UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

UNITED STATES OF AMERICA	)	
	)	
vs.	)	CAUSE NO. 3:18-CR-47 RLM-MGG
	)	
SHANE INGHELS	)	

SENTENCING MEMORANDUM

Shane Inghels has pleaded guilty, without a plea agreement, to one count of possession with intent to distribute more than 50 grams of methamphetamine, 21 U.S.C. § 841(a)(1), and one count of possessing a firearm after conviction for a felony crime, 18 U.S.C. § 922(g)(1). The government had no objection to the presentence report. Mr. Inghels objected to ¶¶ 11 and 59 of the report. The court adopts as its own findings ¶¶ 1–10, 12–58, and 60–169 of the presentence report, specifically including paragraphs ¶¶ 127-150 relating to Mr. Inghels's financial condition and earning ability. Mr. Inghels and the government both told the court they had no objections to the conditions of supervision proposed in Part F of the presentence report.

A sentencing court must first compute the guidelines sentence correctly, then decide whether the guidelines sentence is the correct sentence for that defendant. United States v. Garcia, 754 F.3d 460, 483 (7th Cir. 2014). The court applies the 2018 version of the sentencing guidelines.

Because the gun count would be a specific offense characteristic in calculating the guideline range for the drug count, the two counts are grouped

together and treated as a single offense for purposes of determining the guideline range. U.S.S.G. § 3D1.2(c).

The base offense level for drug crimes varies depending upon the type of drug and quantity of drug involved. Mr. Inghels was caught with 65.94 grams of methamphetamine and 28.6 grams of marijuana. He also had $2,537 on his person. The guidelines allow drug proceeds to be converted into a drug quantity. The presentence report and the government view that cash as proceeds from the sale of drugs. Using an average methamphetamine price of $50 a gram, the presentence report would convert the cash into 50.74 grams of methamphetamine. Mr. Inghels objects. He says the money wasn't related to drug dealing, but rather was payment for work he had done for his sister's company (she told the probation officer Mr. Inghels was working from ten to fifteen hours a week; the presentence report does not disclose his hourly rate of pay). Mr. Inghels car contained paraphernalia for the sale of drugs; the government and presentence report conclude that it is more likely than not that the drugs came from cash came from the sale of drugs.

The court needn't resolve this issue, because the base offense level would be the same with or without the imputed 50 grams of methamphetamine. Either way, the base offense level for Mr. Inghels's drug crime is 24.

Mr. Inghels's offense level would increase by two levels because he created a substantial risk of death or serious bodily injury to another person, U.S.S.G. §

3C1.2, which, when combined with a three-level reduction for acceptance of responsibility, U.S.S.G. § 3E1.1, would produce an offense level of 23.

The government and the presentence report contend that a different offense level has to apply because Mr. Inghels is an armed career criminal as defined by 18 U.S.C. § 924(e)(1). Mr. Inghels has prior felony convictions for burglary, battery, and dealing in methamphetamine, all committed on different occasions. The government and presentence report contend that each of these is either a "violent felony" or a "serious drug offense" within the meaning of 18 U.S.C. § 924(e)(2)(B). If the government and the presentence report are right, the base offense level is 34, U.S.S.G. § 4B1.1(b)(2), and, after a three-level reduction for acceptance of responsibility, U.S.S.G. § 3E1.1, Mr. Inghels's final adjusted offense level would be 31. More importantly, instead of facing a ten-year maximum sentence on Count 2, Mr. Inghels would face a 15 year minimum sentence on that count. Mr. Inghels argues that under Mathis v. US, 136 S. Ct. 2243 (2016), his conviction for dealing in methamphetamine is not a "serious drug offense" within the meaning of the statute. The court disagrees.

State laws aren't all written the same way, and federal courts have struggled with the application of the Armed Career Criminal Act. As the law is understood today, a state criminal statute falls into one of three categories, and courts analyze each category differently.

Courts use a "categorical approach" when a statute defines only a single, indivisible crime with a single set of elements. *Id.* at 2248-2249. To determine whether a state criminal conviction falls within the meaning of the Armed Career Criminal Act, the sentencing judge simply looks at the statute that defined the state crime to see whether the elements of the state crime (what must be admitted or proven) sufficiently mirror the elements of the generic version of the enumerated crime. If so, the conviction counts for purposes of the Armed Career Criminal Act; if not, the government must identify three other qualifying convictions. The court makes no further inquiry about the nature of the defendant's conduct in that state case.

Things get more complicated when the state criminal statute defines multiple crimes with multiple, alternative — "divisible" — elements. In that event, the court can't simply look at the judgment of conviction to see what statute the defendant violated and compare that statute to the generic version of the crime. A single statute might define the crime that can be committed in alternate ways; some of those alternate ways might match the generic version of the crime, while others don't. The *Mathis* Court used the example of a California burglary statute that defined burglary as "the lawful entry or the unlawful entry" with the intent to steal. Effectively, the statute defined two different crimes and gave them both the same name. *Id.* at 2249. When confronted with the statute of this sort, a sentencing court uses a "modified categorical approach" that allows examination

of the select few other documents such as the charging paper, jury instructions, or plea agreement and colloquy, to learn the elements of the crime for which the defendant was convicted. The sentencing court then compares those elements to the elements of the generic version of the crime to decide whether a defendant is an armed career criminal. *Id.*

The *Mathis* Court confronted a third type of statute: one that requires only a single set of elements, but goes on to give examples of what would constitute one of the elements. The Iowa statute at issue there defined burglary more broadly than the generic version. The Iowa statute required proof of unlawful entry into a vehicle, not only a building or structure. The sentencing court had engaged in a "modified categorical approach" and looked at the underlying papers to see whether the defendant broke into a building or structure (which would be generic burglary) or a vehicle (which wouldn't be generic burglary)

The Supreme Court reversed. The unmodified and modified approaches were designed to allow a court to focus on the elements of the law the defendant broke, rather than exactly what he did to break that law. *Id.* At 2251. When the criminal law is divisible, the court might look at the charged or admitted conduct to see which of variously defined though singularly name crimes the conviction reflects. In the case of the Iowa statute, the element was clear and the same in every case — one had to unlawfully enter something — but one could commit the crime by engaging in conduct that amounted to generic burglary or by engaging in conduct

that didn't. Just what the defendant did would become a matter of proof, and the Sixth Amendment doesn't allow a sentencing court to make such a finding. The *Mathis* Court held that sentencing courts must use the "categorical approach" of simply looking at the elements of the state crime compared to the generic crime's elements. The Iowa law criminalized more conduct than a generic burglary statute does, so the inquiry had to end there, and the conviction didn't qualify as one to be counted for purposes of the Armed Career Criminal Act.

At the time of Mr. Inghels's offense, Ind. Code § 35–48–4–1.1 defined several crimes as dealing in methamphetamine, a class B felony:

> A person who:
> (1) knowingly or intentionally:
> (A) manufactures;
> (B) finances the manufacture of;
> (C) delivers; or
> (D) finances the delivery of;
> methamphetamine, pure or adulterated; or
> (2) possesses, with intent to:
> (A) manufacture;
> (B) finance the manufacture of;
> (C) deliver; or
> (D) finance the delivery of;
> methamphetamine, pure or adulterated;
> commits a dealing in methamphetamine, a Class B felony, except as provided in subsection (b).

Subsection (b) goes on to set forth several other elements that, if proven or admitted, turn a Class B felony into a Class A felony.

That statute didn't create multiple ways of proving a single element, like the Iowa statute did; it created several crimes, each requiring a different element (or,

in the case of the Class A felonies, several different elements) and named all of them "dealing in methamphetamine."[1] Even after *Mathis*, a modified categorical approach is correct. Reference to the charging information in the Elkhart Superior Court No. 3 discloses that Mr. Inghels was alleged to have knowingly manufactured methamphetamine – a generic "serious drug felony".

The court overrules Mr. Inghels's objection to ¶ 59 of the presentence report, and adopts that paragraph as its own.

Because Inghels is an armed career criminal, the guidelines place him in Criminal History Category VI. U.S.S.G. § 4B1.1(b). Even under the traditional counting, Mr. Inghels would be assessed fourteen criminal history points for his prior convictions:

- Two points would be assessed for his 60-day sentence in 2017 for misdemeanor battery resulting in bodily injury;
- Three points would be assessed for his net 18-month sentence in 2017 for felony unlawful possession of a syringe; and two more points would be assessed because Mr. Inghels was still serving the non-

[1] The statute created the following crimes:
1. (1) knowingly or intentionally (2) manufacturing (3) methamphetamine.
2. (1) knowingly or intentionally (2) financing the manufacture of (3) methamphetamine.
3. (1) knowingly or intentionally (2) delivering (3) methamphetamine.
4. (1) knowingly or intentionally (2) financing the delivery of (3) methamphetamine.
5. (1) possessing (2) with intent to manufacture (3) methamphetamine.
6. (1) possessing (2) with intent to finance the manufacture of (3) methamphetamine.
7. (1) possessing (2) with intent to deliver (3) methamphetamine.
8. (1) possessing (2) with intent to finance the delivery of (3) methamphetamine.

supervisory portion of that sentence when he committed the crimes for which he is being sentenced today;

- One point would be assessed for his 40-day sentence in 2016 for misdemeanor theft;
- Three points would be assessed for his twelve-year sentence in 2009 for dealing methamphetamine; and
- Three points would be assessed for Mr. Inghels's net two-year sentence in 2004 for felony battery.

Those fourteen points would have placed Mr. Inghels in Criminal History Category VI.

For a Category VI offender at offense level 31, the sentencing guidelines recommend a sentencing range of 188 to 235 months' imprisonment. U.S.S.G. § 5A1.1. The statute of conviction requires minimum sentences of five years on the drug count (Count 1) and fifteen years on the gun count (Count 2).

The court decides the sentence under 18 U.S.C. § 3553, United States v. Booker, 543 U.S. 220 (2005). Accordingly, the court turns to the statutory factors, seeking a reasonable sentence: one sufficient, but not greater than necessary, to satisfy the purposes of the sentencing statute. 18 U.S.C. § 3553(a).

The guideline range is the starting point and the initial benchmark, but the court doesn't presume that the recommended range is reasonable. Gall v. United States, 552 U.S. 38, 50 (2007). As just calculated, the sentencing guidelines,

which ordinarily pose the best hope, on a national basis, for avoiding unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct, 18 U.S.C. § 3553(a)(6); United States v. Boscarino, 437 F.3d 634, 638 (7th Cir. 2006), recommend a sentencing range of 188 to 235 months. The government recommends a 235-month sentence, the highest sentence recommended under the guidelines. The defense recommends a sentence of 180 months, the lowest sentence allowed by statute.

The nature and circumstances of the crimes weigh heavily against Mr. Inghels. As he drove away from a drug sale, with guns and more drugs in his car, police began following him. There were three active warrants out for Mr. Inghels, so he fled. Mr. Inghels drove for ten miles at speeds up to 130 miles per hour weaving into lanes with oncoming traffic, disregarding stop lights, and disregarding the pleas of his eight-and-a-half-month pregnant passenger, who was begging him to stop. He lost control of his car in a turn and crashed into a ditch. He fled, gallantly leaving his passenger behind, and police pursued. Mr. Inghels stopped only when a police dog joined the pursuit. His plea of guilty spared the government the time and expense of trial and trial preparation.

Mr. Inghels is 36 years old. This is his fifth felony conviction; he also had two juvenile felony convictions in which he was sentenced to the Indiana Department of Corrections, and a third for which he wasn't sentenced to an adult prison. By the government's calculation, Mr. Inghels has been under supervision

or custody of the criminal justice system continuously for the last two decades, except for an eight-month period in which he was arrested, but not convicted, three times. The criminal justice system hasn't yet figured out what might deter Mr. Inghels.

Mr. Inghels had a difficult childhood including physical abuse at his father's hand, and joined a gang. His best friend was murdered when Mr. Inghels was thirteen. He suffers from several mental health conditions, including diagnoses for depression, anxiety and post-traumatic stress disorder. He has taken a variety of medications for those conditions. Mr. Inghels has suffered from, and been treated for, seizures for about eight years; if he doesn't use his medication, he has as many as two seizures per week.

Mr. Inghels has what can only be described as a horrible substance abuse problem. He told the probation officer he has "pretty much used everything there is," and can't remember the last time he wasn't using. Testing by the probation office reflected severe issues with substance dependence. Mr. Inghels has had some substance abuse treatment in the past; more might help. Mr. Inghels earned his GED while incarcerated, and has taken some post-secondary classes. As might be expected of someone who has been jailed and imprisoned as often as Mr. Inghels, his employment record is spotty. Mr. Inghels cares for his stepfather and others; people close to him speak highly of him.

Mr. Inghels has committed crimes involving guns, drugs, and violence, undeterred by anything the criminal justice system has tried to place in his way. Substance abuse treatment and mental health treatment might help him (we all must hope they help him), but at this point, he poses a far greater risk of future criminal activity than do most defendants who pass to this court.

The sentencing guidelines ordinarily are the best measurement of the need to reflect the crime's seriousness, to provide just punishment for the crime, and to deter others from committing the same sort of crimes. The defense argues that the guidelines are high with respect to the crimes' seriousness because the qualifying offenses for his Armed Career Criminal status didn't involve armed violence. The court agrees, but also notes that Mr. Inghels stole five firearms in the burglary that was one of the qualifying offenses. Mr. Inghels also argues that the guidelines are high as fair punishment because our understanding of addiction and mental illness is emerging, and might lead to effective treatment. Again, the court agrees, but it would require a lot of speculation to find that new effective treatments will emerge and succeed with Mr. Inghels. Reasonably uniform sentencing practices generally tend to promote respect for the law.

Mr. Inghels's requested 15-year sentence is a long sentence, but it still doesn't reflect the seriousness of his conduct on the day of his arrest: he endangered the lives of his passenger, the pursuing police, and innocent drivers in oncoming or crossing traffic. Nor is it adequate to reflect Mr. Inghels's nearly

unbroken history of criminal activity since age 16. It is to be hoped that substance abuse treatment and mental health treatment will reduce the threat he poses, but nothing in this record allows the court to make a prediction one way or the other. The events surrounding this crime, the continuing nature of Mr. Inghels's criminal activity, and the threat he poses to everyone else combine to make his requested sentence insufficient to satisfy the purposes of sentencing.

At first blush, the government's requested 235 month sentence – nearly 20 years, and at the high end of the advisory guideline range – seems to be too high. But when the court stops to try to articulate why it is too high, it comes up empty. A 235-month sentence is sufficient but not more than necessary to satisfy the purposes of the sentencing statute.

The court would have imposed the same sentence even if the court had ruled differently on Mr. Inghels's objections. Formal declaration of armed career criminal or career offender status did not affect the court's selection of the sentence.

Count 1 requires a supervised release term of at least 4 years, and this record provides no basis for a longer term, especially recognizing the length of the imprisonment. The terms of the supervision would be those proposed in Part F of the presentence report.

Mr. Inghels can't pay the fines recommended by the guidelines even if afforded the most generous of installment payment schedules, so the court imposes no fine. A special assessment of $200.00 is mandatory. 18 U.S.C. § 3013.

The court exercises its discretion to not order this sentence to be served concurrently or consecutively to any state sentence imposed in cases in which Mr. Inghels awaits trial or disposition. This court is nearly ignorant of the events surrounding those cases, and at least a sentencing state judge will have the benefit of this sentencing memorandum when deciding how the state sentence should relate to this sentence. The court has no objection should a state sentencing court decide that a state sentence should be concurrent with this federal sentence.

Accordingly, it is the judgment of the court that the defendant, Shane Inghels, is hereby committed to the custody of the Bureau of Prisons to be imprisoned for a term of 235 months on Count 1, and a term of 180 months on Count 2, with the sentences to run concurrently for an aggregate sentence of 235 months.

The court recommends that the Bureau of Prisons designate as the place of the defendant's confinement a facility, consistent with the defendant's security classification as determined by the Bureau of Prisons, where he might receive substance abuse treatment and mental health treatment.

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of 4 years. While on supervised release, the defendant shall comply with the terms of supervision set forth in ¶¶ 170-182 of the presentence report, which paragraphs the court incorporates as part of this sentence. Mr. Inghels expressly waived the reading in open court of the conditions of supervision.

Because the defendant is not able and, even with the use of a reasonable installment schedule, is not likely to become able to pay all or part of the fine recommended by the sentencing guidelines, the court imposes no fine.

The defendant shall pay to the United States a special assessment of $200.00, which shall be due immediately.

ENTERED: November 27, 2018

/s/ Robert L. Miller, Jr.
Robert L. Miller, Jr., Judge
United States District Court

cc: S. Inghels
D. Vandercoy
M. Donnelly
USM
USPO

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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ORDER

August 7, 2019

Before

WILLIAM J. BAUER, *Circuit Judge*
DAVID F. HAMILTON, *Circuit Judge*
MICHAEL B. BRENNAN, *Circuit Judge*

No. 18-3598	UNITED STATES OF AMERICA, Plaintiff - Appellee v. SHANE INGHELS, Defendant - Appellant
Originating Case Information:	
District Court No: 3:18-cr-00047-RLM-MGG-1 Northern District of Indiana, South Bend Division District Judge Robert L. Miller	

The following is before the court: **MOTION FOR SUMMARY AFFIRMANCE**, filed on July 24, 2019, by counsel for the appellee.

This court has carefully reviewed the final order of the district court, the record on appeal, and appellant's brief. Based on this review, the court has determined that any issues which could be raised are insubstantial and that further briefing would not be helpful to the court's consideration of the issues. *See Taylor v. City of New Albany*, 979 F.2d 87 (7th Cir. 1992); *Mather v. Village of Mundelein*, 869 F.2d 356, 357 (7th Cir. 1989) (per curiam) (court can decide case on motions papers and record where briefing would be not assist the court and no member of the panel desires briefing or argument). "Summary disposition is appropriate 'when the position of one party is so clearly

correct as a matter of law that no substantial question regarding the outcome of the appeal exists.'" *Williams v. Chrans*, 42 F.3d 1137, 1139 (7th Cir. 1995) (citing *Joshua v. United States*, 17 F.3d 378, 380 (Fed. Cir. 1994)). As appellant concedes in his opening brief, this circuit's recent caselaw directly resolves the appellant's arguments that his prior Indiana conviction for dealing methamphetamine was improperly considered a serious drug offense under the Armed Career Criminal Act or a controlled substance offense under the Guidelines. *See United States v. Williams*, ___ F.3d ___, 2019 WL 3294007 (7th Cir. July 23, 2019); *United States v. Smith*, 921 F.3d 708, 714 (7th Cir. 2019); *see also United States v. Anderson*, 766 Fed. Appx. 377, 381 (7th Cir. 2019) (unpublished). Summary affirmance is therefore appropriate. *United States v. Fortner*, 455 F.3d 752, 754 (7th Cir. 2006).

Accordingly, **IT IS ORDERED** that the appellee's motion is **GRANTED**, and the judgment of the district court is summarily **AFFIRMED**.

form name: **c7_Order_3J**(form ID: **177**)