

No. __-____

IN THE
SUPREME COURT OF THE UNITED STATES

ISAIAH GALBREATH,

Petitioner

v.

UNITED STATES OF AMERICA

Respondent

APPENDIX

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Northern District of Texas

APPENDIX A

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 17-11233
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

July 24, 2018

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ISAIAH GALBREATH,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:17-CR-87-1

Before DENNIS, CLEMENT, and OWEN, Circuit Judges.

PER CURIAM:*

Isaiah Galbreath pleaded guilty to conspiracy to possess with intent to distribute methamphetamine. The district court sentenced him below the guidelines range to 300 months of imprisonment, to be followed by 4 years of supervised release. Galbreath challenges the substantive reasonableness of his below-guidelines sentence because U.S.S.G. § 2D1.1 was not formulated using empirical evidence with respect to methamphetamine offenses. The

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Government has filed an unopposed motion for summary affirmance or, alternatively, for an extension of time to file a merits brief.

We have rejected arguments that *Kimbrough v. United States*, 552 U.S. 85, 109-10 (2007), means a sentence is necessarily unreasonable if the relevant Guideline is not empirically based, or that the presumption of reasonableness should not apply on appeal. *See United States v. Duarte*, 569 F.3d 528, 530-31 (5th Cir. 2009); *United States v. Mondragon-Santiago*, 564 F.3d 357, 366-67 (5th Cir. 2009); *see also United States v. Simpson*, 796 F.3d 548, 557 (5th Cir. 2015). Accordingly, the judgment of the district court is AFFIRMED. The Government's motion for summary affirmance and the alternative motion for an extension of time to file an appellate brief are DENIED.

APPENDIX B

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF TEXAS

Fort Worth Division

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

ISAIAH GALBREATH

Case Number: 4:17-CR-00087-O(01)

U.S. Marshal's No.: 55487-177

Chris Wolfe, Assistant U.S. Attorney

Taylor Brown, Attorney for the Defendant

On June 21, 2017 the defendant, ISAIAH GALBREATH, entered a plea of guilty as to Count One of the Indictment filed on May 17, 2017. Accordingly, the defendant is adjudged guilty of such Count, which involves the following offense:

Title & Section

21 U.S.C. § 846

Nature of Offense

Conspiracy to Possess with Intent to Distribute
Methamphetamine

Offense Ended

March 8, 2017

Count

One

The defendant is sentenced as provided in pages 2 through 4 of this judgment. The sentence is imposed pursuant to Title 18, United States Code § 3553(a), taking the guidelines issued by the United States Sentencing Commission pursuant to Title 28, United States Code § 994(a)(1), as advisory only.

The defendant shall pay immediately a special assessment of \$100.00 as to Count One of the Indictment filed on May 17, 2017.

The defendant shall notify the United States Attorney for this district within thirty days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Sentence imposed October 2, 2017.



REED O'CONNOR
U.S. DISTRICT JUDGE

Signed October 4, 2017.

Judgment in a Criminal Case
Defendant: ISALAH GALBREATH
Case Number: 4:17-CR-00087-O(1)

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IMPRISONMENT

The defendant, ISALAH GALBREATH, is hereby committed to the custody of the Federal Bureau of Prisons (BOP) to be imprisoned for a term of **Three Hundred (300) months** as to Count One of the Indictment filed on May 17, 2017. This sentence shall run concurrently to any future sentence imposed in the probation violation pending before the 18th Judicial District Court of Johnson County, Texas, under Case No. F45981.

The Court recommends to the BOP that the defendant be allowed to participate in the Residential Drug Treatment Program, if eligible.

The defendant is remanded to the custody of the United States Marshal.

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of **Four (4) years** as to Count One of the Indictment filed on May 17, 2017.

While on supervised release, in compliance with the standard conditions of supervision adopted by the United States Sentencing Commission, the defendant shall:

- (1) not leave the judicial district without the permission of the Court or probation officer;
- (2) report to the probation officer as directed by the Court or probation officer and submit a truthful and complete written report within the first five (5) days of each month;
- (3) answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- (4) support the defendant's dependents and meet other family responsibilities;
- (5) work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- (6) notify the probation officer within seventy-two (72) hours of any change in residence or employment;
- (7) refrain from excessive use of alcohol and not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
- (8) not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- (9) not associate with any persons engaged in criminal activity and not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- (10) permit a probation officer to visit the defendant at any time at home or elsewhere and permit confiscation of any contraband observed in plain view by the probation officer;
- (11) notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer;
- (12) not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the Court; and,
- (13) notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and permit the probation officer to make such notifications and to

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Defendant: ISALAH GALBREATH

Case Number: 4:17-CR-00087-O(1)

confirm the defendant's compliance with such notification requirement, as directed by the probation officer.

In addition the defendant shall:

not commit another federal, state, or local crime;

not possess illegal controlled substances;

not possess a firearm, destructive device, or other dangerous weapon;

cooperate in the collection of DNA as directed by the U.S. probation officer;

report in person to the U.S. Probation Office in the district to which the defendant is released from the custody of the Federal Bureau of Prisons within 72 hours of release;

participate in mental health treatment services as directed by the probation officer until successfully discharged, which services may include prescribed medications by a licensed physician, with the defendant contributing to the costs of services rendered (copayment) at a rate of at least \$25 per month;

refrain from any unlawful use of a controlled substance, submitting to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer pursuant to the mandatory drug testing provision of the 1994 crime bill; and,

participate in a program approved by the probation officer for treatment of narcotic or drug or alcohol dependency that will include testing for the detection of substance use, abstaining from the use of alcohol and all other intoxicants during and after completion of treatment, contributing to the costs of services rendered (copayment) at the rate of at least \$25 per month.

FINE/RESTITUTION

The Court does not order a fine or costs of incarceration because the defendant does not have the financial resources or future earning capacity to pay a fine or costs of incarceration.

Restitution is not ordered because there is no victim other than society at large.

Judgment in a Criminal Case

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Defendant: ISALAH GALBREATH

Case Number: 4:17-CR-00087-O(1)

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

United States Marshal

BY
Deputy Marshal