

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

STEVEN ADAM SEGOVIA,
Petitioner
v.

UNITED STATES OF AMERICA
Respondent

APPENDIX

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APPENDIX A

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 19-10521
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

January 6, 2020

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

STEVEN ADAM SEGOVIA,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 5:18-CR-117-1

Before SMITH, DENNIS, and DUNCAN, Circuit Judges.

PER CURIAM:*

Steven Adam Segovia appeals the 175-month sentence imposed after he pleaded guilty to possession “with intent to distribute 50 grams and more of methamphetamine (actual).” Citing the rule of *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000), Segovia contends that the district court violated his Fifth and Sixth Amendment rights by basing his guideline sentence on a drug amount in excess of 300 grams of methamphetamine that was not alleged in

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

the indictment and proved to a jury beyond a reasonable doubt. The Government moves for summary affirmance, arguing that Segovia's argument is foreclosed by *United States v. Tuma*, 738 F.3d 681 (5th Cir. 2013), and *United States v. Bazemore*, 839 F.3d 379 (5th Cir. 2016).

In *Tuma*, this court held that a district court may make findings of fact that increase a defendant's sentence if those facts do not expose the defendant to an increased mandatory minimum sentence. *Tuma*, 738 F.3d at 693. Otherwise, a court's "broad sentencing discretion, informed by judicial factfinding, does not violate the Sixth Amendment." *Id.* (quoting *Alleyne v. United States*, 570 U.S. 99, 116 (2013)); *cf. also generally Apprendi*, 530 U.S. at 490 (holding that, "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt"). Segovia suggests that the Supreme Court's decision in *Hurst v. Florida*, 136 S. Ct. 616, 619-24 (2016), called *Tuma* into question by invalidating Florida's capital sentencing scheme to the extent it required the trial judge, not the jury, to find sufficient aggravating circumstances to justify the death penalty. He concedes, however, that in *Bazemore* this court rejected a similar argument, explaining that *Hurst* "applies only to statutory schemes in which judge-made findings increase the maximum sentence that a defendant can receive." *Bazemore*, 839 F.3d at 392-93.

Segovia was charged and convicted under a statute providing a minimum sentence of 10 years and a maximum sentence of life in prison for a crime involving 50 grams or more of methamphetamine. *See* 21 U.S.C. § 841(b)(1)(A)(viii). Because the charged drug quantity supported Segovia's 175-month sentence, and the sentence did not exceed the statutory maximum, the sentence raises no constitutional concerns. *See Bazemore*, 839 F.3d at 392-

93; *Tuma*, 738 F.3d at 693. We also note that, in any event, Segovia stipulated that his crime involved more than 300 grams of methamphetamine.

Segovia's contention is clearly foreclosed, such that "there can be no substantial question as to the outcome of the case." *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969). Accordingly, the Government's motion for summary affirmance is GRANTED, and the judgment is AFFIRMED. The Government's alternative motion for additional time for briefing is DENIED.

APPENDIX B

United States District Court

Northern District of Texas

Lubbock Division

UNITED STATES OF AMERICA

v.

STEVEN ADAM SEGOVIA
Defendant.Case Number: 5:18-CR-00117-C(01)
USM No. 58078-177**JUDGMENT IN A CRIMINAL CASE**
(For Offenses Committed On or After November 1, 1987)

The defendant, STEVEN ADAM SEGOVIA, was represented by David E. Sloan

The defendant pleaded guilty to count 1 of the indictment filed November 14, 2018. Accordingly, the court has adjudicated that the defendant is guilty of the following offenses:

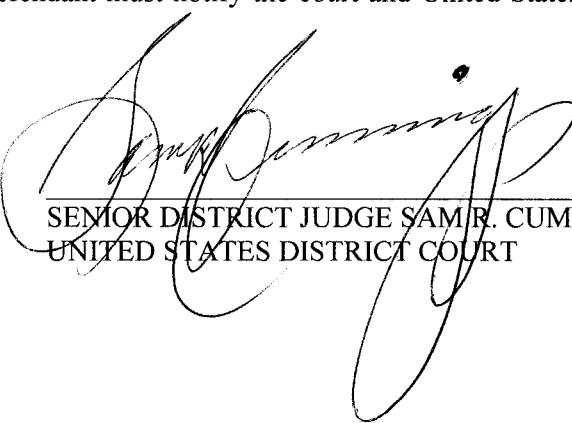
<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date of Offense</u>	<u>Count Number</u>
21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A)(viii)	Possession With Intent To Distribute 50 Grams Or More Of Methamphetamine (Actual)	09/07/2018	1

As pronounced on April 26, 2019, the defendant is sentenced as provided in pages 1 through 4 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$100.00, for count 1 of the indictment, which shall be due immediately. Said special assessment shall be made to the Clerk, U.S. District Court.

It is further 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 change in the defendant's economic circumstances.

Signed this the 26th day of April, 2019.



 SENIOR DISTRICT JUDGE SAM R. CUMMINGS
 UNITED STATES DISTRICT COURT

DEFENDANT: STEVEN ADAM SEGOVIA
CASE NUMBER: 5:18-CR-00117-C(01)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 175 months as to count 1 to run consecutive to any sentence imposed in Case No. 2011-429,687, pending in the 137th District Court, Lubbock County, Texas; and Case No. 2018-414,863, pending in the 364th District Court, Lubbock County, Texas.

The defendant shall remain in the custody of the U.S. Marshal Service.

The Court recommends incarceration at FCI Big Spring, Texas.

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: STEVEN ADAM SEGOVIA
 CASE NUMBER: 5:18-CR-00117-C(01)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: 5 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 illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

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 directed by the probation officer.

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 above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse.
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.
- The defendant shall cooperate in the collection of DNA as directed by the probation officer.
- The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense.
- The defendant shall participate in an approved program for domestic violence.
- The defendant must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution.

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Fine and Restitution sheet of the judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the 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 in a manner and frequency directed by the court or probation officer.
- 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 by 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.
- 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: STEVEN ADAM SEGOVIA
CASE NUMBER: 5:18-CR-00117-C(01)

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall abstain from the use of alcohol and all other intoxicants during the term of supervision.
2. The defendant shall participate in a program (inpatient and/or outpatient) approved by the U.S. Probation Office for treatment of narcotic, drug, or alcohol dependency, which will include testing for the detection of substance use or abuse. The defendant shall contribute to the costs of services rendered (copayment) at a rate of at least \$10.00 per month.