

# APPENDIX A

**NONPRECEDENTIAL DISPOSITION**  
To be cited only in accordance with Fed. R. App. P. 32.1

**United States Court of Appeals**  
For the Seventh Circuit  
Chicago, Illinois 60604

Submitted October 23, 2019  
Decided November 19, 2019

**Before**

WILLIAM J. BAUER, *Circuit Judge*

MICHAEL S. KANNE, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

No. 18-3431

UNITED STATES OF AMERICA,  
*Plaintiff-Appellee,*

Appeal from the United States District  
Court for the Northern District of Illinois,  
Western Division.

*v.*

No. 3:17-cr-50032-1

DERRICK T. NEVILLE, JR.,  
*Defendant-Appellant.*

Frederick J. Kapala,  
*Judge.*

**ORDER**

Derrick Neville, Jr. pleaded guilty to possessing a controlled substance with intent to distribute, 21 U.S.C. § 841(a)(1), and being a felon in possession of a firearm, 18 U.S.C. § 922(g)(2), and was sentenced to 186 months in prison under the Armed Career Criminal Act, 18 U.S.C. § 924(e). He has appealed, but his lawyer asserts that the appeal is frivolous and moves to withdraw under *Anders v. California*, 386 U.S. 738, 744 (1967). Neville opposes the motion using the procedure in Circuit Rule 51(b). Counsel's brief explains the nature of the case and addresses the issues that an appeal of this kind might be expected to involve. Because the analysis appears thorough, we limit our

review to the subjects that counsel and Neville discuss. See *United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014).

Counsel first considers whether Neville could challenge the voluntariness of his guilty plea. Counsel does not expressly indicate whether he spoke to Neville about challenging the plea, see *United States v. Konczak*, 683 F.3d 348, 349 (7th Cir. 2012); *United States v. Knox*, 287 F.3d 667, 670–71 (7th Cir. 2002), and Neville is silent about the issue in his Rule 51(b) response. But the omissions do not require that we deny the *Anders* motion. The transcript of the plea colloquy shows that the district court accepted the guilty plea only after substantially complying with the requirements of Federal Rule of Criminal Procedure 11. See *Konczak*, 683 F.3d at 349. During the colloquy, Neville said that he understood the nature of the proceeding and the questions he was being asked. The judge explained to him what rights he was relinquishing by pleading guilty, see Rule 11(b)(1)(B)–(F), warned him of the consequences of the plea, see Rule 11(b)(1)(H)–(N), assured itself that the plea was voluntary, see Rule 11(b)(2), and determined that the plea had a factual basis. See Rule 11(b)(3). The only omission we see is that the judge did not inform Neville that non-citizens may be removed from the United States if convicted, see Rule 11(b)(1)(O), but this omission did not prejudice Neville because he is a United States citizen. On this record, any argument challenging the voluntariness of the plea would be frivolous.

Counsel next considers whether Neville could challenge his classification as an Armed Career Criminal under § 924(e) and appropriately concludes that this argument would be frivolous because he waived it during the district court’s proceedings. A party waives an argument when he intentionally (as opposed to negligently) chooses not to raise it. *United States v. Waldrip*, 859 F.3d 446, 449 (7th Cir. 2017). In his sentencing memorandum, Neville stated that he expressly agreed with his classification as an Armed Career Criminal and the Sentencing Guideline calculations set forth in the presentence report. In that memorandum, he acknowledged that “he was afforded the right to challenge his classification,” but that his “attorney believe[d] that after reviewing [his] criminal history, the PSR and the applicable case law that there [was] not a good faith basis to challenge his classification.” Later, at the sentencing hearing, Neville’s counsel reiterated that he could not “object to or disagree with” the prosecutor’s guideline calculations and agreed that Neville’s criminal history “falls with the case law regarding him being classified as an armed career criminal.” By intentionally relinquishing the opportunity in these two instances to contest his Armed Career Criminal classification, Neville waived the right to challenge it on appeal. See

*Waldrip*, 859 F.3d at 449. Accordingly, any challenge to the classification—and the application of the Guidelines—would be frivolous.

In his Rule 51(b) response, however, Neville challenges the classification and contends that his two convictions under the Illinois Controlled Substances Act, 720 ILCS § 570/401(c), are not “serious drug offenses” under the ACCA.

To determine whether a prior conviction counts as a serious drug offense under the ACCA, courts apply a “categorical” approach that focuses on the elements of the crime of conviction, rather than the facts underlying the conviction. *Mathis v. United States*, 136 S. Ct. 2243, 2248 (2019). If the elements of the crime of conviction reach more broadly than the definition of a “serious drug offense” under the ACCA—in other words, if it is possible to violate the underlying statute without committing a “serious drug offense” within the meaning of the ACCA—then the conviction cannot serve as a predicate offense under the ACCA. *United States v. Williams*, 931 F.3d 570, 575 (7th Cir. 2019); see also 18 U.S.C. § 924(e).

In interpreting the ACCA, the Supreme Court has recognized a “narrow range of cases” in which courts may look beyond the statute of conviction to determine if it qualifies as an ACCA predicate offense. *Taylor v. United States*, 495 U.S. 575, 602 (1990). If a statute is “divisible”—that is, if it identifies multiple crimes under one section or heading—courts may apply a “modified categorical approach” and examine a limited class of documents, such as indictments or plea agreements, to determine if the defendant was convicted of a version of the crime that falls within the ACCA definition of a “serious drug offense.” *Descamps*, 570 U.S. at 257, 261–63.

Neville maintains that the list of substances criminalized in 720 ILCS § 570/401(c) sweeps more broadly than the list of substances contemplated by 18 U.S.C. § 924(e). Illinois’s § 570/401(c) outlaws, among other things, possession with intent to deliver certain controlled substances and lists the substances it criminalizes in individual subsections. The federal § 924(e)(ii) defines a “serious drug offense” as a drug conviction under state law, drawing its list of criminalized substances from the Controlled Substances Act, 21 U.S.C. § 802. Indeed, we recently determined that 720 ILCS § 570/402(c)—a provision similar to § 570/401(c) that criminalizes drug possession and uses subsections to list a comparable set of substances—is not divisible and includes substances that are *not* controlled substances under federal law. *Najera-Rodriguez v. Barr*, 926 F.3d 343, 348, 356 (7th Cir. 2019). As a result, we concluded that a conviction under 720 ILCS § 570/402(c) cannot serve as a “felony drug offense” for

federal sentencing purposes. See *United States v. De La Torre*, 940 F.3d 938, 949 (7th Cir. 2019).

Even if Neville's argument were not barred by his waiver in the district court, it would be foreclosed by the circumstances of his guilty plea. Unlike the defendant in *Najera-Rodriguez*, he pleaded guilty to violating two specific subsections of the Illinois Controlled Substances Act, 720 ILCS § 570/401(c)(1) and § 570/401(c)(2), rather than § 570/401(c) generally. These two subsections criminalize possession of heroin and cocaine. These provisions are divisible so that the modified categorical approach can apply. There is thus no ambiguity about which substances are implicated by Neville's convictions and whether those substances are also criminalized under federal law. Accordingly, we can determine that his convictions count as "serious drug offenses" under federal law without needing to look beyond the statutory text. We add that we have previously rejected a categorical challenge to the use of § 570/401 as a predicate drug offense under the Guidelines, albeit on different grounds. See *United States v. Redden*, 875 F.3d 374, 375 (7th Cir. 2017).<sup>1</sup>

Finally, we agree with counsel that it would be frivolous to challenge the reasonableness of Neville's sentence, which is two months below the low end of his correctly calculated guideline range of 188 to 235 months. Where, as here, the sentence is below the guideline range, we presume that it is reasonable. See *Rita v. United States*, 551 U.S. 338, 347–56 (2007); *United States v. Griffith*, 712 F.3d 1006, 1012 (7th Cir. 2013). Counsel cannot identify any grounds for overcoming that presumption, nor can we. See *United States v. Melendez*, 819 F.3d 1006, 1014 (7th Cir. 2016). The district court properly considered each relevant 18 U.S.C. § 3553(a) sentencing factor, specifically discussing Neville's personal background (placing special emphasis on his youth, remorse, and difficult upbringing, but weighing them against his mental illness and substance abuse), his criminal history (noting that he had a "chronic" criminal history beginning at age thirteen and committed the current offense nine months after being released on parole), and the need to protect the public and adequately deter future criminal conduct (concluding that a sentence below the guideline range was appropriate but determining

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<sup>1</sup> In a supplement to his Circuit Rule 51 statement filed on November 8, 2019, Neville cited *Najera-Rodriguez*, asserted that his 2014 conviction in DeKalb County was for a violation of § 570/402(c), and concluded that *Najera-Rodriguez* therefore bars reliance on that conviction for enhancing his sentence. This argument is not correct. Paragraph 64 of the Presentence Report shows that the DeKalb County conviction was for violating § 570/401(c)(2), not § 402(c). Section 401(c)(2) is divisible in a way that § 402(c) is not. The DeKalb County conviction under § 401(c)(2) was properly counted as a serious drug offense.

that a term of supervised release following imprisonment would benefit both Neville and the community).

We GRANT counsel's motion to withdraw and DISMISS the appeal.

# APPENDIX B

United States Court of Appeals  
For the Seventh Circuit  
Chicago, Illinois 60604

January 24, 2020

Before

WILLIAM J. BAUER, *Circuit Judge*

MICHAEL S. KANNE, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

No. 18-3431

UNITED STATES OF AMERICA,  
*Plaintiff-Appellee,*

Appeal from the United States District  
Court for the Northern District of Illinois,  
Western Division.

*v.*

No. 3:17-cr-50032-1

DERRICK T. NEVILLE, JR.,  
*Defendant-Appellant.*

Frederick J. Kapala,  
*Judge.*

ORDER

On consideration of defendant Derrick T. Neville, Jr.'s petition for panel rehearing or a suggestion for a rehearing en banc, filed December 19, 2019, no judge in active service has requested a vote on the petition for rehearing en banc, and all judges on the original panel have voted to deny the petition for rehearing.

Accordingly, the petition for panel rehearing or a suggestion for a rehearing en banc filed by defendant Derrick T. Neville, Jr. is DENIED.

# UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse  
Room 2722 - 219 S. Dearborn Street  
Chicago, Illinois 60604



Office of the Clerk  
Phone: (312) 435-5850  
[www.ca7.uscourts.gov](http://www.ca7.uscourts.gov)

## ORDER

January 8, 2020

*By the Court:*

No. 18-3431	UNITED STATES OF AMERICA, Plaintiff - Appellee  v.  DERRICK T. NEVILLE, JR., Defendant - Appellant
<b>Originating Case Information:</b>	
District Court No: 3:17-cr-50032-1 Northern District of Illinois, Western Division District Judge Frederick J. Kapala	

The January 7, 2020, order denying the appellant's petition for panel rehearing or a suggestion for a rehearing en banc is **WITHDRAWN** as improvidently issued. The petition remains under consideration by the court.

United States Court of Appeals

For the Seventh Circuit  
Chicago, Illinois 60604

January 7, 2020

Before

WILLIAM J. BAUER, *Circuit Judge*

MICHAEL S. KANNE, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

No. 18-3431

UNITED STATES OF AMERICA,  
*Plaintiff-Appellee,*

Appeal from the United States District  
Court for the Northern District of Illinois,  
Western Division.

v.

No. 3:17-cr-50032-1

DERRICK T. NEVILLE, JR.,  
*Defendant-Appellant.*

Frederick J. Kapala,  
*Judge.*

ORDER

On consideration of defendant Derrick T. Neville, Jr.'s petition for panel rehearing or a suggestion for a rehearing en banc, filed December 19, 2019, no judge in active service has requested a vote on the petition for rehearing en banc, and all judges on the original panel have voted to deny the petition for rehearing.

Accordingly, the petition for panel rehearing or a suggestion for a rehearing en banc filed by defendant Derrick T. Neville, Jr. is **DENIED**.

# APPENDIX C

IN THE CIRCUIT COURT FOR THE TWENTY-THIRD JUDICIAL CIRCUIT  
DEKALB COUNTY, ILLINOIS

Case No. 14CF-338

PEOPLE OF THE STATE OF ILLINOIS

-vs- Derrick Naville Jr.

Plaintiff

Defendant

Judge	Pltf Atty. PGM	Ct. Reporter.
Stuckert	Deft. Atty. APC	S. Faard

JUDGMENT ORDER

Attest Maureen A. Josh  
Clerk of the Circuit Court

Illinois Department of Corrections

FILED  
IN OPEN COURT

OCT 16 2014

Crime for which Defendant was convicted  
UNLAWFUL possession with intent to deliver  
Controlled Substance

Chapter and Section.

720 ILCS 5/21401(c) (2)

Credit for time served:

DeKalb County Jail:

162 day(s) month(s)

To be determined by Sheriff

Other Credit:

(type/place/agency)

day(s) month(s)

Costs of these proceedings:

Fine.

\$

Circuit Clerk's Costs.

\$

Restitution

\$

Drug Fine

\$

Lab Fee.

\$

Trauma Fee

\$

Drug Assessment Fee.

\$

VCVA Fine

\$

Total Due:

\$

Payment Status:

Sentence of the Court.

day(s) months(s) 4 years(s)

(if applicable)

Concurrent

Consecutive with case numbers:

Court II Nolle pross

2yr MSR - Bootcamp recommendation

White-Clerk  
Judgment Order Criminal CR000017.CRI  
Updated 03/10/2014

Yellow-State's Attorney

Plkt-Defendant's Attorney

Goldcard-Defendant

Court II is dismissed. A true copy of the original on file in my office.

Attested to this 11 day of MAy 20

MAUREEN A. JOSH

Clerk of the Circuit Court

23rd Judicial Circuit

DeKalb County, Illinois

IN THE CIRCUIT COURT OF THE TWENTY-THIRD JUDICIAL CIRCUIT  
DEKALB COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, ) CASE NO.: 14 CV 330  
Plaintiff(s), )  
vs. ) COUNTS 1  
Defendant. ) (You must complete a separate form for each case number.)

FILED  
IN CIRCUIT COURT  
OCT 16 2014

Maureen A. Josh  
Clerk of the Circuit Court  
DeKalb County, Illinois

GUILTY PLEA AND JURY DEMAND/WAIVER

COMES NOW said Defendant in the above-captioned cause, and having been fully advised of his/her right to plead not guilty, to have a jury trial or a trial before a judge, to be proved guilty beyond a reasonable doubt, to confront the witnesses against him, and fully understand that upon a plea of guilty that there will be no trial of any kind does hereby knowingly and freely

waive his/her right to trial by jury and consents to a trial by the Court without a jury

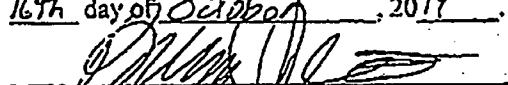
Said defendant further enters a plea of

guilty to the charges contained in the within cause.

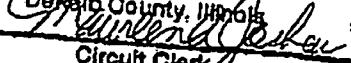
An individual convicted of domestic battery may be subject to federal criminal penalties for possessing, transporting, shipping, or receiving any firearm or ammunition in violation of the federal Gun Control Act of 1968 (18 U.S.C. 922(g) (8) and (9)).

Derrick Neuhof  
Defendant

Subscribed and sworn to before me this  
16th day of October, 2014.

  
Judge/Clerk

Circuit Plea & Jury Demand Waiver ACK000027 CRI  
Rev 11/9/2012

A true copy of the original on file in my office  
Attested to this 16 day of October, 2014  
MAUREEN A. JOSH  
Clerk of the Circuit Court  
23rd Judicial Circuit  
DeKalb County, Illinois  
By   
Circuit Clerk

In the Circuit Court of the Seventeenth Judicial Circuit  
Winnebago County, State of Illinois

CC-30

**FILED**  
Date 3/17/08  
By Deputy Clerk of the Circuit Court  
Winnebago County, IL

26317-000285

People of the State of Illinois

Plaintiff

Derrick Neville  
Defendant

Case No(s) 08CF434

**PROBATION ORDER**

YOU HAVE BEEN GRANTED THE PRIVILEGE OF PROBATION. IF YOU FAIL TO OBEY THE FOLLOWING CONDITIONS YOUR PROBATION MAY BE MODIFIED OR REVOKED. IF REVOKED YOU CAN BE RESENTENCED ON THE OFFENSE FOR WHICH YOU RECEIVED PROBATION. The above named defendant, having been convicted of the offense(s) designated below, is hereby sentenced to probation subject to the terms and conditions stated below provided that any violation of said conditions may result in the above named defendant being subject to the Administrative Sanctions Program in the Probation Department, or modification or revocation of this disposition.

OFFENSE(S) VCSA - UPWID 1-15 a Class 1 as amended felony and/or Class 1 misdemeanor, for a period of 48 months

**THE CONDITIONS OF SENTENCE ARE THAT DEFENDANT SHALL**

Not violate any criminal statute or ordinance of any jurisdiction

Defendant shall report immediately to the Adult Probation Department located on the first floor of the Winnebago County Courthouse. Furthermore, Defendant shall report monthly or as often as the probation officer may direct.

Not possess any firearms or dangerous weapons

Not leave the State of Illinois without consent of the court and giving advance notice to and obtaining written permission from probation officer

Permit probation officer to visit the defendant at the defendant's home or elsewhere as requested by the probation officer

Inform the Clerk of the Circuit Court and the probation office of a change of address within 24 hours

If an offense referenced in this order is a felony submit a blood and/or tissue and/or saliva specimen within 45 days for genetic marker testing pursuant to 710 ILCS 5/5-4.1 and pay an analysis fee of \$200.00

Register as a sex offender and comply with Sex Offender Registration Act 730 ILCS 150/1 et seq

Not consume alcohol or illicit drugs unless prescribed by a physician

Submit to random urinalysis and/or blood test and/or breathalyzer test at the direction of the probation department or any agency referred to for counseling, and shall sign releases of information concerning the test results to the court and probation

Undergo medical testing for sexually transmissible disease pursuant to 730 ILCS 5/5-3(g) and shall appear and obtain the results in court on \_\_\_\_\_ The results are to be furnished to the sentencing judge

Obtain GED or educational program employed or in educational program

Pay restitution in the amount of \$ \_\_\_\_\_, to be paid in full by \_\_\_\_\_

\*Restitution is payable at a rate to be determined by the Financial Compliance Unit \*Restitution payments made through the Winnebago County Clerk's Office

Circuit Clerk is to send restitution to \_\_\_\_\_

Defendant Address \_\_\_\_\_

Defendant's Signature Derrick Neville

Entered March 17 2008 by Deputy Clerk

Judge: Robert J. White

By Deputy Clerk

Entered March 17 2008 by Deputy Clerk

Defendant Address \_\_\_\_\_

Defendant's Signature Derrick Neville

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Entered March 17 2008 by Deputy Clerk

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Defendant's Signature <u

STATE OF ILLINOIS  
IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT  
COUNTY OF WINNEBAGO

FILED

Date 2/12/08  
By *Thomas A. Klein*  
Clerk of the Circuit Court  
Winnebago County, IL  
Deputy

THE PEOPLE OF THE STATE OF ILLINOIS )  
PLAINTIFF ) NO 08CF434  
vs )  
DERRICK NEVILLE )  
DOB 10/31/90 )  
DEFENDANT )

BILL OF INDICTMENT

The Grand Jury charges

COUNT I

That on or about the 5th day of February, 2008, in the County of Winnebago, State of Illinois, DERRICK NEVILLE committed the offense of VIOLATION OF THE CONTROLLED SUBSTANCES ACT in that he, while being within 1000 feet of the real property comprising a church, namely Church of Christ located at 112 S. Henrietta, Rockford, Illinois, knowingly and unlawfully possessed with the intent to deliver, in violation of 720 ILCS 570/401(c)(1), 1 gram or more but less than 15 grams of a substance containing heroin, a controlled substance, in violation of 720 ILCS 570/407(b)(1) (Class X Felony, 6-30 years/Max. Fine \$500,000)

I hereby certify that this document is a true, perfect and complete copy of the original on file in my office.

*Thomas A. Klein*  
Clerk of the Circuit Court  
Winnebago County, Illinois  
By *UAV*  
Deputy Clerk  
4-7-17

A TRUE BILL  
*UAV*  
Foreman