

APPENDIX

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Opinion of the Eleventh Circuit Court of Appeals, <i>United States v. Wilfredo Madrigal</i> , 770 Fed. Appx 553 (May 14, 2019)	A-1
Judgment imposing sentence	A-2

A-1

770 Fed.Appx. 553 (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 App. 11th Cir. Rule 36-2.

United States Court of Appeals, Eleventh Circuit.

UNITED STATES of America, Plaintiff-Appellee,

v.

Wilfredo Roy MADRIGAL, a.k.a. Wolfman,
a.k.a. Fredo, Defendant-Appellant.

No.

18

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13734

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Non-Argument Calendar

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(May 14, 2019)

Attorneys and Law Firms

Carol Herman, Emily M. Smachetti, U.S. Attorney Service - Southern District of Florida, U.S. Attorney Service - SFL, Miami, FL, Robert Benjamin Cornell, U.S. Attorney's Office, Fort Lauderdale, FL, for Plaintiff-Appellee

Peter Vincent Birch, Michael Caruso, Federal Public Defender, Federal Public Defender's Office, West Palm Beach, FL, for Defendant-Appellant

Appeal from the United States District Court for the Southern District of Florida, D.C. Docket No. 9:18-cr-80064-RLR-1

Before TJOFLAT, JILL PRYOR and BLACK, Circuit Judges.

Opinion

PER CURIAM:

Wilfredo Madrigal appeals his 120-month sentence for distributing heroin. Madrigal contends the district court improperly classified him as a career offender based on two prior convictions for drug-related offenses under Fla. Stat. § 893.13. Madrigal asserts the convictions should not qualify as predicate offenses under U.S.S.G. § 4B1.2(b) because the state law lacked a *mens rea* element.

*554 We review *de novo* the district court's decision to classify a defendant as a career offender under § 4B1.1. *United States v. Gibson*, 434 F.3d 1234, 1243 (11th Cir. 2006). "We are bound by prior panel decisions unless or until we overrule them while sitting *en banc*, or they are overruled by the Supreme Court." *United States v. Jordan*, 635 F.3d 1181, 1189 (11th Cir. 2011).

A defendant is a career offender if (1) the defendant is at least 18 years old at the time of the instant offense of conviction, (2) the instant offense of conviction is either a crime of violence or a controlled substance offense, and (3) the defendant has at least two prior convictions for either a crime of violence or a controlled substance offense. U.S.S.G. § 4B1.1(a). A "controlled substance offense" is an offense under federal or state law, punishable by more than one year of imprisonment, that prohibits the manufacture, import, export, distribution, or dispensing of a controlled substance, or possession of a controlled substance, with intent to manufacture, import, export, distribute, or dispense. U.S.S.G. § 4B1.2(b).

In *United States v. Smith*, we held that a prior conviction under Fla. Stat. § 893.13 was a "controlled substance offense" under § 4B1.2(b) and that the definition of "controlled substance offense" under § 4B1.2(b) does not require "that a predicate state offense include[] an element of *mens rea* with respect to the illicit nature of the controlled substance." 775 F.3d 1262, 1268 (11th Cir. 2014); *see also United States v. Pridgeon*, 853 F.3d 1192, 1200 (11th Cir. 2017) (rejecting the argument that *Smith* was wrongly decided and affirming *Smith*'s holding that convictions under § 893.13 qualify as "controlled substance offenses" under the Sentencing Guidelines), *cert. denied*, — U.S. —, 138 S.Ct. 215, 199 L.Ed.2d 140 (2017). In *Smith*, we stated there was no need to look at the generic definition of "controlled substance offense" by comparing Fla. Stat. § 893.13 to its federal analogue because the term is defined in the Sentencing Guidelines. 775 F.3d at 1267.

Madrigal's argument his prior convictions under Fla. Stat. § 893.13 were not "controlled substance offenses" under the Guidelines because the state law lacked a *mens rea* element is foreclosed by our decision in *Smith*. Accordingly, the district court did not err in applying an enhanced base offense level based on its determination that his prior Fla. Stat. § 893.13 convictions were controlled substance offenses, and we affirm.

AFFIRMED.

All Citations

770 Fed.Appx. 553 (Mem)

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A-2

UNITED STATES DISTRICT COURT

Southern District of Florida

West Palm Beach Division

UNITED STATES OF AMERICA

v.

WILFREDO ROY MADRIGAL

JUDGMENT IN A CRIMINAL CASE

Case Number: 9:18-CR-80064-001

USM Number: 17254-104

Counsel For Defendant: Peter Birch

Counsel For The United States: Jennifer Nucci

Court Reporter: Pauline Stipes

The defendant pleaded guilty to count(s) 1 of the Information.

The defendant is adjudicated guilty of these offenses:

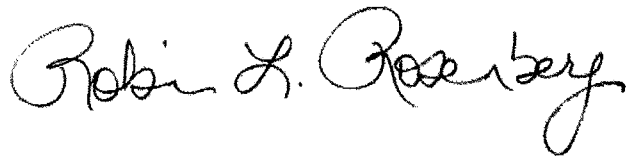
<u>TITLE & SECTION</u>	<u>NATURE OF OFFENSE</u>	<u>OFFENSE ENDED</u>	<u>COUNT</u>
21:841(a)(1),(b)(1)(C)	Possession with intent to distribute a mixture or substance containing a detectable amount of heroin	03/09/2018	1

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

All remaining counts are dismissed on the motion of the government.

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.

Date of Imposition of Sentence: 8/9/2018



Robin L. Rosenberg
United States District Judge

Date: 8/10/2018

DEFENDANT: WILFREDO ROY MADRIGAL

CASE NUMBER: 9:18-CR-80064-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **120 months as to count one. This sentence is to begin immediately.**

The court makes the following recommendations to the Bureau of Prisons: that the defendant be incarcerated in a facility in South Florida. The Court further recommends that the defendant be allowed to participate in the RDAP program.

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

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

DEPUTY UNITED STATES MARSHAL

DEFENDANT: WILFREDO ROY MADRIGAL

CASE NUMBER: 9:18-CR-80064-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **3 years**.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall 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 defendant shall cooperate in the collection of DNA as directed by the probation officer.

The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

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

STANDARD CONDITIONS OF SUPERVISION

1. The defendant shall not leave the judicial district without the permission of the court or probation officer;
2. The defendant shall report to the probation officer and shall submit a truthful and complete written report within the first fifteen days of each month;
3. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. The defendant shall support his or her dependents and meet other family responsibilities;
5. The defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6. The defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7. The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9. 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 probation officer;
10. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11. The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12. 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; and
13. 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.

DEFENDANT: WILFREDO ROY MADRIGAL

CASE NUMBER: 9:18-CR-80064-001

SPECIAL CONDITIONS OF SUPERVISION

Employment Requirement - The defendant shall maintain full-time, legitimate employment and not be unemployed for a term of more than 30 days unless excused for schooling, training or other acceptable reasons. Further, the defendant shall provide documentation including, but not limited to pay stubs, contractual agreements, W-2 Wage and Earnings Statements, and other documentation requested by the U.S. Probation Officer.

Financial Disclosure Requirement - The defendant shall provide complete access to financial information, including disclosure of all business and personal finances, to the U.S. Probation Officer.

Permissible Search - The defendant shall submit to a search of his/her person or property conducted in a reasonable manner and at a reasonable time by the U.S. Probation Officer.

Substance Abuse Treatment - The defendant shall participate in an approved treatment program for drug and/or alcohol abuse and abide by all supplemental conditions of treatment. Participation may include inpatient/outpatient treatment. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

DEFENDANT: **WILFREDO ROY MADRIGAL**

CASE NUMBER: **9:18-CR-80064-001**

CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$100.00	\$0.00	\$0.00

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.

<u>NAME OF PAYEE</u>	<u>TOTAL LOSS*</u>	<u>RESTITUTION ORDERED</u>	<u>PRIORITY OR PERCENTAGE</u>
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* 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.

**Assessment due immediately unless otherwise ordered by the Court.

DEFENDANT: WILFREDO ROY MADRIGAL

CASE NUMBER: 9:18-CR-80064-001

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.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during 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.

This assessment/fine/restitution is payable to the CLERK, UNITED STATES COURTS and is to be addressed to:

U.S. CLERK'S OFFICE

ATTN: FINANCIAL SECTION

400 NORTH MIAMI AVENUE, ROOM 08N09

MIAMI, FLORIDA 33128-7716

The assessment/fine/restitution is payable immediately. The U.S. Bureau of Prisons, U.S. Probation Office and the U.S. Attorney's Office are responsible for the enforcement of this order.

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

<u>CASE NUMBER</u>	<u>TOTAL AMOUNT</u>	<u>JOINT AND SEVERAL AMOUNT</u>
<u>DEFENDANT AND CO-DEFENDANT NAMES</u>		
<u>(INCLUDING DEFENDANT NUMBER)</u>		

The Government shall file a preliminary order of forfeiture within 3 days.

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) penalties, and (8) costs, including cost of prosecution and court costs.