

No. \_\_\_\_

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IN THE  
SUPREME COURT OF THE UNITED STATES

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ROLANDO HUMPHREY,

*Petitioner*

v.

UNITED STATES OF AMERICA

*Respondent*

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APPENDIX

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Appendix A Judgment and Sentence of the United States District Court for the Northern District of Texas

Appendix B Judgment and Opinion of Fifth Circuit

## APPENDIX A

CLERK, U.S. DISTRICT COURT  
By \_\_\_\_\_ Deputy

Case Number: 4:16-CR-256-A(01)

UNITED STATES OF AMERICA

§

v.

§

ROLANDO HUMPHREY

§

**JUDGMENT IN A CRIMINAL CASE**

The government was represented by Assistant United States Attorney John P. Bradford. The defendant, ROLANDO HUMPHREY, was represented by Federal Public Defender through Assistant Federal Public Defender William Hermesmeyer.

The defendant pleaded guilty on April 21, 2017 to the one count indictment filed on November 9, 2016. Accordingly, the court ORDERS that the defendant be, and is hereby, adjudged guilty of such count involving the following offense:

<u>Title &amp; Section / Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count</u>
21 U.S.C. §§ 841(a)(1) and (b)(1)(C) Possession with Intent to Distribute a Controlled Substance	October 17, 2016	1

As pronounced and imposed on August 4, 2017, the defendant is sentenced as provided in this judgment.

The court ORDERS that the defendant immediately pay to the United States, through the Clerk of this Court, a special assessment of \$100.00.

The court further ORDERS that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence address, or mailing address, as set forth below, until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court, through the clerk of this court, and the Attorney General, through the United States Attorney for this district, of any material change in the defendant's economic circumstances.

**IMPRISONMENT**

The court further ORDERS that the defendant be, and is hereby, committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 240 months.

The court recommends to the Bureau of Prisons that defendant be allowed to participate in the Institution Residential Drug Abuse Treatment Program. The Bureau of Prisons to notify the court if the defendant cannot participate in the Institution Residential Drug Abuse Treatment Program, and is to give the court an explanation of why the defendant cannot participate.

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

SUPERVISED RELEASE

The court further ORDERS that, upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years and that while on supervised release, the defendant shall comply with the following conditions:

1. The defendant shall not commit another federal, state, or local crime.
2. The defendant shall not unlawfully possess a controlled substance.
3. The defendant shall cooperate in the collection of DNA as directed by the U.S. Probation Officer, as authorized by the Justice for All Act of 2004.
4. The defendant shall 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.
5. The defendant shall 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 at a rate of at least \$25 per month.
6. The defendant shall 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 at the rate of at least \$25 per month.
7. The defendant shall also comply with the Standard Conditions of Supervision as hereinafter set forth.

Standard Conditions of Supervision

1. The defendant shall report in person to the probation office in the district to which the defendant is released within seventy-two (72) hours of release from the custody of the Bureau of Prisons.
2. The defendant shall not possess a firearm, destructive device, or other dangerous weapon.
3. The defendant shall provide to the U.S. Probation Officer any requested financial information.
4. The defendant shall not leave the judicial district where the defendant is being supervised without the permission of the Court or U.S. Probation Officer.

5. The defendant shall report to the U.S. Probation Officer as directed by the court or U.S. Probation Officer and shall submit a truthful and complete written report within the first five (5) days of each month.
6. The defendant shall answer truthfully all inquiries by the U.S. Probation Officer and follow the instructions of the U.S. Probation Officer.
7. The defendant shall support his dependents and meet other family responsibilities.
8. The defendant shall work regularly at a lawful occupation unless excused by the U.S. Probation Officer for schooling, training, or other acceptable reasons.
9. The defendant shall notify the probation officer at least ten (10) days prior to any change in residence or employment.
10. The defendant shall refrain from excessive use of alcohol and shall 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.
11. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
12. The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the U.S. Probation Officer.
13. The defendant shall permit a probation officer to visit him at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the U.S. Probation Officer.
14. The defendant shall notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer.
15. The defendant shall 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.
16. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

The court hereby directs the probation officer to provide defendant with a written statement that sets forth all the conditions to which the term of supervised release is subject, as contemplated and required by 18 U.S.C. § 3583(f).

FINE

The court did not order a fine because the defendant does not have the financial resource or future earning capacity to pay a fine.

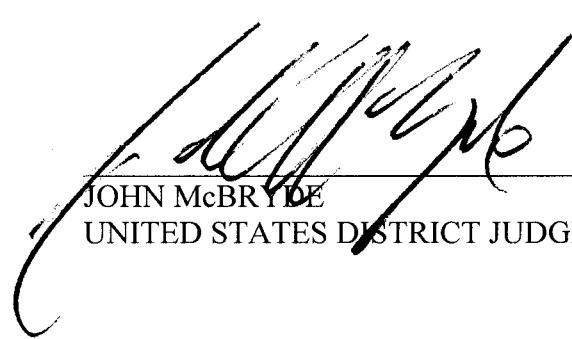
FORFEITURE

Pursuant to 18 U.S.C. § 924(d) and 28 U.S.C. § 2461(c), the defendant shall forfeit to the United States any firearm or ammunition involved in or used in the knowing commission of the offense, including but not limited to: one Aero Precision rifle, Model X15, Serial No. AR43123, with a 100-round drum and 39 rounds of 5.56-millimeter ammunition; one Anderson Manufacturing rifle, Model AM-15, Serial No. 15254693, with magazine and 27 rounds of 5.56-millimeter ammunition; one SKS rifle, Serial No. 23002436, with magazine containing 31 rounds of 7.62-millimeter x 39-millimeter ammunition; one Aero Precision rifle, Model X15, Serial No. AR43122, with magazine and 43 rounds of 5.56-millimeter ammunition; a Smith & Wesson pistol, Model SD9VE, Serial No. FXB3565, with magazine and 16 rounds of 9-millimeter ammunition; one 20-round magazine loaded with 20 rounds of 5.56-millimeter ammunition; three 30-round magazines, each loaded with 30 rounds of 5.56-millimeter ammunition; one 30-round magazine loaded with 29 rounds of 5.56-millimeter ammunition; one white bag containing 27 rounds of 5.56-millimeter ammunition; three rounds of 7.62-millimeter ammunition; 264 rounds of 7.62-millimeter x 39-millimeter ammunition; and 57 rounds of 9-millimeter ammunition.

STATEMENT OF REASONS

The "Statement of Reasons" and personal information about the defendant are set forth on the attachment to this judgment.

Signed this the 4th day of August, 2017.

  
JOHN McBRYDE  
UNITED STATES DISTRICT JUDGE

RETURN

I have executed the imprisonment part of this Judgment as follows:

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Defendant delivered on \_\_\_\_\_, 2017 to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this Judgment.

United States Marshal for the  
Northern District of Texas

By \_\_\_\_\_  
Deputy United States Marshal

## APPENDIX B

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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United States Court of Appeals  
Fifth Circuit

**FILED**

July 11, 2018

Lyle W. Cayce  
Clerk

No. 17-10927  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

ROLANDO HUMPHREY,

Defendant - Appellant

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:16-CR-256-1

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Before BARKSDALE, OWEN, and ENGELHARDT, Circuit Judges.

PER CURIAM:\*

Rolando Humphrey challenges his sentence of 240 months' imprisonment, imposed following his guilty-plea conviction for possession with intent to distribute a controlled substance, in violation of 21 U.S.C. § 841(a)(1).

In calculating the quantity of drugs sold by Humphrey for the purposes of Sentencing Guideline § 2D1.1, the district court found the one kilogram of cocaine seized from Humphrey's automobile did not reflect the scale of his

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\* 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.

offense because Humphrey admitted to selling one fourth of a kilogram of cocaine at least once, but sometimes three times, a week during the two years before his arrest. The court, therefore, estimated his past cocaine sales (although rounding down to one fourth of a kilogram once a week) and aggregated these amounts in its drug-quantity finding. As he did in district court, Humphrey contends the court unreasonably aggregated the amount of drugs he admitted to selling.

Although post-*Booker*, the Guidelines are advisory only, the district court must avoid significant procedural error, such as improperly calculating the Guidelines sentencing range. *Gall v. United States*, 552 U.S. 38, 48–51 (2007). If no such procedural error exists, a properly preserved objection to an ultimate sentence is reviewed for substantive reasonableness under an abuse-of-discretion standard. *Id.* at 51; *United States v. Delgado-Martinez*, 564 F.3d 750, 751–53 (5th Cir. 2009). In that respect, for issues preserved in district court, as in this instance, its application of the Guidelines is reviewed *de novo*; its factual findings, only for clear error. *E.g., United States v. Cisneros-Gutierrez*, 517 F.3d 751, 764 (5th Cir. 2008). The court’s determination of “relevant conduct” under Guideline § 1B1.3 is a factual finding, reviewed only for clear error. *United States v. Rhine*, 583 F.3d 878, 883–85 (5th Cir. 2009).

“A defendant convicted of a drug offense is sentenced based on the amount of drugs involved in the offense”; but, “offense” is defined as “the offense of conviction and all relevant conduct”. U.S.S.G. § 1B1.1. The comments to Guideline § 2D1.1 specify that “quantities of drugs not specified in the count of conviction” are relevant conduct and “may be considered in determining the offense level”. U.S.S.G. § 2D1.1, cmt. 5; *Rhine*, 583 F.3d at 885; *United States v. Robins*, 978 F.2d 881, 889–90 (5th Cir. 1992). Accordingly, the court, in applying § 2D1.1, did not err in considering as

relevant conduct Humphrey's admission to selling more than the kilogram that was seized from his automobile. *Rhine*, 583 F.3d at 884–85.

Especially in the light of Humphrey's admitting to selling one fourth of a kilogram of cocaine at least once a week, the court did not clearly err in finding the amount of drugs seized from Humphrey did not reflect the scale of his offense. U.S.S.G. § 2D1.1, cmt. 5. The court properly considered Humphrey's admission to selling more than the one kilogram of cocaine seized from his automobile and plausibly determined he was not merely a one-time drug distributor. *Robins*, 978 F.2d at 890.

AFFIRMED.