
NO. _____

IN THE UNITED STATES SUPREME COURT

_____ **TERM**

JUSTIN SAIN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

APPENDIX

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NOT RECOMMENDED FOR FULL-TEXT PUBLICATION
File Name: 20a0104n.06

No. 19-5145

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JUSTIN L. SAIN,

Defendant-Appellant.

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FILED
Feb 14, 2020
DEBORAH S. HUNT, Clerk

ON APPEAL FROM THE
UNITED STATES DISTRICT
COURT FOR THE EASTERN
DISTRICT OF TENNESSEE

Before: GIBBONS, KETHLEDGE, and BUSH, Circuit Judges.

KETHLEDGE, Circuit Judge. Justin Sain pled guilty to conspiring to distribute at least 50 grams of methamphetamine. The district court sentenced Sain to 120 months' imprisonment—the mandatory minimum—after it found that he possessed a gun in connection with the drug offense. Sain challenges that finding, and also argues that the government needed to prove that connection to a jury beyond a reasonable doubt. We reject his arguments and affirm.

In April 2017, the Chattanooga Police Department suspected that John Webb was distributing drugs. The police were watching Webb's apartment when they saw Justin Sain arrive and leave a few minutes later. The officers followed Sain and pulled him over for a traffic violation. Eventually, they frisked Sain and found 98 grams of methamphetamine; they also searched his car and found digital scales, syringes, a meth pipe, and a .44 Magnum revolver—all inside a briefcase on the passenger seat.

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The government charged Sain with conspiring to distribute at least 50 grams of methamphetamine, in violation of 21 U.S.C. §§ 846 and 841(a)(1). Sain pled guilty. His guidelines range was 87 to 108 months' imprisonment, but the quantity of drugs triggered a 120-month mandatory-minimum sentence under 21 U.S.C. § 841(b)(1)(A). At his sentencing hearing, Sain argued that the district court should apply a statutory safety valve and sentence him "without regard to any statutory minimum sentence." *See* 18 U.S.C. § 3553(f). The district court rejected that argument and sentenced Sain to the statutory minimum of 120 months' imprisonment. This appeal followed.

Sain argues that he should have qualified for safety-valve relief because, he says, the .44 Magnum was not connected with his drug offense. Safety-valve relief allows a district court to "impose a sentence . . . without regard to any statutory minimum sentence[,]" but only if a defendant demonstrates, among other things, that he did not possess a firearm "in connection with" his drug offense. *Id.* § 3553(f)(2). We review for clear error the district court's finding that Sain did possess the gun in connection with his drug offense. *United States v. Haynes*, 468 F.3d 422, 426 (6th Cir. 2006).

The parties agree that whether Sain possessed the .44 Magnum in connection with his drug distribution depends on the "proximity of the firearm to the drugs, the type of firearm involved, whether the firearm was loaded, and any alternative purpose offered to explain the presence of the firearm." *United States v. Moses*, 289 F.3d 847, 850 (6th Cir. 2002). Sain offered an alternative purpose: he said that he always kept the .44 Magnum in his car and mostly used it for hunting and recreation. But the police arrested Sain in an industrial area—an unlikely place for hunting—and Tennessee's hunting season had closed three months before. Moreover, the .44 Magnum was loaded and was easily accessible if Sain needed it to protect the drugs. The district court thus did

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not clearly err when it found that Sain possessed the gun in connection with his drug offense. *See United States v. Leanos*, 827 F.3d 1167, 1170 (8th Cir. 2016); *cf. United States v. Bolton*, No. 93-5533, 1994 WL 83323, at *4 (6th Cir. Mar. 15, 1994) (table).

Sain also makes two constitutional arguments that he did not raise at sentencing. Although we generally review constitutional issues *de novo*, we apply plain error review when a defendant failed to raise the arguments below. *United States v. Yancy*, 725 F.3d 596, 600 (6th Cir. 2013). Sain must therefore show, among other things, that both alleged errors were “plain” or “obvious” under current law. *See United States v. Olano*, 507 U.S. 725, 732–34 (1993).

First, Sain argues that a jury, rather than a judge, should have decided whether he possessed the .44 Magnum in connection with his drug distribution. Our circuit has not addressed the issue, and questions of first impression are generally “inappropriate to address under plain error review.” *See United States v. Accardi*, 669 F.3d 340, 348 (D.C. Cir. 2012). Moreover, eight other circuits have rejected Sain’s argument. *See United States v. Fincher*, 929 F.3d 501, 504 (7th Cir. 2019) (collecting cases). The district court therefore did not plainly err in making this finding itself. *See United States v. Jones*, 108 F.3d 668, 672 (6th Cir. 1997).

Second, Sain argues that the government, rather than Sain himself, should have borne the burden of proving the connection between the .44 Magnum and Sain’s drug distribution. But we have repeatedly held that the “defendant bears the burden of proving by a preponderance of the evidence that he is entitled to relief under the safety valve.” *E.g., United States v. Barron*, 940 F.3d 903, 914 (6th Cir. 2019). Thus, the district court did not plainly err when it placed the burden of proof on Sain rather than the government.

The district court’s judgment is affirmed.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE CHATTANOOGA DIVISION

UNITED STATES OF AMERICA

v.

JUSTIN L. SAIN
USM#53137-074

JUDGMENT IN A CRIMINAL CASE

(For Offenses committed on or after November 1, 1987)

Case Number: **1:18-CR-00039-TRM-SKL(2)**

Erin Alix Phillippi Rust

Defendant's Attorney

THE DEFENDANT:

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

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offense(s):

Title & Section and Nature of Offense	Date Violation Concluded	Count
21 U.S.C. § 846, 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A) Conspiracy to Possess with the Intent to Distribute 50 Grams or More of Methamphetamine (Actual) and 500 Grams or More of a Mixture and Substance Containing Methamphetamine	03/31/2018	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 and 18 U.S.C. § 3553.

- The defendant has been found not guilty on count(s).
- All remaining count(s) as to this defendant are dismissed upon motion of the United States.

IT IS ORDERED that the defendant shall 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 shall notify the court and the United States attorney of any material change in the defendant's economic circumstances.

February 8, 2019

Date of Imposition of Judgment

/s/ Travis R. McDonough

Signature of Judicial Officer

Travis R McDonough, United States District Judge

Name & Title of Judicial Officer

February 12, 2019

Date

DEFENDANT: JUSTIN L SAIN
CASE NUMBER: 1:18-CR-00039-TRM-SKL(2)

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IMPRISONMENT

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

120 months as to Count One.

The court makes the following recommendations to the Bureau of Prisons: **The court recommends that the defendant receive 500 hours of substance abuse treatment from the BOP Institution Residential Drug Abuse Treatment Program.**

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

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

at a m. p m. on
 as notified by the United States Marshal.

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

before 2 p m. on .
 as notified by the United States Marshal.
 as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on

to ,
at ,
with a certified copy of this judgment.

UNITED STATES MARSHAL

By
DEPUTY UNITED STATES MARSHAL

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **five (5) 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 sentencing 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 (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 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.

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. 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 mandatory, standard, and any special conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: JUSTIN L SAIN
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SPECIAL CONDITIONS OF SUPERVISION

The defendant must participate in a program of testing and treatment for drug and/or alcohol abuse, as directed by the probation officer, until such time as the defendant is released from the program by the probation officer.

The defendant must submit his person, property, house, residence, vehicle, papers, [computers (as defined in Title 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 or designee. Failure to submit to a search may be grounds for revocation of release. The defendant must warn any other occupants that the premises may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that the defendant has violated a condition of his supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.

DEFENDANT: JUSTIN L SAIN
CASE NUMBER: 1:18-CR-00039-TRM-SKL(2)

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CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments sheet of this judgment.

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

The determination of restitution is deferred until An *Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.

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

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

Restitution amount ordered pursuant to plea agreement \$

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options under the Schedule of Payments sheet of this judgment 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:

<input type="checkbox"/> the interest requirement is waived for the	<input type="checkbox"/> fine	<input type="checkbox"/> restitution
<input type="checkbox"/> the interest requirement for the	<input type="checkbox"/> fine	<input type="checkbox"/> 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.

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 payments of \$ 100.00 due immediately, balance due
 - not later than _____, or
 - in accordance with C, D, E, or F below; or
- B** Payment to begin immediately (may be combined with C, D, or F below); or
- C** Payment in equal *(e.g., weekly, monthly, quarterly)* installments of \$ _____ over a period of *(e.g., months or years)*, to commence *(e.g., 30 or 60 days)* after the date of this judgment; or
- D** Payment in equal *(e.g., weekly, monthly, quarterly)* installments of \$ _____ over a period of *(e.g., months or years)*, to commence *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or
- E** Payment during the term of supervised release will commence within *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F** Special instructions regarding the payment of criminal monetary penalties:

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 **U.S. District Court, 900 Georgia Avenue, Joel W. Solomon Federal Building, United States Courthouse, Chattanooga, TN, 37402**. Payments shall be in the form of a check or a money order, made payable to U.S. District Court, with a notation of the case number including defendant number.

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

- Joint and Several

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

Defendant shall receive credit on his restitution obligation for recovery from other defendants who contributed to the same loss that gave rise to defendant's restitution obligation.
- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

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