

APPENDIX TABLE OF CONTENTS

Judgment entered September 9, 2019, <i>United States v. Timothy Allen McWilliams</i> , S.D. Iowa No. 4:19-CR-0054-RGE-HCA.....	A2
Judgment entered May 29, 2020, <i>United States v. Timothy Allen McWilliams</i> , Eighth Circuit Court of Appeals No. 19-3158	A13
Opinion entered May 29, 2020, <i>United States v. Timothy Allen McWilliams</i> , 807 Fed. Appx. 589 (8th Cir. 2019) (Mem)	A14

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA

v.

TIMOTHY ALLEN MCWILLIAMS

JUDGMENT IN A CRIMINAL CASE

Case Number: 4:19-CR-00054-001

USM Number: 19043-030

Gina Messamer

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) One of the Indictment filed on March 20, 2019.

☐ 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	Offense Ended	Count
21 U.S.C. § 841(a)(1), 841(b)(1)(B)	Possession with Intent to Distribute at Least Five Grams of Actual Methamphetamine	02/26/2019	One

☐ See additional count(s) on page 2

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.

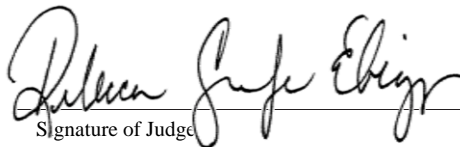
☐ The defendant has been found not guilty on count(s)

☐ Count(s) ☐ is ☐ are 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.

September 20, 2019

Date of Imposition of Judgment



Signature of Judge

Rebecca Goodgame Ebinger, U.S. District Judge

Name of Judge

Title of Judge

September 20, 2019

Date

A2

DEFENDANT: TIMOTHY ALLEN MCWILLIAMS
CASE NUMBER: 4:19-CR-00054-001

IMPRISONMENT

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

151 months as to Count One of the Indictment filed on March 20, 2019.

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

The defendant be placed at USP Leavenworth; the defendant be provided the opportunity to participate in the 500-hour residential drug abuse program (RDAP); the defendant be provided the opportunity to participate in the Life Connections program; and the defendant be provided the opportunity to participate in culinary arts and automotive vocational programs.

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

☐ The defendant is remanded to the custody of the United States Marshal for surrender to the ICE detainer.

☐ 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 _____ 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 _____

a _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____

DEPUTY UNITED STATES MARSHAL

DEFENDANT: TIMOTHY ALLEN MCWILLIAMS
CASE NUMBER: 4:19-CR-00054-001

Judgment Page: 3 of 7

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of :
5 years as to Count One of the Indictment filed on March 20, 2019.

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 (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.

DEFENDANT: TIMOTHY ALLEN MCWILLIAMS
CASE NUMBER: 4:19-CR-00054-001

Judgment Page: 4 of 7

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.

Defendant's Signature _____

Date _____

DEFENDANT: TIMOTHY ALLEN MCWILLIAMS
CASE NUMBER: 4:19-CR-00054-001

Judgment Page: 5 of 7

SPECIAL CONDITIONS OF SUPERVISION

You must participate in a program of testing and/or treatment for substance abuse, as directed by the Probation Officer, until such time as the defendant is released from the program by the Probation Office. At the direction of the probation office, you must receive a substance abuse evaluation and participate in inpatient and/or outpatient treatment, as recommended. Participation may also include compliance with a medication regimen. You will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment. You must not use alcohol and/or other intoxicants during the course of supervision.

You must submit to a mental health evaluation. If treatment is recommended, you must participate in an approved treatment program and abide by all supplemental conditions of treatment. Participation may include inpatient/outpatient treatment and/or compliance with a medication regimen. You will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

You must participate in a cognitive behavioral treatment program, which may include journaling and other curriculum requirements, as directed by the U.S. Probation Officer.

If not obtained while in Bureau of Prisons' custody, you must participate in GED classes as approved by the U.S. Probation Office.

You will submit to a search of your person, property, residence, adjacent structures, office, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), and other electronic communications or data storage devices or media, conducted by a U.S. Probation Officer. Failure to submit to a search may be grounds for revocation. You must warn any other residents or occupants that the premises and/or vehicle 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 you have violated a condition of your release and/or that the area(s) or item(s) to be searched contain evidence of this violation or contain contraband. Any search must be conducted at a reasonable time and in a reasonable manner. This condition may be invoked with or without the assistance of law enforcement, including the U.S. Marshals Service.

DEFENDANT: TIMOTHY ALLEN MCWILLIAMS
 CASE NUMBER: 4:19-CR-00054-001

CRIMINAL MONETARY PENALTIES

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

- ☐ Pursuant to 18 U.S.C. § 3573, upon the motion of the government, the Court hereby remits the defendant's Special Penalty Assessment; the fee is waived and no payment is required.

	<u>Assessment</u>	<u>JVTA Assessment *</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$ 0.00	\$ 0.00	\$0.00

- ☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* 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.

<u>Name of Payee</u>	<u>Total Loss**</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
TOTALS		\$0.00	\$0.00

- ☐ 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: TIMOTHY ALLEN MCWILLIAMS
CASE NUMBER: 4:19-CR-00054-001

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 payment of \$ 100.00 due immediately, balance due
- ☐ not later than _____, or
☒ in accordance ☐ 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:
- All criminal monetary payments are to be made to the Clerk's Office, U.S. District Court, P.O. Box 9344, Des Moines, IA. 50306-9344.
- While on supervised release, you shall cooperate with the Probation Officer in developing a monthly payment plan consistent with a schedule of allowable expenses provided by the Probation Office.

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

The defendant shall 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) JVT A assessment, and (8) costs, including cost of prosecution and court costs.

DEFENDANT: TIMOTHY ALLEN MCWILLIAMS
CASE NUMBER: 4:19-CR-00054-001
DISTRICT: SOUTHERN DISTRICT OF IOWA

STATEMENT OF REASONS

(Not for Public Disclosure)

Sections I, II, III, IV, and VII of the Statement of Reasons form must be completed in all felony and Class A misdemeanor cases.

I. COURT FINDINGS ON PRESENTENCE INVESTIGATION REPORT

- A. ☒ **The court adopts the presentence investigation report without change.**
- B. ☐ **The court adopts the presentence investigation report with the following changes:** *(Use Section VIII if necessary)*
(Check all that apply and specify court determination, findings, or comments, referencing paragraph numbers in the presentence report)
1. ☐ **Chapter Two of the United States Sentencing Commission Guidelines Manual** determinations by court: *(briefly summarize the changes, including changes to base offense level, or specific offense characteristics)*
 2. ☐ **Chapter Three of the United States Sentencing Commission Guidelines Manual** determinations by court: *(briefly summarize the changes, including changes to victim-related adjustments, role in the offense, obstruction of justice, multiple counts, or acceptance of responsibility)*
 3. ☐ **Chapter Four of the United States Sentencing Commission Guidelines Manual** determinations by court: *(briefly summarize the changes, including changes to criminal history category or scores, career offender status, or criminal livelihood determinations)*
 4. ☐ **Additional Comments or Findings:** *(include comments or factual findings concerning any information in the presentence report, including information that the Federal Bureau of Prisons may rely on when it makes inmate classification, designation, or programming decisions; any other rulings on disputed portions of the presentence investigation report; identification of those portions of the report in dispute but for which a court determination is unnecessary because the matter will not affect sentencing or the court will not consider it)*
- C. ☐ **The record establishes no need for a presentence investigation report pursuant to Fed.R.Crim.P. 32.**
Applicable Sentencing Guideline: *(if more than one guideline applies, list the guideline producing the highest offense level)* _____

II. COURT FINDINGS ON MANDATORY MINIMUM SENTENCE *(Check all that apply)*

- A. ☒ One or more counts of conviction carry a mandatory minimum term of imprisonment and the sentence imposed is at or above the applicable mandatory minimum term.
- B. ☐ One or more counts of conviction carry a mandatory minimum term of imprisonment, but the sentence imposed is below the mandatory minimum term because the court has determined that the mandatory minimum term does not apply based on:
- ☐ findings of fact in this case: *(Specify)* _____
- ☐ substantial assistance *(18 U.S.C. § 3553(e))*
- ☐ the statutory safety valve *(18 U.S.C. § 3553(f))*
- C. ☐ No count of conviction carries a mandatory minimum sentence.

III. COURT DETERMINATION OF GUIDELINE RANGE: *(BEFORE DEPARTURES OR VARIANCES)*

Total Offense Level: 31

Criminal History Category: VI

Guideline Range: *(after application of §5G1.1 and §5G1.2)* 188 to 235 months

Supervised Release Range: 4 to 5 years

Fine Range: \$ 30,000 to \$ 5,000,000

- ☒ Fine waived or below the guideline range because of inability to pay.

DEFENDANT: TIMOTHY ALLEN MCWILLIAMS
CASE NUMBER: 4:19-CR-00054-001
DISTRICT: SOUTHERN DISTRICT OF IOWA

STATEMENT OF REASONS

IV. GUIDELINE SENTENCING DETERMINATION *(Check all that apply)*

- A. ☐ The sentence is within the guideline range and the difference between the maximum and minimum of the guideline range does not exceed 24 months.
- B. ☐ The sentence is within the guideline range and the difference between the maximum and minimum of the guideline range exceeds 24 months, and the specific sentence is imposed for these reasons: *(Use Section VIII if necessary).*
- C. ☐ The court departs from the guideline range for one or more reasons provided in the Guidelines Manual.
(Also complete Section V)
- D. ☒ The court imposed a sentence otherwise outside the sentencing guideline system (*i.e.*, a variance). *(Also complete Section VI)*

V. DEPARTURES PURSUANT TO THE GUIDELINES MANUAL *(If applicable)*

- A. **The sentence imposed departs:** *(Check only one)*
☐ above the guideline range
☐ below the guideline range
- B. **Motion for departure before the court pursuant to:** *(Check all that apply and specify reason(s) in sections C and D)*

1. **Plea Agreement**

- ☐ binding plea agreement for departure accepted by the court
☐ plea agreement for departure, which the court finds to be reasonable
☐ plea agreement that states that the government will not oppose a defense departure motion

2. **Motion Not Addressed in a Plea Agreement**

- ☐ government motion for departure
☐ defense motion for departure to which the government did not object
☐ defense motion for departure to which the government objected
☐ joint motion by both parties

3. **Other**

- ☐ Other than a plea agreement or motion by the parties for departure

C. **Reasons for departure:** *(Check all that apply)*

- | | | |
|---|--|--|
| <input type="checkbox"/> 4A1.3 Criminal History Inadequacy | <input type="checkbox"/> 5K2.1 Death | <input type="checkbox"/> 5K2.12 Coercion and Duress |
| <input type="checkbox"/> 5H1.1 Age | <input type="checkbox"/> 5K2.2 Physical Injury | <input type="checkbox"/> 5K2.13 Diminished Capacity |
| <input type="checkbox"/> 5H1.2 Education and Vocational Skills | <input type="checkbox"/> 5K2.3 Extreme Psychological Injury | <input type="checkbox"/> 5K2.14 Public Welfare |
| <input type="checkbox"/> 5H1.3 Mental and Emotional Condition | <input type="checkbox"/> 5K2.4 Abduction or Unlawful Restraint | <input type="checkbox"/> 5K2.16 Voluntary Disclosure of Offense |
| <input type="checkbox"/> 5H1.4 Physical Condition | <input type="checkbox"/> 5K2.5 Property Damage or Loss | <input type="checkbox"/> 5K2.17 High-Capacity Semiautomatic Weapon |
| <input type="checkbox"/> 5H1.5 Employment Record | <input type="checkbox"/> 5K2.6 Weapon | <input type="checkbox"/> 5K2.18 Violent Street Gang |
| <input type="checkbox"/> 5H1.6 Family Ties and Responsibilities | <input type="checkbox"/> 5K2.7 Disruption of Government Function | <input type="checkbox"/> 5K2.20 Aberrant Behavior |
| <input type="checkbox"/> 5H1.11 Military Service | <input type="checkbox"/> 5K2.8 Extreme Conduct | <input type="checkbox"/> 5K2.21 Dismissed and Uncharged Conduct |
| <input type="checkbox"/> 5H1.11 Charitable Service/Good Works | <input type="checkbox"/> 5K2.9 Criminal Purpose | <input type="checkbox"/> 5K2.22 Sex Offender Characteristics |
| <input type="checkbox"/> 5K1.1 Substantial Assistance | <input type="checkbox"/> 5K2.10 Victim's Conduct | <input type="checkbox"/> 5K2.23 Discharged Terms of Imprisonment |
| <input type="checkbox"/> 5K2.0 Aggravating/Mitigating Circumstances | <input type="checkbox"/> 5K2.11 Lesser Harm | <input type="checkbox"/> 5K2.24 Unauthorized Insignia |
| | | <input type="checkbox"/> 5K3.1 Early Disposition Program (EDP) |
- ☐ Other Guideline Reason(s) for Departure, to include departures pursuant to the commentary in the Guidelines Manual: *(see "List of Departure Provisions" following the Index in the Guidelines Manual.) (Please specify)*

D. **State the basis for the departure.** *(Use Section VIII if necessary)*

DEFENDANT: TIMOTHY ALLEN MCWILLIAMS

CASE NUMBER: 4:19-CR-00054-001

DISTRICT: SOUTHERN DISTRICT OF IOWA

STATEMENT OF REASONS**VI. COURT DETERMINATION FOR A VARIANCE** *(If applicable)***A. The sentence imposed is:** *(Check only one)*

- ☐ above the guideline range
☒ below the guideline range

B. Motion for a variance before the court pursuant to: *(Check all that apply and specify reason(s) in sections C and D)***1. Plea Agreement**

- ☐ binding plea agreement for a variance accepted by the court
☐ plea agreement for a variance, which the court finds to be reasonable
☐ plea agreement that states that the government will not oppose a defense motion for a variance

2. Motion Not Addressed in a Plea Agreement

- ☐ government motion for a variance
☐ defense motion for a variance to which the government did not object
☒ defense motion for a variance to which the government objected
☐ joint motion by both parties

3. Other

- ☐ Other than a plea agreement or motion by the parties for a variance

C. 18 U.S.C. § 3553(a) and other reason(s) for a variance *(Check all that apply)*

- ☐ The nature and circumstances of the offense pursuant to 18 U.S.C. § 3553(a)(1):
☐ Mens Rea ☐ Extreme Conduct ☐ Dismissed/Uncharged Conduct
☐ Role in the Offense ☐ Victim Impact
☐ General Aggravating or Mitigating Factors: *(Specify)*

☒ The history and characteristics of the defendant pursuant to 18 U.S.C. § 3553(a)(1):

- | | |
|--|---|
| <input type="checkbox"/> Aberrant Behavior | <input checked="" type="checkbox"/> Lack of Youthful Guidance |
| <input type="checkbox"/> Age | <input type="checkbox"/> Mental and Emotional Condition |
| <input type="checkbox"/> Charitable Service/Good Works | <input type="checkbox"/> Military Service |
| <input type="checkbox"/> Community Ties | <input type="checkbox"/> Non-Violent Offender |
| <input type="checkbox"/> Diminished Capacity | <input type="checkbox"/> Physical Condition |
| <input checked="" type="checkbox"/> Drug or Alcohol Dependence | <input checked="" type="checkbox"/> Pre-sentence Rehabilitation |
| <input type="checkbox"/> Employment Record | <input type="checkbox"/> Remorse/Lack of Remorse |
| <input type="checkbox"/> Family Ties and Responsibilities | <input checked="" type="checkbox"/> Other: <i>(Specify)</i> <u>Childhood trauma</u> |

☐ Issues with Criminal History: *(Specify)* _____

- ☐ To reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense *(18 U.S.C. § 3553(a)(2)(A))*

☐ To afford adequate deterrence to criminal conduct *(18 U.S.C. § 3553(a)(2)(B))*

☐ To protect the public from further crimes of the defendant *(18 U.S.C. § 3553(a)(2)(C))*

☐ To provide the defendant with needed educational or vocational training *(18 U.S.C. § 3553(a)(2)(D))*

☐ To provide the defendant with medical care *(18 U.S.C. § 3553(a)(2)(D))*

☐ To provide the defendant with other correctional treatment in the most effective manner *(18 U.S.C. § 3553(a)(2)(D))*

☐ To avoid unwarranted sentencing disparities among defendants *(18 U.S.C. § 3553(a)(6)) (Specify in section D)*

☐ To provide restitution to any victims of the offense *(18 U.S.C. § 3553(a)(7))*

☐ Acceptance of Responsibility ☒ Conduct Pre-trial/On Bond ☐ Cooperation Without Government Motion for Departure

☐ Early Plea Agreement ☐ Global Plea Agreement

☐ Time Served *(not counted in sentence)* ☐ Waiver of Indictment ☐ Waiver of Appeal

☐ Policy Disagreement with the Guidelines *(Kimbrough v. U.S., 552 U.S. 85 (2007): (Specify)* _____

☐ Other: *(Specify)* _____

D. State the basis for a variance. *(Use Section VIII if necessary)*

The sentence was imposed after considering all the factors set forth in 18 U.S.C. § 3553(a), as dictated into the record at the time of sentencing.

DEFENDANT: TIMOTHY ALLEN MCWILLIAMS
CASE NUMBER: 4:19-CR-00054-001
DISTRICT: SOUTHERN DISTRICT OF IOWA

STATEMENT OF REASONS

VII. COURT DETERMINATIONS OF RESTITUTION

A. ☒ **Restitution not applicable.**

B. **Total amount of restitution:** \$0.00

C. **Restitution not ordered:** *(Check only one)*

1. ☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because the number of identifiable victims is so large as to make restitution impracticable under 18 U.S.C. § 3663A(c)(3)(A).
2. ☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because determining complex issues of fact and relating them to the cause or amount of the victims' losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim would be outweighed by the burden on the sentencing process under 18 U.S.C. § 3663A(c)(3)(B).
3. ☐ For other offenses for which restitution is authorized under 18 U.S.C. § 3663 and/or required by the sentencing guidelines, restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweigh the need to provide restitution to any victims under 18 U.S.C. § 3663(a)(1)(B)(ii).
4. ☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. §§ 1593, 2248, 2259, 2264, 2327 or 3663A, restitution is not ordered because the victim(s)' losses were not ascertainable (18 U.S.C. § 3664(d)(5)).
5. ☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. §§ 1593, 2248, 2259, 2264, 2327 or 3663A, restitution is not ordered because the victim(s) elected to not participate in any phase of determining the restitution order (18 U.S.C. § 3664(g)(1)).
6. ☐ Restitution is not ordered for other reasons: *(Explain)*

D. ☐ **Partial restitution is ordered for these reasons:** *(18 U.S.C. § 3553(c))*

VIII. ADDITIONAL BASIS FOR THE SENTENCE IN THIS CASE *(If applicable)*

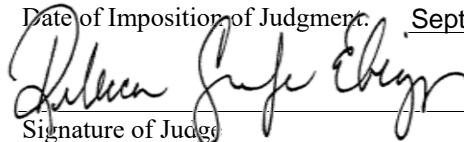
Defendant's Soc. Sec. No.: 506-90-8517

Defendant's Date of Birth: 10/22/1970

Defendant's Residence
Address: U.S. Marshals Service custody

Defendant's Mailing
Address: U.S. Marshals Service custody

Date of Imposition of Judgment: September 20, 2019


Signature of Judge

Rebecca Goodgame Ebinger, U.S. District Judge
Name and Title of Judge

Date: September 20, 2019

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

No: 19-3158

United States of America

Plaintiff - Appellee

v.

Timothy Allen McWilliams

Defendant - Appellant

Appeal from U.S. District Court for the Southern District of Iowa - Des Moines
(4:19-cr-00054-RGE-1)

JUDGMENT

Before COLLOTON, GRUENDER, and GRASZ, Circuit Judges.

This appeal from the United States District Court was submitted on the record of the district court and briefs of the parties.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

May 29, 2020

Order Entered in Accordance with Opinion:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

United States Court of Appeals
For the Eighth Circuit

No. 19-3158

United States of America,

Plaintiff - Appellee,

v.

Timothy Allen McWilliams,

Defendant - Appellant.

Appeal from United States District Court
for the Southern District of Iowa - Des Moines

Submitted: April 17, 2020

Filed: May 29, 2020

[Unpublished]

Before COLLOTON, GRUENDER, and GRASZ, Circuit Judges.

PER CURIAM.

Timothy McWilliams pleaded guilty to one count of possession with intent to distribute five grams or more of methamphetamine. *See* 21 U.S.C. § 841(a)(1),

(b)(1)(B). At sentencing, the district court¹ varied downward from the advisory guideline range of 188 to 235 months' imprisonment and sentenced McWilliams to 151 months in prison. McWilliams argues on appeal that the district court committed procedural error in calculating the advisory guideline range when it determined that he qualified as a career offender under USSG § 4B1.1.

The district court determined that McWilliams qualified as a career offender based on his prior convictions in Iowa for domestic abuse assault and conspiracy to manufacture a controlled substance. A defendant is a career offender if he “has at least two prior felony convictions of either a crime of violence or a controlled substance offense.” USSG § 4B1.1(a). A “controlled substance offense” includes an offense that “prohibits the manufacture, import, export, distribution, or dispensing of a controlled substance.” USSG § 4B1.2(b). Application Note 1 to § 4B1.2 states that the terms “[c]rime of violence” and “controlled substance offense” include the offenses of aiding and abetting, conspiring, and attempting to commit such offenses.” USSG § 4B1.2, comment. (n.1).

McWilliams argues that his prior conviction for conspiracy to manufacture a controlled substance does not qualify as a “controlled substance offense” because the guideline does not encompass inchoate offenses like conspiracy and attempt. Citing *United States v. Havis*, 927 F.3d 382, 387 (6th Cir. 2019) (en banc) (per curiam), and *United States v. Winstead*, 890 F.3d 1082, 1091 (D.C. Cir. 2018), he contends that the guideline commentary is invalid because it is inconsistent with the guideline and is not an interpretation of the guideline at all.

McWilliams's argument is foreclosed by circuit precedent. *United States v. Merritt*, 934 F.3d 809, 811 (8th Cir. 2019); *United States v. Williams*, 926 F.3d 966,

¹The Honorable Rebecca Goodgame Ebinger, United States District Judge for the Southern District of Iowa.

971 (8th Cir. 2019); *United States v. Bailey*, 677 F.3d 816, 818 (8th Cir. 2012) (per curiam). These decisions construed *United States v. Mendoza-Figueroa*, 65 F.3d 691 (8th Cir. 1995) (en banc), as deciding that the commentary is valid, and that a drug conspiracy offense is a controlled substance offense. Other circuits likewise have held that the commentary is valid and that inchoate drug offenses qualify as controlled substance offenses under the guidelines. *United States v. Lange*, 862 F.3d 1290, 1294-96 (11th Cir. 2017); *United States v. Chavez*, 660 F.3d 1215, 1226-28 (10th Cir. 2011); *United States v. Piper*, 35 F.3d 611, 617 (1st Cir. 1994); *see also United States v. Adams*, 934 F.3d 720, 727-30 (7th Cir. 2019) (construing USSG § 2K2.1). We note that the Sentencing Commission has published a proposed amendment to USSG § 4B1.2 that would resolve the disagreement among the circuits on this issue. *See* Sentencing Guidelines for United States Courts, 83 Fed. Reg. 65400, 65412-15 (proposed Dec. 20, 2018) (to be codified at USSG § 4B1.2).

For these reasons, there was no error in calculating the advisory guideline range, and the judgment of the district court is affirmed.
