

NUMBER _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2018

JEFFREY BURRIS, Petitioner,

v.

UNITED STATES OF AMERICA, Respondent.

APPENDIX A

TO PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

**JONATHAN D. BYRNE
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Counsel for Petitioner

**BRIAN J. KORNBRATH
ACTING FEDERAL PUBLIC DEFENDER**

**LEX A. COLEMAN
ASSISTANT FEDERAL PUBLIC DEFENDER**

741 Fed.Appx. 183 (Mem)

This case was not selected for publication in West's Federal Reporter.

See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S.Ct. of Appeals 4th Cir. Rule 32.1.

United States Court of Appeals, Fourth Circuit.

UNITED STATES of America, Plaintiff-Appellee,

v.

Jeffrey BURRIS, A/k/a Jeffrey M. Burris, Defendant-Appellant.

No. 18-4265

|

Submitted: October 23, 2018

|

Decided: November 7, 2018

Appeal from the United States District Court for the Southern District of West Virginia, at Charleston. Irene C. Berger, District Judge. (2:17-cr-00099-1)

Attorneys and Law Firms

Christian M. Capece, Federal Public Defender, Jonathan D. Byrne, Assistant Federal Public Defender, Lex A. Coleman, Assistant Federal Public Defender, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Charleston, West Virginia, for Appellant. Michael B. Stuart, United States Attorney, R. Gregory McVey, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Charleston, West Virginia, for Appellee.

Before DIAZ and THACKER, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Opinion

Affirmed by unpublished per curiam opinion.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Jeffrey Burris appeals the 60-month sentence imposed following his guilty plea to possession of unregistered firearms, 26 U.S.C. § 5861(d) (2012). Burris contends that his within-Guidelines sentence is unreasonable. Finding no error, we affirm.

We review a sentence for reasonableness, applying “a deferential abuse-of-discretion standard.” *Gall v. United States*, 552 U.S. 38, 41, 128 S.Ct. 586, 169 L.Ed.2d 445 (2007). This review entails consideration of the procedural and substantive reasonableness of the sentence. *Id.* at 51, 128 S.Ct. 586. In determining procedural reasonableness, we consider whether the district court properly calculated the applicable Guidelines range, considered the 18 U.S.C. § 3553(a) (2012) factors, and sufficiently explained the selected sentence. *Id.* If we find no significant procedural error, we examine the substantive reasonableness of the sentence under the “totality of the circumstances.” *Id.* “Any sentence that is within or below a properly calculated Guidelines range is presumptively reasonable.” *United States v. Louthian*, 756 F.3d 295, 306 (4th Cir. 2014). To successfully challenge substantively reasonableness, an appellant must rebut this “presumption … by showing that the sentence is unreasonable when measured against the … § 3553(a) factors.” *Id.*

Burris’ 60-month sentence falls within the correctly calculated Guidelines range of 57-71 months and is presumptively reasonable. In imposing sentence, the district court addressed the various statutory factors. The court was especially concerned about the serious nature of the offense, which involved the possession of 14 unregistered firearms, some of which Burris had concealed in woods, and Burris’ lengthy criminal history, which included two assaults and two offenses related to weapons. The court observed that prior terms of probation had not had the intended deterrent effect. We find nothing in the record *184 to support the claim that the sentence is unreasonable when measured against the statutory sentencing factors.

We therefore affirm. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

All Citations

741 Fed.Appx. 183 (Mem)

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APPENDIX B

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ACTING FEDERAL PUBLIC DEFENDER

LEX A. COLEMAN
ASSISTANT FEDERAL PUBLIC DEFENDER

1 here, as well as the sentencing memoranda filed by the
2 parties, and particularly giving consideration to the
3 sentencing factors set forth in 18, U.S.C., Section 3553(a),
4 it's the judgment of this Court that you be committed to the
5 Bureau of Prisons for a term of 60 months.

6 Upon your release it's ordered that you be placed on
7 supervised release for a term of three years.

8 Within 72 hours of your release, Mr. Burris, I am
9 ordering that you report in person to the United States
10 Probation Office in the district in which you are released.

11 While you're on supervised release, you must not commit
12 another federal, state, or local crime. You must not
13 possess a firearm or other dangerous device. And you must
14 not unlawfully possess a controlled substance.

15 You also must comply with the standard terms and
16 conditions of supervision as recommended by the United
17 States Sentencing Commission and as adopted by this Court,
18 including I am ordering that you participate in a program of
19 testing, counseling, and treatment for drug and alcohol
20 abuse as directed by your probation officer.

21 In addition, I'm ordering that you comply with the
22 standard conditions of supervision adopted by the Southern
23 District of West Virginia in Local Rule 32.3.

24 I find, given my review of the Pre-Sentence
25 Investigation Report, Mr. Burris, that there is no

1 information to suggest a low risk of future substance abuse
2 given the paraphernalia and the marijuana that was found.

3 And, so, I'm going to order that you submit to a drug
4 test within 14 days of your release and at least two
5 periodic drug tests thereafter as a condition of your
6 supervised release.

7 I find in my review of your financial situation that
8 you do not have the resources to pay a fine. And,
9 therefore, I'm going to order that no fine be imposed.

10 I find that there's no identifiable victim in this
11 case. And, therefore, I make no order of restitution.

12 I do order, however, that you pay a special assessment
13 of \$100 for having been convicted of a felony offense. And
14 that is due immediately. If not paid immediately, I order
15 that you pay it by participating in the Bureau of Prisons'
16 Inmate Financial Responsibility Program and that you make
17 payments of at least \$25 per quarter.

18 Having considered the applicable advisory guideline
19 range in this case and, as I've said, the 3553(a) factors, I
20 find that this sentence of 60 months of incarceration to be
21 followed by three years of supervised release is appropriate
22 and reasonable.

23 In addition to approximately 70 legal guns, you
24 possessed a short-barreled rifle; a short-barreled shotgun;
25 five fully automatic machine guns, one with a partially

1 obliterated serial number as I've indicated; two machine gun
2 trigger packs; four firearm silencers; and a destructive
3 device.

4 The destructive device, the silencers, and two machine
5 guns and marijuana paraphernalia were found in containers
6 out in the woods. Moving the items to containers in the
7 woods both increases the danger of possessing those devices
8 and demonstrates, quite frankly, your awareness that despite
9 statements made to the probation officer to the contrary
10 that possessing those weapons was illegal. Those guns left
11 unsecured in the woods could have been accessed by others,
12 including your son.

13 You have continued with the probation office to
14 minimize your conduct and suggest that you were unaware that
15 what you were doing was illegal. It simply, Mr. Burris, is
16 not credible that someone with your level of interest in
17 firearms and who had at least two prior convictions that
18 involved firearms was unaware that possessing those firearms
19 violated federal law.

20 Today here you say you had intentions of registering
21 them but things just jumped ahead which is inconsistent with
22 the statements made to the probation office during the
23 pre-sentence investigation.

24 You and your wife have issues which I've indicated are
25 not at issue in this case so far as I'm concerned. This

1 case is strictly about the criminal conduct of possessing
2 fully automatic firearms and a destructive device not
3 registered in the National Firearms Registration and
4 Transfer Record.

5 I've considered your criminal record. Although you
6 have no criminal history points as calculated under the
7 guidelines, as I've indicated you have two prior convictions
8 related to weapons, a 1995 conviction for carrying a
9 concealed dangerous instrument and a 2004 conviction for
10 conspiracy third degree that involved possession of stolen
11 firearms.

12 You also have two assault convictions. Your guideline
13 range, quite frankly, somewhat underrepresents the
14 seriousness of your history.

15 In imposing a sentence within the applicable guideline
16 range I've given consideration to the fact that this will be
17 your first term of imprisonment. I've considered your
18 medical condition as well as your extensive employment
19 history.

20 I have also considered your attorney's argument here
21 today as well as in the sentencing memoranda in favor of a
22 sentence of probation based on your medical problems and the
23 collateral consequences of your felony conviction, together
24 with the other mitigating circumstances that he presented.

25 In losing your right to possess firearms, you are

1 losing a hobby and a significant number of guns. That in no
2 way, in my opinion, serves as an adequate punishment or
3 deterrent for your offense. And, therefore, when I look at
4 the 3553(a) factors, I find that a sentence of probation is
5 not appropriate in this case.

6 Your hobby of collecting guns does not make you
7 deserving of more lenient treatment than other defendants
8 with similar conduct.

9 Your attorney also pointed out that you successfully
10 completed previous terms of probation. However, those
11 previous terms of probation have not served as a deterrent
12 or we would not be here today.

13 I will recommend, Mr. Burris, to the Bureau of Prisons
14 that they conduct a medical evaluation and place you in a
15 facility that can best treat your medical condition.

16 Having considered your history and characteristics and
17 the other sentencing factors under Section 3553(a), I find
18 this sentence fulfills the goals of sentencing.

19 I find specifically that an order sentencing you to a
20 term of probation would not meet the goals of sentencing as
21 outlined in Section 3553(a) of Title 18.

22 This sentence, however, is adequate or sufficient and
23 yet not more than necessary to provide just punishment and
24 deterrence, to protect the public from further crimes
25 committed by you, and to promote respect for the law.

NUMBER _____

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UNITED STATES DISTRICT COURT

Southern District of West Virginia

UNITED STATES OF AMERICA

v.

JEFFREY BURRIS

JUDGMENT IN A CRIMINAL CASE

Case Number: 2:17-cr-00099-01

USM Number: 14601-088

Lex A. Coleman

Defendant's Attorney

THE DEFENDANT:

 pleaded guilty to count(s) One of a single-count Indictment pleaded nolo contendere to count(s) _____ which was accepted by the court. was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
26 U.S.C. §§ 5861(d) and 5871	Possession of Firearms Not Registered in the National Firearms Registration and Transfer Record	5/10/2017	One

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

 The defendant has been found not guilty on count(s) _____ Count(s) _____ is are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 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. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

4/19/2018

Date of Imposition of Judgment



IRENE C. BERGER

UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA

Name and Title of Judge

4/19/2018

Date

DEFENDANT: JEFFREY BURRIS
CASE NUMBER: 2:17-cr-00099-01

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

SIXTY (60) MONTHS.

The court makes the following recommendations to the Bureau of Prisons:

That the defendant receive a medical evaluation and be placed in a facility that can best treat his medical conditions.

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

The defendant shall surrender to the United States Marshal for this district:

at _____ a.m. p.m. on _____.

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on _____.

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

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 UNITED STATES MARSHAL

DEFENDANT: JEFFREY BURRIS

CASE NUMBER: 2:17-cr-00099-01

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:

THREE (3) YEARS.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: JEFFREY BURRIS
CASE NUMBER: 2:17-cr-00099-01

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature

Date

DEFENDANT: JEFFREY BURRIS
CASE NUMBER: 2:17-cr-00099-01

ADDITIONAL SUPERVISED RELEASE TERMS

While on supervised release, the defendant must not commit another federal, state, or local crime, must not possess a firearm or other dangerous device, and must not unlawfully possess a controlled substance. The defendant must also comply with the standard terms and conditions of supervised release as recommended by the United States Sentencing Commission and as adopted by the United States District Court for the Southern District of West Virginia, including the special condition that the defendant shall participate in a program of testing, counseling, and treatment for drug and alcohol abuse as directed by the probation officer, until such time as the defendant is released from the program by the probation officer. In addition, the defendant shall comply with the Standard Conditions of Supervision adopted by the Southern District of West Virginia in Local Rule of Criminal Procedure 32.3, as follows:

- 1) If the defendant is unemployed, the probation officer may direct the defendant to register and remain active with Workforce West Virginia;
- 2) The defendant shall submit to random urinalysis or any drug screening method whenever the same is deemed appropriate by the probation officer and shall participate in a substance abuse program as directed by the probation officer. The defendant shall not use any method or device to evade a drug screen;
- 3) As directed by the probation officer, the defendant will make copayments for drug testing and drug treatment services at rates determined by the probation officer in accordance with a court-approved schedule based on ability to pay and availability of third-party payments; and
- 4) A term of community service is imposed on every defendant on supervised release or probation. Fifty hours of community service is imposed on every defendant for each year the defendant is on supervised release or probation. The obligation for community service is waived if the defendant remains fully employed or actively seeks such employment throughout the year.

DEFENDANT: JEFFREY BURRIS

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

Assessment **JVTA Assessment*** **Fine** **Restitution**
TOTALS \$ 100.00 \$ 0.00 \$ 0.00 \$ 0.00

The determination of restitution is deferred until . An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

- Restitution amount ordered pursuant to plea agreement \$ _____
- The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- The court determined that the defendant does not have the ability to pay interest and it is ordered that:
 - the interest requirement is waived for the fine restitution.
 - the interest requirement for the fine restitution is modified as follows:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: JEFFREY BURRIS
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SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A Lump sum payment of \$ 100.00 due immediately, balance due
 not later than _____, or
 in accordance with C, D, E, or F below; or

B Payment to begin immediately (may be combined with C, D, or F below); or

C Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F Special instructions regarding the payment of criminal monetary penalties:

If not paid immediately, the defendant shall pay the special assessment while incarcerated through participation in the Inmate Financial Responsibility Program by paying quarterly installments of \$25 each.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

The defendant shall pay the cost of prosecution.
 The defendant shall pay the following court cost(s):
 The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVTA assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.