

FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

IRA VINCENT SPEARMAN,
Defendant-Appellant.

No. 16-55177

D.C. No.
2:93-cr-01027-TJH-1

ORDER

Filed January 18, 2019

Before: Sidney R. Thomas, Chief Judge, and Kim McLane
Wardlaw and Marsha S. Berzon, Circuit Judges.

Order

SUMMARY*

First Step Act of 2018

The panel remanded a criminal case with instructions that the district court proceed with re-sentencing in light of, and in accordance with, the First Step Act of 2018.

Under the First Step Act, a court that imposed a sentence for a covered sentence may 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. The panel wrote that had section 2 of the Fair Sentencing Act of 2010 been in effect at the time the defendant committed his offense, he would have been subject to “a term of imprisonment which may not be less than 10 years and not more than life imprisonment.”

The panel remanded for this limited purpose only and without prejudice to the arguments made on appeal. The panel retained jurisdiction over the certified claims in the 28 U.S.C. § 2255 appeal.

COUNSEL

Michael Romano (argued) and Sophie Wood, Three Strikes Project, Stanford Law School, Stanford, California, for Defendant-Appellant.

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

Elana Shavit Artson (argued), Assistant United States Attorney, Criminal Appeals Section; L. Ashley Aull, Chief, Criminal Division; Nicola T. Hanna, United States Attorney; United States Attorney's Office, Los Angeles, California; for Plaintiff-Appellee.

ORDER

This case is remanded with instructions that the district court proceed with re-sentencing in light of, and in accordance with, the First Step Act of 2018, S. 756, 115th Cong. (2018) (enacted but not yet codified). Under the Act, “[a] court that imposed a sentence for a covered offense may, on motion of . . . the court, impose a reduced sentence as if sections 2 and 3 of the Fair Sentencing Act of 2010 (Public Law 111-220; 124 Stat. 2372) were in effect at the time the covered offense was committed.” First Step Act § 404(b). Had section 2 of the Fair Sentencing Act of 2010 been in effect at the time Spearman committed his offense, he would have been subject to “a term of imprisonment which may not be less than 10 years and not more than life imprisonment” 21 U.S.C. § 841(b)(1)(B).

This case is remanded for this limited purpose only and without prejudice to the arguments made on appeal. We retain jurisdiction over the certified claims in the 28 U.S.C. § 2255 appeal. The parties shall bear their own costs of appeal.

REMANDED.