convictions, which the district court counted separately, consistent with our then-controlling ACCA precedents. See United States v. Faulkner, 826 F.3d 1139, 1147-49 (8th Cir. 2016), cert. denied, 581 U.S. 961 (2017).

Faulkner has since made many attempts to vacate or reduce his long sentence. In 2017, he filed a post-conviction motion for relief under 28 U.S.C. § 2255, arguing his 1984 burglary conviction is not a qualifying ACCA offense because its elements are broader than the “generic” offense that qualifies as “ACCA burglary.” The district court denied the motion. We affirmed, applying the Supreme Court’s “categorical approach” and comparing the state statute’s elements to generic burglary. Faulkner v. United States, 926 F.3d 475, 477 (8th Cir. 2019).

With other avenues of post-conviction relief from his sentence foreclosed,² Faulkner began seeking a sentence reduction by filing motions for compassionate release relief under 18 U.S.C. § 3582(c)(1)(A). This statute is a “narrow exception” to the rule that a “prison sentence, once imposed, usually cannot be modified by the district court.” Rutherford, 146 S. Ct. at 1326. The statute provides that a court may “reduce the term of imprisonment, after considering the factors set forth in 18 U.S.C. § 3553(a), if it finds that ‘extraordinary and compelling reasons warrant such a reduction,’ and that ‘such a reduction is consistent with the applicable policy statements issued by the Sentencing Commission.’” 18 U.S.C. § 3582(c)(1)(A)(i).

The Commission’s policy statement in USSG § 1B1.13(d) lists types of circumstances that may be “extraordinary and compelling.” After the First Step Act opened compassionate release relief to motions filed by prisoners as well as the Director of the Bureau of Prisons, a circuit split developed over whether a nonretroactive change in the law under 18 U.S.C. § 924(c) could be an “extraordinary

²See United States v. Crandall, 25 F.4th 582, 586 (8th Cir.), cert. denied, 142 S. Ct. 2781 (2022).

and compelling” reason for granting a prisoner relief. In Crandall, we held “that a non-retroactive change in the law, whether offered alone or in combination with other factors, cannot contribute to a finding of ‘extraordinary and compelling reasons’ for a reduction in sentence under § 3582(c)(1)(A).” 25 F.4th at 586.

After denying Faulkner’s first two § 3582(c)(1)(A) motions on procedural grounds, the district court dismissed his next motion, concluding Crandall was controlling, and we summarily affirmed. The district court then denied his fourth motion because he had not shown an extraordinary and compelling reason for a reduction and “no new information changes the Court’s prior finding that the general sentencing factors at 18 U.S.C. § 3553(a) disfavor early release.” Faulkner appealed; we summarily affirmed.

In 2023, the Sentencing Commission amended its applicable policy statement to provide that:

If a defendant received an unusually long sentence and has served at least 10 years of the term of imprisonment, a change in the law (other than an amendment to the Guidelines Manual that has not been made retroactive) may be considered in determining whether the defendant presents an extraordinary and compelling reason, but only where such change would produce a gross disparity between the sentence being served and the sentence likely to be imposed at the time the motion is filed, and after full consideration of the defendant’s individualized circumstances.

USSG § 1B1.13(b)(6). Faulkner then filed this fifth motion, relying on the Commission’s new policy statement and arguing that a 2022 Supreme Court decision established a change in the law governing his sentencing that produced the requisite “gross disparity.” The district court denied the motion because our recent decisions established that Faulkner had not established a change in the law.

Faulkner again appealed. With the appeal pending, the Supreme Court held in Erlinger v. United States that whether two past offenses occurred on different occasions, which triggers an ACCA enhancement that exposes the defendant to a longer prison term, are facts constituting the offense that the Fifth and Sixth Amendments require to be submitted to a jury and found unanimously beyond a reasonable doubt. They may not be found by a judge based on the preponderance of the evidence, as the district court initially did in sentencing Faulkner. 602 U.S. 821, 825, 830-35 (2024). On appeal, Faulkner abandoned his original change-in-the-law argument and focused on Erlinger, arguing a jury would likely have found the ACCA enhancement inapplicable, resulting in a substantially lower sentence. We remanded, requesting the district court’s assessment of Erlinger’s impact.

On remand, the district court again denied this fifth motion for compassionate release, reasoning that Erlinger provides no basis to reduce Faulkner’s sentence because any ACCA error in counting his qualifying prior offenses after his initial trial was harmless -- no rational jury would have unanimously found beyond a reasonable doubt that Faulkner *did not* commit his three qualifying predicate offenses on different occasions. Faulkner again appeals the denial of § 3582(c)(1)(A) relief.

II. Discussion

“We review *de novo* . . . whether a defendant is eligible for a sentence reduction and review for an abuse of discretion the district court’s decision to grant or deny an authorized sentence reduction.” United States v. Rogge, 141 F.4th 902, 903 (8th Cir. 2025) (cleaned up). The defendant bears the burden to establish that compassionate release is warranted. United States v. Avalos Banderas, 39 F.4th 1059, 1062 (8th Cir. 2022).

The question whether USSG § 1B1.13(b)(6) is invalid because it exceeds the Sentencing Commission’s policy statement authority Congress delegated under 18

U.S.C. § 3582(c)(1)(A)(i) is an issue that has generated conflicting circuit court views ever since the Department of Justice began challenging district court decisions applying the “unusually long sentence” policy statement before it even became effective. We need not conclusively decide the issue in this case, which the district court avoided before the Supreme Court addressed it in Rutherford, because we agree with the district court that Faulkner has not satisfied the requirements of § 1B1.13(b)(6) because any error in applying the ACCA enhancement in the initial sentence was harmless. If the issue was again presented to a jury in a retrial of his criminal case, as Erlinger appears to require, Faulkner would fail to show a gross disparity between the sentence being served and the sentence likely imposed when the motion was filed because no reasonable jury “would unanimously find beyond a reasonable doubt” that Faulkner *did not* commit his two predicate 1996 drug offenses on different occasions. As Justice Kavanaugh predicted in his Erlinger dissent, “In most (if not all) cases, the fact that a judge rather than a jury applied ACCA’s different-occasions requirement will be harmless.” 602 U.S. at 859.

Our conclusion that any ACCA error was harmless is consistent with our recent decision in United States v. Sledd, 148 F.4th 988 (8th Cir. 2025), a case that involved whether a “discrete” drug offense that occurred during a drug distribution conspiracy was committed on a different occasion than the conspiracy offense. We applied the factors relevant to deciding the statutory “occasions different from one another standard” identified by the Supreme Court in Erlinger: “whether the [two offenses] ‘were committed close in time, whether they were committed near or far from one another, and whether [they] were similar or intertwined in purpose of character.’” Id. at 990, quoting Erlinger, 602 U.S. at 828. In Sledd, the drug conspiracy took place in three Missouri counties; the discrete sale was made in one of those counties. In Sledd, we held that a jury, not the district judge, must usually decide this fact-intensive issue. The court was properly the decisionmaker because Sledd pleaded guilty, but the court failed to consider the three factors as a jury would. However, we concluded, the error was harmless because Sledd’s plea agreement made clear the

offenses were committed on separate occasions -- the conspiracy was ongoing for over a year before the discrete sale occurred, and the Supreme Court has explicitly said that “Courts . . . have nearly always treated offenses as occurring on separate occasions if a person committed them *a day* or more apart.” Wooden v. United States, 595 U.S. 360, 369–70 (2022) (emphasis added). Therefore, there is “*no reasonable argument*” the two offenses were committed on the same occasion. Sledd, 148 F.4th at 992 (emphasis added) (quotations omitted). Sledd is the latest in a line of Eighth Circuit cases holding that a discrete drug offense committed during an extended conspiracy offense qualifies as a separate occasion. See Faulkner, 826 F.3d at 1148-49; United States v. Melbie, 751 F.3d 586, 590 (8th Cir. 2014); United States v. Johnston, 220 F.3d 857, 862 (8th Cir. 2000).

Here, Faulkner’s two 1996 drug offenses were charged in the same indictment. It charged him with participating in a cocaine trafficking conspiracy between Chicago and Rochester, Minnesota between October 1993 and February 1995, and with possessing cocaine with intent to distribute based on his February 1995 arrest at his uncle’s residence in Minneapolis. Though there is no guilty plea agreement establishing relevant facts, as in Sledd, the jury in 2015 found Faulkner guilty of both offenses beyond a reasonable doubt. That verdict means it is undisputed that Faulkner’s two offenses were committed on separate occasions -- his discrete drug possession with intent to distribute offense occurred over a year into his participation in the drug distribution conspiracy. The district court did not err in concluding that there is “no reasonable argument” that a second rational jury would *not* unanimously find beyond a reasonable doubt that Faulkner’s two 1996 drug offenses were committed on different occasions. Therefore, the ACCA enhancement was properly applied even if USSG § 1B1.13(b)(6) is valid, because applying Erlinger to this fifth motion for compassionate release relief would not create the requisite gross disparity between Faulkner’s current sentence and his likely sentence if he were now resentenced after a jury trial.

Though we need not decide the policy statement validity issue, unlike the district court we now have the benefit of the Supreme Court’s decision in Rutherford and our decision in Loggins, which squarely addressed the issue. In Rutherford, the Court reviewed the Sentencing Commission’s statutory policy statement authority under Loper Bright Enters. v. Raimondo, 603 U.S. 369 (2024), and concluded, 146 S. Ct. at 1334-35:

[T]he Commission’s policy statements must be ‘consistent with’ the governing statute, 28 U.S.C. § 944(a), and courts have a duty to ‘independently interpret the statute and effectuate the will of Congress,’ 603 U.S. at 395. We are not bound to follow the Commission’s guidance when it ‘exceed[s its] statutory authority’ by adopting a definition of a term that is inconsistent with the statute. . . . The statutory text and structure make clear that Congress’s non-retroactive change to § 924(e) -- considered by itself or with other factors -- cannot make a prisoner eligible for compassionate release. To the extent that it counsels otherwise, the Commission’s policy statement is invalid.

Six weeks later, we decided Loggins, a case in which we heard oral argument in April 2025 but held the appeal in abeyance pending the Supreme Court’s decision in Rutherford. After reviewing the Rutherford decision, and giving emphasis to the above-quoted passage, we concluded, 181 F.4th at 887:

“Consistent with the Supreme Court’s binding decision in Rutherford, we hold that the First Step Act’s nonretroactive statutory changes to § 924(c), like other nonretroactive legal changes, cannot, whether offered alone or in combination with other insufficient factual considerations, constitute ‘extraordinary and compelling’ reasons for a sentence reduction under 18 U.S.C. § 3582(c)((1)(A). See Crandall, 25 F.4th at 586.”

The Rutherford and Loggins opinions both explain that nonretroactive changes in the law cannot serve as “extraordinary and compelling” reasons for a sentence

reduction, and that to the extent the Commission’s policy statement counsels otherwise, it is “invalid.” Rutherford, 146 S. Ct. at 1335; Loggins, 181 F.4th at 887. Erlinger constitutes “a change in the law.” Though the Supreme Court has not decided the issue, it seems likely that Erlinger is a nonretroactive change. See Erlinger, 602 U.S. 821, 859 n.3 (2024) (Kavanaugh, J., dissenting) (Erlinger not retroactive); United States v. Gallimore, No. 24-6239, 2026 WL 1847264, at *2 (10th Cir. June 26, 2026) (no reasonable jurist could find Erlinger retroactive).³ In Loggins, we held that “the First Step Act’s nonretroactive statutory changes to § 924(c), like other nonretroactive legal changes, cannot . . . constitute ‘extraordinary and compelling’ reasons for a sentence reduction under 18 U.S.C. § 3582(c)(1)(A). See Crandall, 25 F.4th at 586.” Loggins, 181 F.4th at 887. If this rule applies, Erlinger cannot constitute an “extraordinary and compelling” reason for a sentence reduction.

Faulkner has provided no basis to distinguish Rutherford and Loggins from this case despite having ample time to do so. Because we conclude the district court properly denied compassionate release relief on harmless error grounds, we need not invite further briefing on whether there is any reason to conclude that our broadly-phrased holding in Loggins, which is Eighth Circuit law unless overturned by the court en banc, should not apply in this case.

For the foregoing reasons, we affirm the district court’s February 28, 2025, order denying Faulkner’s motion for a compassionate release sentence reduction.

³“New procedural rules do not apply retroactively on federal collateral review.” Edwards v. Vannoy, 593 U.S. 255, 272 (2021). “Rules that allocate decisionmaking authority [between judge and jury] are prototypical procedural rules.” Schiro v. Summerlin, 542 U.S. 348, 353 (2004).