

No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

Billy J. Griffin \_\_\_\_\_ — PETITIONER  
(Your Name)

vs.

United States of America \_\_\_\_\_ — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Eighth Circuit  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Billy J. Griffin #47373-044

(Your Name)

FCI Memphis, Federal Correctional Institution

(Address)

PO Box 34550, Memphis, TN 38184

(City, State, Zip Code)

Represented by, Michael Moroni EDMO36560

(Phone Number)

PO Box 24, Bloomfield, MO 63825

Phone: 573-568-9085

ATTORNEY FOR PETITIONER

## LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

## RELATED CASES

None

## QUESTION PRESENTED

Question 1. Is the Missouri Controlled Drug Statute indivisible such that the Defendant's two distribution of marijuana felony convictions in state court would not apply in the Career Offender calculations, in particular are statutes that penalize a controlled substance and then refer to another section of the statute for definitions of the controlled substances indivisible?

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IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the United States court of appeals appears at Appendix A to the Petition and is unpublished.

The judgment of the United States district court appears at Appendix B and is unpublished.

## JURISDICTION

The case below was decided by the United States Court of Appeals for the Eighth Circuit.

The case was decided on July 12, 2019.

A petition for rehearing was filed on July 16, 2019.

The petition for rehearing was denied on August 8, 2019.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

**United States Constitution Amendment 5:** No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

### **21 USC Section 841. (a)(1) and (b)(1)(B)(Viii)**

#### **(a) Unlawful acts**

Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally--

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or

...

#### **(b) Penalties**

Except as otherwise provided in section 849, 859, 860, or 861 of this title, any person who violates subsection (a) of this section shall be sentenced as follows:

(1) . . . (B) In the case of a violation of subsection (a) of this section involving-- . . .

(viii) 5 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 50 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers;

such person shall be sentenced to a term of imprisonment which may not be less than 5 years and not more than 40 years and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or \$2,000,000 if the defendant is an individual or \$5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment which may not be less than 10

years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or \$4,000,000 if the defendant is an individual or \$10,000,000 if the defendant is other than an individual, or both. Notwithstanding section 3583 of title 18, any sentence imposed under this subparagraph shall, in the absence of such a prior conviction, include a term of supervised release of at least 4 years in addition to such term of imprisonment and shall, if there was such a prior conviction, include a term of supervised release of at least 8 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein.

18 USC § 3553 - Imposition of a sentence

**(a) Factors To Be Considered in Imposing a Sentence.**— The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider— . . .

**(f) Limitation on Applicability of Statutory Minimums in Certain Cases.**— Notwithstanding any other provision of law, in the case of an offense under section 401, 404, or 406 of the Controlled Substances Act (21 U.S.C. 841, 844, 846) or section 1010 or 1013 of the Controlled Substances Import and Export Act (21 U.S.C. 960, 963), the court shall impose a sentence pursuant to guidelines promulgated by the United States Sentencing Commission under section 994 of title 28 without regard to any statutory minimum sentence, if the court finds at sentencing, after the Government has been afforded the opportunity to make a recommendation, that—

- (1) the defendant does not have more than 1 criminal history point, as determined under the sentencing guidelines;
- (2) the defendant did not use violence or credible threats of violence or possess a firearm or other dangerous weapon (or induce another participant to do so) in connection with the offense;
- (3) the offense did not result in death or serious bodily injury to any person;
- (4) the defendant was not an organizer, leader, manager, or supervisor of others in the offense, as determined under the sentencing guidelines and was not engaged in a continuing criminal enterprise, as defined in section 408 of the Controlled Substances Act; and
- (5) not later than the time of the sentencing hearing, the defendant has truthfully provided to the Government all information and evidence the defendant has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan, but the fact that the defendant has no relevant or useful other information to provide or that the Government is already aware of the information shall not preclude a determination by the court that the defendant has complied with this requirement.

**2005 Missouri Revised Statutes - § 195.211. — Distribution, delivery, manufacture or production of a controlled substance, violations and attempted violations, penalty.**

195.211. 1. Except as authorized by sections 195.005 to 195.425 and except as provided in section 195.222, it is unlawful for any person to distribute, deliver, manufacture, produce or attempt to distribute, deliver, manufacture or produce a controlled substance or to possess with intent to distribute, deliver, manufacture, or produce a controlled substance.

2. Any person who violates or attempts to violate this section with respect to manufacturing or production of a controlled substance of any amount except for five grams or less of marijuana in a residence where a child resides or within two thousand feet of the real property comprising a public or private elementary or

public or private elementary or secondary school, public vocational school or a public or private junior college, college or university, or any school bus is guilty of a class A felony.

3. Any person who violates or attempts to violate this section with respect to any controlled substance except five grams or less of marijuana is guilty of a class B felony.

4. Any person who violates this section with respect to distributing or delivering not more than five grams of marijuana is guilty of a class C felony.

**2005 Missouri Revised Statutes - § 195.017. — Substances, how placed in schedules--list of scheduled substances--publication of schedules annually--electronic log of transactions to be maintained, when--certain products to be located behind pharmacy counter--exemption from requirements, when--rulemaking authority.**

195.017. 1. The department of health and senior services shall place a substance in Schedule I if it finds that the substance:

(1) Has high potential for abuse; and

(2) Has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

2. Schedule I:

(1) The controlled substances listed in this subsection are included in Schedule I;

... [List of controlled substances]

**2011 Missouri Revised Statutes**

**TITLE XII PUBLIC HEALTH AND WELFARE**

**Chapter 195 Drug Regulations**

**Section 195.211. Distribution, delivery, manufacture or production of a controlled substance, violations and attempted violations, penalty.**

195.211. 1. Except as authorized by sections 195.005 to 195.425 and except as provided in section 195.222, it is unlawful for any person to distribute, deliver, manufacture, produce or attempt to distribute, deliver, manufacture or produce a controlled substance or to possess with intent to distribute, deliver, manufacture, or produce a controlled substance.

2. Any person who violates or attempts to violate this section with respect to manufacturing or production of a controlled substance of any amount except for five grams or less of marijuana in a residence where a child resides or within two thousand feet of the real property comprising a public or private elementary or public or private elementary or secondary school, public vocational school or a public or private community college, college or university, or any school bus is guilty of a class A felony.

3. Any person who violates or attempts to violate this section with respect to any controlled substance except five grams or less of marijuana is guilty of a class B felony.

4. Any person who violates this section with respect to distributing or delivering not more than five grams of marijuana is guilty of a class C felony.

**2011 Missouri Revised Statutes**

**TITLE XII PUBLIC HEALTH AND WELFARE**

**Chapter 195 Drug Regulations**

**Section 195.017. Substances, how placed in schedules--list of scheduled substances--publication of schedules annually--electronic log of transactions to be maintained, when--certain products to be located behind pharmacy**

195.017. 1. The department of health and senior services shall place a substance in Schedule I if it finds that the substance:

(1) Has high potential for abuse; and

(2) Has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

2. Schedule I:

(1) The controlled substances listed in this subsection are included in Schedule I;

... [List of controlled substances]

**New York Penal Law Section 220.31 - Criminal sale of a controlled substance in the fifth degree.**

220.31 Criminal sale of a controlled substance in the fifth degree.

A person is guilty of criminal sale of a controlled substance in the fifth degree when he knowingly and unlawfully sells a controlled substance.

Criminal sale of a controlled substance in the fifth degree is a class D felony.

**New York Consolidated Laws, Penal Law - PEN § 220.00.5 Controlled substances; definitions**

5. “Controlled substance” means any substance listed in schedule I, II, III, IV or V of section thirty-three hundred six of the public health law other than marihuana, but including concentrated cannabis as defined in paragraph (a) of subdivision four of section thirty-three hundred two of such law.

**MAICR 325.08 (2010) CONTROLLED SUBSTANCES: POSSESSION WITH  
INTENT TO DISTRIBUTE, DELIVER, OR SELL**

(As to Count \_\_\_\_\_, if) (If) you find and believe from the evidence beyond a reasonable doubt: First, that (on) (on or about) [date], in the (City) (County) of \_\_\_\_\_, State of Missouri, the defendant possessed ([name of controlled substance]) (more than 5 grams of marijuana), a controlled substance, and Second, that defendant (knew) (or) (was aware) of its presence and nature, and Third, that defendant intended to (distribute) (deliver) (sell) the ([name of controlled substance]) (marijuana) to ([name of persons, if known]) (another person) (other persons), then you will find the defendant guilty (under Count \_\_\_\_\_) of possession of ([name of controlled substance]) (more than 5 grams of marijuana) with intent to (distribute) (deliver) (sell). However, unless you find and believe from the evidence beyond a reasonable doubt each and all of these propositions, you must find the defendant not guilty of that offense. As used in this instruction, the term "possessed" means either actual or constructive possession of the substance. A person has actual possession if he has the substance on his person or within easy reach and convenient control. A person who is not in actual possession has constructive possession if he has the power and intention at a given time to exercise dominion or control over the substance either directly or through another person or persons. (Possession may also be sole or joint. If one person alone has possession of a substance, possession is sole. If two or more persons share possession of a substance, possession is joint.)

**MAICR 325.04.1 (2007) CLASS C FELONY: DISTRIBUTION OR  
DELIVERY OF 5 GRAMS OR LESS OF MARIJUANA**

((As to Count \_\_\_\_\_, if) (If) you do not find the defendant guilty of (distributing) (delivering) (selling) more than 5 grams of marijuana under Instruction No. \_\_\_\_\_, you must consider whether he is guilty of (distributing) (delivering) (selling) marijuana under this instruction.) (As to Count \_\_\_\_\_, if) (If) you find and believe from the evidence beyond a reasonable doubt: First, that (on) (on or about) [date], in the (City) (County) of \_\_\_\_\_, State of Missouri, the defendant knowingly (distributed) (delivered) (sold) marijuana, a controlled substance, to [name of person or otherwise describe], and Second, that defendant (knew) (or) (was aware) that the substance he (distributed) (delivered) (sold) was marijuana, then you will find the defendant guilty (under Count \_\_\_\_\_) of (distributing) (delivering) (selling) marijuana. However, unless you find and believe from the evidence beyond a reasonable doubt each and all of these propositions, you must find the defendant not guilty of that offense.

## STATEMENT OF THE CASE

The defendant was charged with one count of distribution of 50 grams or more of a substance containing methamphetamine under 21 USC 841(a)(1) punishable under 21 USC 841(b)(1)(B)(viii) for a controlled drug buy occurring on October 11, 2017. Pursuant to a plea agreement, the Defendant pled guilty to the charge on May 8, 2018. On August 6, 2018, the original counsel for the Defendant withdrew due to a newly discovered conflict of interest. The undersigned was then appointed. The guideline range of punishment was 70 to 87 months with a 60 month mandatory minimum. It was found that he was a career offender which raised the guidelines to from 188 to 235 months. The career offender guidelines were objected to based on the argument that his two prior felony Missouri drug offenses could not be used in the career offender scheme because the Missouri Statute was overbroad. The career offender argument was denied. On October 23, 2018, the court sentenced the Defendant to 150 months in prison with 4 years of supervised release and a \$100.00 dollar assessment.

A timely appeal was taken to the United States Court of Appeals for the Eighth Circuit. The defendant argued on appeal that the court erred in finding the career offender guidelines applicable. The Eighth Circuit affirmed the decision on July 12, 2019 affirming the district court's judgment. *U.S. v. Griffin*, No. 18-3276 (8<sup>th</sup> Cir. 2019).

The Petitioner sought a timely rehearing *en banc* which was denied on August 8, 2019. Pursuant to FRAP 35, the Appellant moved for Rehearing En Banc of the Eighth Circuit's decision arguing:

1. The court en banc should rehear the case because it presents issues that (1) conflict with this court's decision in *United States v. Naylor*, 887 F.3d 397 (8<sup>th</sup> Cir. 2018) (en banc) and that consideration by the full court is necessary to secure and maintain uniformity of this court's decisions. In particular this court found that the arguments of the appellant were foreclosed by *Martinez v. Sessions*, 893 F.3d 1067 (8<sup>th</sup> Cir. 2018), *cert. denied*, 139 S.Ct. 1198 (2019) and *Bueno-Muela v. Sessions*, 893 F.3d 1073 (8<sup>th</sup> Cir. 2018), *cert. denied*, 139 S.Ct. 1198 (2019). This court stated that the appellant's argument was "an argument to be made to the court sitting en banc, as this panel is bound by the decisions of earlier panels." (Op. at 2, App. A).
2. For the reasons stated in paragraph 1, the court en banc should rehear the case because the issue of whether the Missouri controlled substance statute is indivisible is one of exceptional importance.

As germane to the Mr. Griffin, the underlying facts are:

Mr. Griffin's first conviction was for a crime that occurred in January 2007 for Distribution of a controlled substance. He was charged under RSMo. 195.211 (2005). Under that statute, the elements are the generic controlled substance. The

elements of distribution of a controlled substance under that statute are: (1) the defendant knowingly distributed a controlled substance (2) that the defendant knew that the substance defendant distributed was a controlled substance. (MAICR 325.04.1(2007)). “To sustain a conviction for possession of a controlled substance with or without intent to distribute, the State must prove (1) conscious and intentional possession of the substance, either actual or constructive, and (2) awareness of the presence and nature of this substance.” *State v. Powell*, 973 S.W.2d 556, 558 (Mo. App. 1998). The chart of controlled substances in Missouri for the date of the first offense are found at RSMo. 195.017 (2005). Specifically listed controlled substances in RSMo. 195.017 provide the means to satisfy the element of the crime. *See, Naylor*, 887 F.3d at 405-07.

Comparing the Missouri Tables with the Federal Tables of 21 USC 812 reveals that Missouri criminalizes several items that the Federal Government does not criminalize. Among the substances criminalized under Missouri law and not federal law are: Acetyl-alpha-methylfentanyl; Difenoxin; Dimethylthiambutene; MPPP; Para-fluorofentanyl; PEPAP; Propriam; Thiofentanyl; Tilidine; Drotebanol; Parahexyl; and peyote (Whether religious or not. Religious use is exempted under the federal law, 42 U.S.C. Sect. 1996a. Also, Missouri law criminalizes a much larger portion of the plant than just the buttons.); alfentanil; alphaprodine; Bulk Dextropropoxyphene; Carfentanil; Butyl Nitrite; Meperidine; and others. Under the

categorical approach this makes the Missouri law over broad. Because it is over broad, it cannot be used to make Mr. Griffin a career offender.

The Second Offense used to enhance Mr. Griffin's penalty was a conviction for a March 2012 possession of a controlled substance with intent to distribute under RSMo. 195.211 (2011). The same rationale applies to this conviction. The elements under state law for possession of a controlled substance were: (1) Possession of a controlled substance; (2) the defendant was aware of its presence and nature; and (3) the Defendant intended to distribute it to another person. (MAICR 325.08 (2010). A review of the RSMo. 195.017 (2011) in effect at time is virtually identical to the previous version. As such the Statute is overbroad and may not be used to make Mr. Griffin a career criminal.

The district court rejected this argument apparently relying on *Martinez v. Sessions*, 893 F.3d 1067 (8<sup>th</sup> Cir. 2018) and while not stated, the decision *Bueno-Muela v. Sessions*, 893 F.3d 1073 (8<sup>th</sup> Circ. 2018). It is noted that the *Martinez* court found that Missouri criminalizes more drugs than does federal law. *Martinez* at 1070. The court went on to find that the identity of a controlled substance is an element of the offense and not the means of the offense, thus making the statute divisible and subject to a modified categorical approach. *Id.* at 1073.

## REASONS FOR GRANTING WRIT

Question 1. Is the Missouri Controlled Drug Statute indivisible such that the Defendant's two distribution of marijuana felony convictions in state court would not apply in the Career Offender calculations, in particular are statutes that penalize a controlled substance and then refer to another section of the statute for definitions of the controlled substances indivisible?

In *Mathis v. U.S.*, 136 S.Ct. 2243 (2016), the Supreme Court held that for purposes of sentencing enhancement, the Court must look to the elements of the state law statute and not the actual facts of the state law convictions. The Court looks to whether the specific controlled substance was a means of violating the state law or whether it was an element. If it is just a means, then the categorical approach is used. *United States v. Naylor*, 887 F.3d 397, 405-07 (8<sup>th</sup> Cir. 2018). Under the categorical approach, the Court does not look to the specific drug involved in the state law offense, but rather to a generic state law offense of controlled substance. *See, Id.*

The issue before this court is whether the Mr. Griffin's two previous state law drug convictions would qualify under federal law. To do this the court must first look to what the state law considered a crime at time of the offense and then compare that to whether that would be a crime under federal law.

Review is sought under Supreme Court Rule 10 (a) in that the Eighth Circuit's decision in the instant case conflicts with the Second Circuit's decision in *United States v. Townsend*, 897 F.3d 66 (2<sup>nd</sup> Cir. 2018).

The Eighth Circuit's decision in the instant case conflicts with the Second Circuit's decision in *United States v. Townsend*, 897 F.3d 66 (2<sup>nd</sup> Cir. 2018). In that case New York's drug statute referred to a list of substances. The scheme created several factual means to commit the crime. *Id.* at 73. New York's statute was held indivisible and could not be used to enhance the sentence under the career offender provisions of the guidelines. *Id.*, *see also, Harbin v. Sessions*, 860 F.3d 58, 64-5 (2<sup>nd</sup> Cir. 2017).

Missouri's statutory scheme is very similar to New York's. NYPL 220.31 states: "A person in guilty of criminal sale of a controlled substance in the fifth degree when he knowingly and unlawfully sells a controlled substance." *Harbin*, 860 F.3d at 64. The code then goes on to define controlled substance in NYPL 220.00(5), a separate section of the code. *Id.* at 65. In Missouri like New York, one statute criminalizes one drug crime and then relies on another statute for definition of what constitutes a controlled a controlled substance, therefore the Second Circuit decisions conflict with the Eighth Circuit's decision. In essence both states have a general controlled substance statute in section of the statute and then another separate section of the statuary scheme defines what violates the general statute.

## CONCLUSION

The Writ of Certiorari should be granted.

Respectfully Submitted,



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ATTORNEY FOR PETITIONER

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Billy J. Griffin, Petitioner

v.

United States of America, Respondent

APPENDIX A

OPINION OF THE COURT OF APPEALS FOR THE EIGHTH CIRCUIT

United States Court of Appeals  
For the Eighth Circuit

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No. 18-3276

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United States of America

*Plaintiff - Appellee*

v.

Billy J. Griffin

*Defendant - Appellant*

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Appeal from United States District Court  
for the Eastern District of Missouri - Cape Girardeau

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Submitted: June 10, 2019  
Filed: July 12, 2019  
[Unpublished]

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Before LOKEN, KELLY, and ERICKSON, Circuit Judges.

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PER CURIAM.

Billy J. Griffin pleaded guilty to distributing methamphetamine, in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(B). At sentencing, the district court<sup>1</sup> determined,

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<sup>1</sup>The Honorable Stephen N. Limbaugh, Jr., United States District Judge for the Eastern District of Missouri.

over Griffin's objection, that Griffin qualified as a career offender under United States Sentencing Guidelines § 4B1.1(a) (2016) based on two prior Missouri convictions, one for distribution of a controlled substance and another for possession of a controlled substance with intent to distribute, both in violation of Mo. Rev. Stat. § 195.211 (2005) (now codified at § 579.055). As a result, Griffin's advisory Guidelines range was 188 to 235 months of imprisonment. The district court imposed a below-Guidelines sentence of 150 months. Griffin now appeals the career offender designation, contending that his prior convictions do not qualify as controlled substance offenses under the Guidelines because Missouri defines "controlled substance" more broadly than federal law does. See Mo. Rev. Stat. §§ 195.010(5), 195.017 (2005). We review *de novo* whether a prior conviction qualifies as a controlled substance offense. United States v. Robertson, 474 F.3d 538, 540 (8th Cir. 2007).

Griffin concedes that his contention is foreclosed by Martinez v. Sessions, 893 F.3d 1067 (8th Cir. 2018), cert. denied, 139 S. Ct. 1198 (2019), and Bueno-Muela v. Sessions, 893 F.3d 1073 (8th Cir. 2018), cert. denied, 139 S. Ct. 1198 (2019). In those cases, we held that the various controlled substances listed within Missouri's statutory definition of "controlled substance" are separate elements of Missouri drug offenses, and therefore that a Missouri drug offense conviction qualifies as a controlled substance offense under 8 U.S.C. § 1227(a)(2)(B)(i) as long as the defendant's conviction was based on a substance that is also a controlled substance under federal law. See Martinez, 893 F.3d at 1070–73; Bueno-Muela, 893 F.3d at 1074–76. Griffin's sole argument on appeal is that Martinez and Bueno-Muela do not control the outcome of his appeal because they conflict with United States v. Naylor, 887 F.3d 397 (8th Cir. 2018) (en banc), an opinion issued two months earlier by the court sitting en banc regarding Missouri's burglary statute. This is an argument to be made to the court sitting en banc, as this panel is bound by the decisions of earlier panels. See, e.g., United States v. Anwar, 880 F.3d 958, 971 (8th Cir. 2018).

Accordingly, the judgment is affirmed.

**United States Court of Appeals**

***For The Eighth Circuit***

Thomas F. Eagleton U.S. Courthouse  
111 South 10th Street, Room 24.329  
**St. Louis, Missouri 63102**

**Michael E. Gans**  
***Clerk of Court***

**VOICE (314) 244-2400**  
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July 12, 2019

Mr. Michael Moroni  
310 Shawnee  
P.O. Box 24  
Bloomfield, MO 63825-0226

RE: 18-3276 United States v. Billy Griffin

Dear Counsel:

The court has issued an opinion in this case. Judgment has been entered in accordance with the opinion. The opinion will be released to the public at 10:00 a.m. today. Please hold the opinion in confidence until that time.

Please review Federal Rules of Appellate Procedure and the Eighth Circuit Rules on post-submission procedure to ensure that any contemplated filing is timely and in compliance with the rules. Note particularly that petitions for rehearing and petitions for rehearing *en banc* must be received in the clerk's office within 14 days of the date of the entry of judgment. Counsel-filed petitions must be filed electronically in CM/ECF. Paper copies are not required. No grace period for mailing is allowed, and the date of the postmark is irrelevant for pro-se-filed petitions. Any petition for rehearing or petition for rehearing *en banc* which is not received within the 14 day period for filing permitted by FRAP 40 may be denied as untimely.

Michael E. Gans  
Clerk of Court

JMM

Enclosure(s)

cc: Mr. Billy J. Griffin  
Mr. Gregory J. Linhares  
Mr. Timothy J. Willis

District Court/Agency Case Number(s): 1:18-cr-00004-SNLJ-1

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Billy J. Griffin, Petitioner

v.

United States of America, Respondent

APPENDIX B

JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF MISSOURI

## United States District Court

OCT 23 2018

Eastern District of Missouri

UNITED STATES OF AMERICA

v

BILLY J. GRIFFIN

JUDGMENT IN A CRIMINAL CASE

U. S. DISTRICT COURT  
EASTERN DISTRICT OF MO  
CAPE GIRARDEAU

CASE NUMBER: 1:18CR0004SNLJ

USM Number: 47373-044

Michael A. Moroni

Defendant's Attorney

THE DEFENDANT:

 pleaded guilty to count(s) one (1) of the Indictment on May 8, 2018. 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	Date Offense Concluded	Count Number(s)
21:841(a)(1) and 841(b)(1)(B)	Distribution of Methamphetamine	10/11/2017	1

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) \_\_\_\_\_ 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.

October 23, 2018

Date of Imposition of Judgment

Signature of Judge

STEPHEN N. LIMBAUGH, JR.  
UNITED STATES DISTRICT JUDGE  
Name & Title of Judge

October 23, 2018

Date signed

DEFENDANT: BILLY J. GRIFFIN

CASE NUMBER: 1:18CR0004SNLJ

District: Eastern District of Missouri

## IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of 150 MONTHS.

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

While in the custody of the Bureau of Prisons, it is recommended the defendant be evaluated for participation in the Residential Drug Abuse Program. It is also recommended the defendant be evaluated for participation in an Occupational/Educational program, specifically, in welding. Such recommendations are made to the extent they are consistent with the Bureau of Prisons policies.

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./pm 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

MARSHALS RETURN MADE ON SEPARATE PAGE

DEFENDANT: BILLY J. GRIFFIN  
CASE NUMBER: 1:18CR0004SNLJ  
District: Eastern District of Missouri

## SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 4 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. § 20901, 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: BILLY J. GRIFFIN  
CASE NUMBER: 1:18CR0004SNLJ  
District: Eastern District of Missouri

## 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](http://www.uscourts.gov).

Defendant's Signature \_\_\_\_\_ Date \_\_\_\_\_

DEFENDANT: BILLY J. GRIFFIN  
CASE NUMBER: 1:18CR0004SNLJ  
District: Eastern District of Missouri

## SPECIAL CONDITIONS OF SUPERVISION

As part of your supervision, you must comply with the following additional special conditions. If it is determined there are costs associated with any services provided, you shall pay those costs based on a co-payment fee established by the probation office:

You must submit your person, property, house, residence, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), other electronic communications or data storage devices or media, or office, to a search conducted by a United States probation officer. You must warn any other occupants that the premises may be subject to searches pursuant to this condition. The probation officer may conduct a search under this condition only when reasonable suspicion exists that you have violated a condition of supervision and that the areas to be searched contain evidence of this violation.

You must submit to substance abuse testing to determine if you have used a prohibited substance. You must not attempt to obstruct or tamper with the testing methods.

You must participate in a substance abuse treatment program and follow the rules and regulations of that program. The probation officer will supervise your participation in the program (provider, location, modality, duration, intensity, etc.).

DEFENDANT: BILLY J. GRIFFIN  
CASE NUMBER: 1:18CR0004SNLJ  
District: Eastern District of Missouri

## CRIMINAL MONETARY PENALTIES

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

<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
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Totals: \$100.00

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

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: BILLY J. GRIFFIN  
CASE NUMBER: 1:18CR0004SNLJ  
District: Eastern District of Missouri

## SCHEDULE OF PAYMENTS

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

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

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

C  Payment in equal \_\_\_\_\_ (e.g., equal, 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., equal, 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:

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 penalty payments, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program are made to the clerk of the court.

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



DEFENDANT: BILLY J. GRIFFIN

CASE NUMBER: 1:18CR0004SNLJ

USM Number: 47373-044

UNITED STATES MARSHAL  
RETURN OF JUDGMENT IN A CRIMINAL CASE

I have executed this judgment as follows:

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The Defendant was delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

UNITED STATES MARSHAL

By \_\_\_\_\_  
Deputy U.S. Marshal

- The Defendant was released on \_\_\_\_\_ to \_\_\_\_\_ Probation
- The Defendant was released on \_\_\_\_\_ to \_\_\_\_\_ Supervised Release
- and a Fine of \_\_\_\_\_  and Restitution in the amount of \_\_\_\_\_

UNITED STATES MARSHAL

By \_\_\_\_\_  
Deputy U.S. Marshal

I certify and Return that on \_\_\_\_\_, I took custody of \_\_\_\_\_  
at \_\_\_\_\_ and delivered same to \_\_\_\_\_  
on \_\_\_\_\_ F.F.T. \_\_\_\_\_

U.S. MARSHAL E/MO

By DUSM \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Billy J. Griffin, Petitioner

v.

United States of America, Respondent

APPENDIX C  
ORDER DENYING REHEARING

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

No: 18-3276

United States of America

Appellee

v.

Billy J. Griffin

Appellant

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Appeal from U.S. District Court for the Eastern District of Missouri - Cape Girardeau  
(1:18-cr-00004-SNLJ-1)

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**ORDER**

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

August 08, 2019

Order Entered at the Direction of the Court:  
Clerk, U.S. Court of Appeals, Eighth Circuit.

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/s/ Michael E. Gans