

No. _____

**IN THE SUPREME COURT OF
THE UNITED STATES**

OCTOBER TERM 2020

ULIS HOWARD ALEXANDER

Petitioner

v.

UNITED STATES OF AMERICA

Respondent

**PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT**

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ATTORNEY OF RECORD AND ATTORNEY FOR PETITIONER

November 2, 2020

QUESTION PRESENTED

Did the Fifth Circuit err in holding that the concept of corpus delicti should not apply in the punishment phase?

LIST OF PARTIES

Pursuant to Rule 14.1(b) of the Rules of this Court, Petitioner would show that all parties to the proceeding of which the judgment is sought to be revised appear in the caption of this case.

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IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2020

ULIS HOWARD ALEXANDER

Petitioner

v.

UNITED STATES OF AMERICA

Respondent

**PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

Petitioner, Ulis Howard Alexander respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit, entered in the above-entitled proceeding on June 29, 2020.

BASIS OF JURISDICTION

The Fifth Circuit Court of Appeals entered their judgment on June 29, 2020.¹ The jurisdiction of this Court is invoked pursuant to the United States Code.²

¹ (App., p. A-1).

² 28 U.S.C. § 1254(1) (2020) (“Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods . . . [b]y writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.”).

STATUTES INVOLVED

This material has been included in the Appendix.

STATEMENT OF THE CASE

The initial indictment, filed March 13, 2018 alleged that Mr. Alexander had violated the following offenses:

Conspiracy to Possess with Intent to Distribute and Distribution of Methamphetamine, a Schedule II Controlled Substance. ³	21 U.S.C. § 846 (21 U.S.C. § 841(a)(1) & 841(b)(1)(A)(viii) 21 U.S.C. 841(a)(1) & 841(b)(1)(B)(viii).
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Following trial before Western District of Texas Judge Alan D. Albright, Mr. Alexander was found guilty of counts one.⁴ On May 16, 2019, the Court assessed the following punishments:⁵

Conspiracy to Possess with Intent to Distribute and Distribution of Methamphetamine, a Schedule II Controlled Substance.	370 months	5 years	\$0.00 fine
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³ ROA.19-50523.22-23.

⁴ ROA.19-50523.92-97.

⁵ ROA.19-50523.92.

The count was also assessed a special assessment of \$100.00.⁶ The judgment was signed on May 16, 2019.⁷ Notice of appeal was timely filed on June 6, 2019.⁸ Petitioner's issues were overruled in the Fifth Circuit Court of Appeals.⁹

⁶ ROA.19-50523.97.

⁷ ROA.19-50523.92.

⁸ ROA.19-50523.98.

⁹ *United States v. Alexander*, 807 Fed. Appx. 414 (5th Cir. 2020).

ARGUMENT FOR GRANTING THE WRIT

Did the Fifth Circuit err in holding that the concept of *corpus delicti* should not apply in the punishment phase?

A. *Ground for Granting the Writ.*

Petitioner argues that the Fifth Circuit's decision has decided an important question of federal law that has not been, but should be, settled by this Court.¹⁰

B. *Reasons for Granting the Writ.*

This case presents a question of whether the concept of *corpus delicti* should be made applicable to sentencing proceedings. Here, Petitioner given a two point enhancement due to possession of "a dangerous weapon" during commission of his drug offense. Specifically, Alexander challenged a two-level enhancement under USSG § 2D1.1(b)(1) for possession of a firearm, arguing that his intercepted and uncorroborated statements that he possessed a firearm and ammunition, and planned to use them, if necessary, to kill the individual who supplied the drug trafficking operation with low-quality methamphetamine, were insufficient to support the enhancement.¹¹ Petitioner argued the *corpus delicti* rule, which forbids a conviction based solely on a defendant's own admissions, should extend to the sentencing context.¹² The Fifth

¹⁰ Sup. Ct. R. 10(c).

¹¹ *United States v. Alexander*, 807 Fed. Appx. 414, 415 (5th Cir. 2020).

¹² *Wong Sun v. United States*, 371 U.S. 471, 488–89 (1963).

Circuit disagreed. The Fifth Circuit stated *inter alia*, that Petitioner's claim lacked authority that the corpus delicti rule applies in the sentencing context.¹³

1. *Factual basis.*

In October 2016, various Central Texas law enforcement agencies investigated the distribution of methamphetamine by a group of individuals, including Appellant.¹⁴ In the Presentence Investigation Report, it was stated that “[t]he defendant indicated in telephone intercepts that he had two boxes of shells for his revolver. Therefore, two levels will be applied to this case.”¹⁵ A two-level increase in the offense level, pursuant to USSG 2D1.1(b)(1) was recommended.¹⁶ Petitioner objected to the recommendation.¹⁷

During the sentencing hearing, an investigating officer stated that he overheard phone calls between a co-conspirator and Appellant regarding a weapon.¹⁸ The conversation concerned receipt of methamphetamine “from a different supplier.”¹⁹ According to the officer, full payment for the methamphetamine had not been made

¹³ *Alexander*, 807 Fed. Appx. at 415.

¹⁴ ROA.19-50523.211.

¹⁵ ROA.19-50523.214.

¹⁶ ROA.19-50523.214.

¹⁷ ROA.19-50523.198. “Defendant objects to paragraphs 47 and 48 because both paragraphs alleged possession of the firearm and shells were indicated in a telephone intercepts [sic] . . . Defendant argues that he was never in possession of a firearm or shells and no weapon or ammunition was found in his possession.”

¹⁸ ROA.19-50523.129.

¹⁹ ROA.19-50523.129.

because it was “a bad batch of methamphetamine.”²⁰ The supplier of the “bad batch” was talking to Appellant directly concerning collection of the money owed.²¹

Appellant and his co-conspirator discussed that the supplier needed to “make it right or basically forget about the money.”²² Further, the pair referenced a threat from the “bad batch” supplier to another co-conspirator – to rob another co-conspirator to collect for the money owed.²³ The officer quoted Appellant that he claimed to have a “revolver and two boxes of shells.”²⁴ In another call, the officer stated that Appellant “reinforced that he has two cases of bullets for the revolver.”²⁵ The officer admitted that during the investigation, law enforcement had no information that Appellant was in fact, in possession of a firearm or bullets.²⁶ Further, the officer noted that during drug activity, “people talk big, make threats to their friends, to their co-conspirators to” enhance their standing.²⁷

²⁰ ROA.19-50523.129–30.

²¹ ROA.19-50523.130.

²² ROA.19-50523.130.

²³ ROA.19-50523.130.

²⁴ ROA.19-50523.130–31. Although the audio of the calls was played before the District Court during sentencing, the recordings were not introduced into evidence.

²⁵ ROA.19-50523.132–34.

²⁶ ROA.19-50523.137.

²⁷ ROA.19-50523.138.

2. *Corpus delicti.*

An unsupported admission by a defendant is insufficient to base a finding of guilt under the rule of *corpus delicti*. This century's old rule requires such admissions to be corroborated by other evidence or admissions. This prevents the injustice of being punished solely based on an uncorroborated confession. However, appellate courts have been reluctant to expand this doctrine into the sentencing phase, noting only that this doctrine has historically been limited to the guilt phase.

Under the “*corpus delicti*” rule, a defendant cannot be convicted solely based on his own admissions.²⁸ Legal historians identify the origins of the *corpus delicti* rule in a 1661 English murder prosecution entitled *Perry's Case*.²⁹ *Perry's Case* was a murder trial of three defendants, where the victim's body was never found.³⁰ However, the “victim” was still very much alive – although waylaid, kidnaped, and held as a slave in Turkey.³¹ The three were convicted and executed on the basis of the victim's disappearance, a bloodied hat, and a confession by a co-defendant.³² However, the victim later returned – alive and well after the executions of the defendants.³³

²⁸ *Wong Sun v. United States*, 371 U.S. 471, 488–89 (1963).

²⁹ Maj. Russell L. Miller, *Wrestling with MRE 304(G): The Struggle to Apply the Corroboration Rule*, 178 MIL. L. REV. 1, 4 (2003) (citing *Perry's Case*, 14 How. St. Tr. 1312 (1661)).

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.* at 4–5.

As now understood in American jurisprudence, *corpus delicti* involves two elements: (1) an injury that is penally prohibited, *e.g.*, in larceny, certain property missing; and (2) the unlawfulness of a person’s conduct in causing that injury.³⁴ The concept of *corpus delicti* in criminal law is principally used to reduce the possibility of punishing a person for a crime that was never in fact committed.³⁵ The almost-universal American rule that, to convict the defendant of a crime on the basis of his extrajudicial (*i.e.*, out of court) confession or admission, the confession or admission must be corroborated by some evidence of the *corpus delicti*.³⁶

In fact, this Court has found that it “is a settled principle of the administration of criminal justice in the federal courts that a conviction must rest upon firmer ground than the uncorroborated admission or confession of the accused.”³⁷ “[T]he requirement of corroboration is rooted in the realization that sound law enforcement requires police investigations which extend beyond the words of the accused.”³⁸ This does not mean that the police cannot follow any leads that a custodial confession generates. Police are free to exploit investigative techniques, but it does not allow the product of those techniques, standing alone, to convict the defendant.³⁹

³⁴ 1 WHARTON’S CRIMINAL LAW § 28 (15th ed. 2020).

³⁵ 1 WAYNE R. LAFAVE, SUBSTANTIVE CRIMINAL LAW § 1.4(b) (3d ed. 2019).

³⁶ *Id.*

³⁷ *Wong Sun*, 371 U.S. at 488–89.

³⁸ *Id.*

³⁹ Carrie Leonetti, *A New Solution to an Old Problem: Limited Use Immunity As A Better Alternative to Miranda’s Procedural Safeguards*, 10 FED. CTS. L. REV. 127, 148 (2018).

3. *This Court should extend the concept of *corpus delicti* fully into federal sentencing.*

This Nation's courts have been reluctant the concept of *corpus delicti* to the punishment phase of a trial. The prevailing view is that the *corpus delicti* doctrine is concerned with preventing *a conviction* from being based solely upon a false confession.⁴⁰ When an offense is offered at the punishment stage, no concern about the defendant's conviction arises.⁴¹ In the punishment phase, the sentencer is not faced with the "specter of a totally innocent defendant being convicted for a crime that never occurred solely on the basis of a confession resulting from official coercion or the defendant's own delusions."⁴²

This ignores the reality that guilty pleas are paramount in federal. Trials have been relatively rare in the federal criminal justice system for decades, but they have become even less common over time.⁴³ As trials have become rarer, guilty pleas have become more common.⁴⁴ The share of federal criminal defendants who entered guilty

⁴⁰ See, e.g., *Bible v. State*, 162 S.W.3d 234, 247 (Tex. Crim. App. 2005) (emphasis added); "The doctrine of *corpus delicti* is intended to reduce the possibility of punishing a person for a crime which was never in fact committed." Charles A. Phipps, *Responding to Child Homicide: A Statutory Proposal*, 89 J. CRIM. L. & CRIMINOLOGY 535, 569 (1999).

⁴¹ *Id.*

⁴² *Id.*

⁴³ John Gramlich, Pew Research Center Fact Tank, *Only 2% of federal criminal defendants go to trial, and most who do are found guilty*, <https://tinyurl.com/y3bcp44a> (last visited November 1, 2020).

⁴⁴ *Id.*

pleas rose from 82 percent in 1998 to 90 percent two decades later.⁴⁵ Guilty pleas rose in absolute numbers, too, from 55,913 in 1998 to 71,550 in 2018.⁴⁶

As the increase in the percentage of guilty pleas, fact-finding remains a central role in the application of the Sentencing Guidelines.⁴⁷ Yet, this Court has focused on majority of its Guidelines opinions only enhancing the fact-finding role of the jury, increasing a judge's discretion to depart from the Sentencing Guidelines recommendations, and requiring that the jury find facts that enhance the maximum and minimum sentences.⁴⁸

Those interventions have reduced certain types of fact-finding by judges, but they are not focused on accuracy. In fact, the broad power of review is contained in the "fundamental sentencing principle" that "a judge may appropriately conduct an inquiry broad in scope, largely unlimited either as to the kind of information he may consider, or the source from which it may come."⁴⁹ On the other hand, it is also fundamental that some limitations on the range of permissible sentencing

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Gall v. United States*, 552 U.S. 38, 51 (2007) ("[The Court] may consider the extent of the deviation, but must give due deference to the district court's decision that the § 3553(a) factors, on a whole, justify the extent of the variance."); *United States v. Booker*, 543 U.S. 220, 245 (2005) (finding that the guidelines were "effectively advisory," and permitting courts to tailor sentences based on other statutory factors). *See also Rita v. United States*, 551 U.S. 338, 346 (2007) (finding that judicial discretion, when in accordance with appropriate guideline application, is "presumptively reasonable.")

⁴⁹ *United States v. Grayson*, 438 U.S. 41, 50 (1978); *see 18 U.S.C. § 3661 (2020)* ("No limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence").

consideration is required by the constitutional guarantee of due process. For example, a sentence is rendered invalid if it is based upon improper or inaccurate information.⁵⁰

Yet, this “guarantee” is seldom found—even under the “advisory” Guidelines. Even under the reformed system, fact-finding continues to result in potentially identifiable increases in sentences.⁵¹ One commentator noted the Sentencing Guidelines “lax treatment of sentencing burdens of proof and admissibility of hearsay or uncharged crimes permits a range of potential errors.”⁵² One glaring example of this is that the guidelines continue to recommend “[r]eliable hearsay evidence may be considered” but not “[u]nreliable allegations,” without defining what reliability means. This uncertainty affects claims of sentencing errors.⁵³

Allowing the concept of *corpus delicti* to punishment issues extends this protection for all sentencing issues – for it is alive and well in certain applications of the Guidelines. For instance, when reviewing drug amounts, where the offense involves an agreement to sell a controlled substance, the agreed-upon quantity of the controlled substance shall be used to decide the offense level unless the sale is completed and the amount delivered more accurately reflects the scale of the offense.⁵⁴ If, however, the defendant establishes that the defendant did not intend to provide or purchase, or was

⁵⁰ *Dorszynski v. United States*, 418 U.S. 424, 431 n.7 (1974).

⁵¹ Brandon L. Garrett, *Accuracy in Sentencing*, 87 S. CAL. L. REV. 499, 518 (2014).

⁵² *Id.*

⁵³ Garrett, *supra* at note 51 at 519.

⁵⁴ USSG § 2D1.1, comment. (n.5).

not reasonably capable of providing or purchasing, the agreed-upon quantity of the controlled substance, the court should exclude that amount.⁵⁵ This prevents inflation of sentences on the basis of bragging or puffery.⁵⁶ Further, the supporting evidence must display an actual ability to deliver the goods.⁵⁷

Moreover, several circuit courts have cited an admission of possession of a weapon – **accompanied by other evidence** – to sustain challenges to this specific offense characteristic.⁵⁸ In *Vital*, the defendant admitted that the firearms seized “belonged to his girlfriend” and an awareness that the firearms were kept in his home supported the enhancement.⁵⁹ Other courts have also noted an admission coupled with other evidence suffices as proof for this enhancement.⁶⁰

⁵⁵ *Id.*

⁵⁶ *United States v. Brick*, 7 F.3d 229 (5th Cir. 1993).

⁵⁷ *United States v. Salazar*, 983 F.2d 778, 782–83 (7th Cir. 1993).

⁵⁸ See, e.g., *United States v. Vital*, 68 F.3d 114, 119–20 (5th Cir. 1995).

⁵⁹ *Id.* at 120.

⁶⁰ See also *United States v. Thornton*, 306 F.3d 1355, 1358 (3d Cir. 2002) (citing evidence “independent” of the defendant’s post-cooperation statements to support the enhancement); *United States v. Duque*, 182 F.3d 933 (10th Cir. 1999) (finding the defendant’s own admissions that he owned weapons during time he was involved in the operation, along with witness testimony that the defendant was seen with a gun at locations where the offense was committed); *United States v. Lewis*, 79 F.3d 688, 689–90 (7th Cir. 1996) (finding that an admission from the defendant, coupled with testimony from a government agent and confidential informant who had seen the defendant with a weapon, was sufficient to uphold the sentence enhancement); *United States v. Willard*, 919 F.2d 606, 609 (9th Cir. 1990) (“By appellant’s own admission in his statement to the officers, and in the presentence report, he had been involved in the drug trade for two or three years and some of the guns found at his place of business belonged to him . . . Any other evidence may suffice, such as appellant’s admission in this case, as long as it is of a sufficient weight to show that the defendant possessed the guns during the commission of the offense.”).

Extension of the doctrine of corpus delicti into federal punishment proceedings is not a panacea. It will not solve all factual inaccuracy issues. Nevertheless, it will ensure that an individual defendant will not suffer additional months or years of additional punishment for bravado or puffery. Moreover, this Court's review of this issue gives meaning to the realization that the real trial in federal court's is now over the applicable punishment range, not over guilt. Sentencing errors are inevitable. However, the practical importance of addressing the merits of these claims is simple: convicted defendants should not serve added time based on errors.

Because the failure of the Fifth Circuit failed to grant Petitioner a sentence free of error, this Honorable Court should grant Petitioner's Writ.

PRAYER

WHEREFORE, Petitioner requests that this Honorable Court grant his Writ of Certiorari, and reverse the holdings of the District Court and the Fifth Circuit, and for any other relief that she may be so entitled.

Respectfully submitted,

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

United States Court of Appeals
Fifth Circuit

FILED

June 5, 2020

Lyle W. Cayce
Clerk

No. 19-50523
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ULIS HOWARD ALEXANDER,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 6:18-CR-93-3

Before KING, GRAVES, and WILLETT, Circuit Judges.

PER CURIAM:*

Ulis Howard Alexander contests the 370-month prison sentence imposed following his conviction for conspiracy to possess with intent to distribute methamphetamine and to distribute methamphetamine. In his sole issue on appeal, Alexander challenges a two-level enhancement under U.S.S.G. § 2D1.1(b)(1) for possession of a firearm, arguing that his intercepted and uncorroborated statements that he possessed a firearm and ammunition, and

* 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.

No. 19-50523

planned to use them, if necessary, to kill the individual who supplied the drug trafficking operation with low-quality methamphetamine, were insufficient to support the enhancement. Alexander notes that the “corpus delicti” rule forbids a conviction based solely on a defendant’s own admissions, and he asserts that this concept should extend to the sentencing context. *See Wong Sun v. United States*, 371 U.S. 471, 488-89 (1963).

The corpus delicti argument was not raised in the district court; thus, our review of the issue is for plain error. *See United States v. Neal*, 578 F.3d 270, 272 (5th Cir. 2009). Alexander has cited no authority establishing that the corpus delicti rule applies in the sentencing context, *see United States v. Barnes*, Nos. 92-4958, 92-4959, 1993 WL 347015, at *4 (5th Cir. Aug. 12, 1993) (unpublished but precedential per 5TH CIR. R. 47.5.3), and his argument is contrary to existing precedent. Because he asserts a novel legal theory, Alexander cannot show clear or obvious error in connection with his corpus delicti argument. *See United States v. Evans*, 587 F.3d 667, 671 (5th Cir. 2009).

Further, the pertinent statements appeared in the presentence report (PSR) and had sufficient indicia of reliability. *See United States v. Zuniga*, 720 F.3d 587, 591 (5th Cir. 2013). A case agent assigned to Alexander’s case testified at sentencing regarding the context of his intercepted statements, and Alexander presented no evidence to rebut the information in the PSR. *See id.* In light of the foregoing, the district court’s finding that § 2D1.1(b)(1) was applicable is plausible in light of the entire record and thus not clearly erroneous. *See United States v. Ruiz*, 621 F.3d 390, 396 (5th Cir. 2010).

AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 19-50523
Summary Calendar

D.C. Docket No. 6:18-CR-93-3

United States Court of Appeals
Fifth Circuit

FILED

June 5, 2020

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

ULIS HOWARD ALEXANDER,

Defendant - Appellant

Appeal from the United States District Court for the
Western District of Texas

Before KING, GRAVES, and WILLETT, Circuit Judges.

J U D G M E N T

This cause was considered on the record on appeal and the briefs on file.

It is ordered and adjudged that the judgment of the District Court is affirmed.



Certified as a true copy and issued
as the mandate on Jun 29, 2020

Attest:

Lyle W. Cayce
Clerk, U.S. Court of Appeals, Fifth Circuit

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

UNITED STATES OF AMERICA

v.

ULIS HOWARD ALEXANDER

Defendant.

**JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)**

The defendant, ULIS HOWARD ALEXANDER, was represented by Jason P. Darling.

The defendant pled guilty to Count One of the Indictment on August 21, 2018. Accordingly, the defendant is adjudged guilty of such Count(s), involving the following offense(s):

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21 U.S.C. § 846 {21 U.S.C. §§ 841(a)(1)and 841(b)(1)(A)(viii)}	Conspiracy To Possess With Intent To Distribute and Distribution Of Methamphetamine, A Schedule II Controlled Substance	03/13/2018	1

As pronounced on May 16, 2019, the defendant is sentenced as provided in pages 2 through 6 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is further 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 must notify the Court and United States Attorney of material changes in economic circumstances.

Signed this 16th day of May, 2019.



ALAN D ALBRIGHT
United States District Judge

19-50523.92

AO 245B (Rev. TXN 10/12) Judgment in a Criminal Case

Judgment -- Page 2 of 6

DEFENDANT: ULIS HOWARD ALEXANDER
CASE NUMBER: 6:18-CR-00093(3) -ADA

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of **Three Hundred and Seventy (370) Months** as to Count One (1).

The defendant shall remain in custody pending service of sentence.

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: ULIS HOWARD ALEXANDER
CASE NUMBER: 6:18-CR-00093(3) -ADA

SUPERVISED RELEASE

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

While on supervised release, the defendant shall comply with the mandatory, standard and if applicable, the special conditions that have been adopted by this Court, and shall comply with the following additional conditions:

The defendant shall participate in a mental health treatment program and follow the rules and regulations of that program. The probation officer, in consultation with the treatment provider, shall supervise participation in the program (provider, location, modality, duration, intensity, etc.). The defendant shall pay the costs of such treatment if financially able.

The defendant shall participate in a substance abuse treatment program and follow the rules and regulations of that program. The program may include testing and examination during and after program completion to determine if the defendant has reverted to the use of drugs. The probation officer shall supervise the participation in the program (provider, location, modality, duration, intensity, etc.). During treatment, the defendant shall abstain from the use of alcohol and any and all intoxicants. The defendant shall pay the costs of such treatment if financially able.

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

DEFENDANT: ULIS HOWARD ALEXANDER
 CASE NUMBER: 6:18-CR-00093(3) -ADA

CONDITIONS OF SUPERVISION

Mandatory Conditions:

- [1] The defendant shall not commit another federal, state, or local crime during the term of supervision.
- [2] The defendant shall not unlawfully possess a controlled substance.
- [3] 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 on probation or supervised release and at least two periodic drug tests thereafter (as determined by the court), but the condition stated in this paragraph may be ameliorated or suspended by the court if the defendant's presentence report or other reliable sentencing information indicates low risk of future substance abuse by the defendant.
- [4] The defendant shall cooperate in the collection of DNA as instructed by the probation officer, if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. § 14135a).
- [5] If applicable, the defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et. seq.*) as instructed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which the defendant resides, works, is a student, or was convicted of a qualifying offense.
- [6] If convicted of a domestic violence crime as defined in 18 U.S.C. § 3561(b), the defendant shall participate in an approved program for domestic violence.
- [7] If the judgment imposes a fine or restitution, it is a condition of supervision that the defendant pay in accordance with the Schedule of Payments sheet of the judgment.
- [8] The defendant shall pay the assessment imposed in accordance with 18 U.S.C. § 3013.
- [9] The defendant shall notify the court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution, fines or special assessments.

Standard Conditions:

- [1] The defendant shall report to the probation office in the federal judicial district where he or she is authorized to reside within 72 hours of release from imprisonment, unless the probation officer instructs the defendant to report to a different probation office or within a different time frame.
- [2] After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when to report to the probation officer, and the defendant shall report to the probation officer as instructed.
- [3] The defendant shall not knowingly leave the federal judicial district where he or she is authorized to reside without first getting permission from the court or the probation officer.
- [4] The defendant shall answer truthfully the questions asked by the probation officer.
- [5] The defendant shall live at a place approved by the probation officer. If the defendant plans to change where he or she lives or anything about his or her living arrangements (such as the people the defendant lives with), the defendant shall 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, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change.
- [6] The defendant shall allow the probation officer to visit the defendant at any time at his or her home or elsewhere, and the defendant shall permit the probation officer to take any items prohibited by the conditions of the defendant's supervision that are observed in plain view.

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- [7] The defendant shall work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses the defendant from doing so. If the defendant does not have full-time employment, he or she shall try to find full-time employment, unless the probation officer excuses the defendant from doing so. If the defendant plans to change where the defendant works or anything about his or her work (such as the position or job responsibilities), the defendant shall 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, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change.
- [8] The defendant shall not communicate or interact with someone the defendant knows is engaged in criminal activity. If the defendant knows someone has been convicted of a felony, the defendant shall not knowingly communicate or interact with that person without first getting the permission of the probation officer.
- [9] If the defendant is arrested or questioned by a law enforcement officer, the defendant shall notify the probation officer within 72 hours.
- [10] The defendant shall 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] The defendant shall 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 the defendant poses a risk to another person (including an organization), the probation officer may require the defendant to notify the person about the risk and the defendant shall comply with that instruction. The probation officer may contact the person and confirm that the defendant has notified the person about the risk.
- [13] The defendant shall follow the instructions of the probation officer related to the conditions of supervision.
- [14] If the judgment imposes other criminal monetary penalties, it is a condition of supervision that the defendant pay such penalties in accordance with the Schedule of Payments sheet of the judgment.
- [15] If the judgment imposes a fine, special assessment, restitution, or other criminal monetary penalties, it is a condition of supervision that the defendant shall provide the probation officer access to any requested financial information.
- [16] If the judgment imposes a fine, special assessment, restitution, or other criminal monetary penalties, it is a condition of supervision that the defendant shall not incur any new credit charges or open additional lines of credit without the approval of the probation officer, unless the defendant is in compliance with the payment schedule.
- [17] If the defendant is excluded, deported, or removed upon release on probation or supervised release, the term of supervision shall be a non-reporting term of probation or supervised release. The defendant shall not illegally re-enter the United States. If the defendant is released from confinement or not deported, or lawfully re-enters the United States during the term of probation or supervised release, the defendant shall immediately report in person to the nearest U.S. Probation Office.

DEFENDANT: ULIS HOWARD ALEXANDER
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CRIMINAL MONETARY PENALTIES/SCHEDEULE

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth. Unless the Court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. Criminal Monetary Penalties, except those payments made through Federal Bureau of Prisons' Inmate Financial Responsibility Program shall be paid through the Clerk, United States District Court, 800 Franklin Ave, Room 380, Waco, TX 76701. The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

If the defendant is not now able to pay this indebtedness, the defendant shall cooperate fully with the office of the United States Attorney, the Federal Bureau of Prisons and/or the United States Probation Office to make payment in full as soon as possible, including during any period of incarceration. Any unpaid balance at the commencement of a term of probation or supervised release shall be paid on a schedule of monthly installments to be established by the U.S. Probation office and approved by the Court.

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

SPECIAL ASSESSMENT

It is ordered that the defendant shall pay to the United States a special assessment of \$100.00. Payment of this sum shall begin immediately.

FINE

The fine is waived because of the defendant's inability to pay.

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 above. However, pursuant to 18 U.S.C. § 3664(i), all non-federal victims must be paid before the United States is paid.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. §3614.

The defendant shall pay interest on any fine or restitution of more than \$2,500.00, unless the fine or restitution is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. §3612(f). All payment options may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. §3612(g).

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

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.

United States Code Annotated
Title 18. Crimes and Criminal Procedure (Refs & Annos)
Part II. Criminal Procedure
Chapter 232. Miscellaneous Sentencing Provisions

18 U.S.C.A. § 3661

§ 3661. Use of information for sentencing

Currentness

No limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence.

CREDIT(S)

(Added Pub.L. 91-452, Title X, § 1001(a), Oct. 15, 1970, 84 Stat. 951, § 3577; renumbered § 3661, Pub.L. 98-473, Title II, § 212(a)(1), Oct. 12, 1984, 98 Stat. 1987.)

Notes of Decisions (104)

18 U.S.C.A. § 3661, 18 USCA § 3661

Current through P.L. 116-182.

End of Document

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United States Code Annotated

Title 21. Food and Drugs (Refs & Annos)

Chapter 13. Drug Abuse Prevention and Control (Refs & Annos)

Subchapter I. Control and Enforcement

Part D. Offenses and Penalties

21 U.S.C.A. § 841

§ 841. Prohibited acts A

Effective: December 21, 2018

Currentness

(a) Unlawful acts

Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally--

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or

(2) to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance.

(b) Penalties

Except as otherwise provided in section 849, 859, 860, or 861 of this title, any person who violates subsection (a) of this section shall be sentenced as follows:

(1)(A) In the case of a violation of subsection (a) of this section involving--

(i) 1 kilogram or more of a mixture or substance containing a detectable amount of heroin;

(ii) 5 kilograms or more of a mixture or substance containing a detectable amount of--

(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;

(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(IV) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subclauses (I) through (III);

(iii) 280 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

(iv) 100 grams or more of phencyclidine (PCP) or 1 kilogram or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(v) 10 grams or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(vi) 400 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 100 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide;

(vii) 1000 kilograms or more of a mixture or substance containing a detectable amount of marihuana, or 1,000 or more marihuana plants regardless of weight; or

(viii) 50 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers;

such person shall be sentenced to a term of imprisonment which may not be less than 10 years or more than life and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18 or \$10,000,000 if the defendant is an individual or \$50,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a serious drug felony or serious violent felony has become final, such person shall be sentenced to a term of imprisonment of not less than 15 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of Title 18 or \$20,000,000 if the defendant is an individual or \$75,000,000 if the defendant is other than an individual, or both. If any person commits a violation of this subparagraph or of section 849, 859, 860, or 861 of this title after 2 or more prior convictions for a serious drug felony or serious violent felony have become final, such person shall be sentenced to a term of imprisonment of not less than 25 years and fined in accordance with the preceding sentence. Notwithstanding section 3583 of Title 18, any sentence under this subparagraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 5 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 10 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein.

(B) In the case of a violation of subsection (a) of this section involving--

(i) 100 grams or more of a mixture or substance containing a detectable amount of heroin;

(ii) 500 grams or more of a mixture or substance containing a detectable amount of--

(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;

(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(IV) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subclauses (I) through (III);

(iii) 28 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

(iv) 10 grams or more of phencyclidine (PCP) or 100 grams or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(v) 1 gram or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(vi) 40 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 10 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide;

(vii) 100 kilograms or more of a mixture or substance containing a detectable amount of marihuana, or 100 or more marihuana plants regardless of weight; or

(viii) 5 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 50 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers;

such person shall be sentenced to a term of imprisonment which may not be less than 5 years and not more than 40 years and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18 or \$5,000,000 if the defendant is an individual or \$25,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a serious drug felony or serious violent felony has become final, such person shall be sentenced to a term of imprisonment which may not be less than 10 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of Title 18 or \$8,000,000 if the defendant is an individual or \$50,000,000 if the defendant is other than an individual, or both. Notwithstanding section 3583 of Title 18, any sentence imposed under this subparagraph shall, in the absence of such a prior conviction, include a term of supervised release of at least 4 years in addition to such term of imprisonment and shall, if there was such a prior conviction, include a term of supervised release of at least 8 years in addition to such term of imprisonment. Notwithstanding any other provision of

law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein.

(C) In the case of a controlled substance in schedule I or II, gamma hydroxybutyric acid (including when scheduled as an approved drug product for purposes of section 3(a)(1)(B) of the Hillory J. Farias and Samantha Reid Date-Rape Drug Prohibition Act of 2000), or 1 gram of flunitrazepam, except as provided in subparagraphs (A), (B), and (D), such person shall be sentenced to a term of imprisonment of not more than 20 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18 or \$1,000,000 if the defendant is an individual or \$5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 30 years and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of Title 18 or \$2,000,000 if the defendant is an individual or \$10,000,000 if the defendant is other than an individual, or both. Notwithstanding section 3583 of Title 18, any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 6 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the provisions of this subparagraph which provide for a mandatory term of imprisonment if death or serious bodily injury results, nor shall a person so sentenced be eligible for parole during the term of such a sentence.

(D) In the case of less than 50 kilograms of marihuana, except in the case of 50 or more marihuana plants regardless of weight, 10 kilograms of hashish, or one kilogram of hashish oil, such person shall, except as provided in paragraphs (4) and (5) of this subsection, be sentenced to a term of imprisonment of not more than 5 years, a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18 or \$250,000 if the defendant is an individual or \$1,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 10 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of Title 18 or \$500,000 if the defendant is an individual or \$2,000,000 if the defendant is other than an individual, or both. Notwithstanding section 3583 of Title 18, any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 2 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 4 years in addition to such term of imprisonment.

(E)(i) Except as provided in subparagraphs (C) and (D), in the case of any controlled substance in schedule III, such person shall be sentenced to a term of imprisonment of not more than 10 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not more than 15 years, a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18 or \$500,000 if the defendant is an individual or \$2,500,000 if the defendant is other than an individual, or both.

(ii) If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 20 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not more than 30 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of Title 18 or \$1,000,000 if the defendant is an individual or \$5,000,000 if the defendant is other than an individual, or both.

(iii) Any sentence imposing a term of imprisonment under this subparagraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 2 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 4 years in addition to such term of imprisonment.

(2) In the case of a controlled substance in schedule IV, such person shall be sentenced to a term of imprisonment of not more than 5 years, a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18 or \$250,000 if the defendant is an individual or \$1,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 10 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of Title 18 or \$500,000 if the defendant is an individual or \$2,000,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least one year in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 2 years in addition to such term of imprisonment.

(3) In the case of a controlled substance in schedule V, such person shall be sentenced to a term of imprisonment of not more than one year, a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18 or \$100,000 if the defendant is an individual or \$250,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 4 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of Title 18 or \$200,000 if the defendant is an individual or \$500,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph may, if there was a prior conviction, impose a term of supervised release of not more than 1 year, in addition to such term of imprisonment.

(4) Notwithstanding paragraph (1)(D) of this subsection, any person who violates subsection (a) of this section by distributing a small amount of marihuana for no remuneration shall be treated as provided in section 844 of this title and section 3607 of Title 18.

(5) Any person who violates subsection (a) of this section by cultivating or manufacturing a controlled substance on Federal property shall be imprisoned as provided in this subsection and shall be fined any amount not to exceed--

(A) the amount authorized in accordance with this section;

(B) the amount authorized in accordance with the provisions of Title 18;

(C) \$500,000 if the defendant is an individual; or

(D) \$1,000,000 if the defendant is other than an individual;

or both.

(6) Any person who violates subsection (a), or attempts to do so, and knowingly or intentionally uses a poison, chemical, or other hazardous substance on Federal land, and, by such use--

(A) creates a serious hazard to humans, wildlife, or domestic animals,

(B) degrades or harms the environment or natural resources, or

(C) pollutes an aquifer, spring, stream, river, or body of water,

shall be fined in accordance with Title 18 or imprisoned not more than five years, or both.

(7) Penalties for distribution

(A) In general

Whoever, with intent to commit a crime of violence, as defined in section 16 of Title 18 (including rape), against an individual, violates subsection (a) by distributing a controlled substance or controlled substance analogue to that individual without that individual's knowledge, shall be imprisoned not more than 20 years and fined in accordance with Title 18.

(B) Definition

For purposes of this paragraph, the term "without that individual's knowledge" means that the individual is unaware that a substance with the ability to alter that individual's ability to appraise conduct or to decline participation in or communicate unwillingness to participate in conduct is administered to the individual.

(c) Offenses involving listed chemicals

Any person who knowingly or intentionally--

(1) possesses a listed chemical with intent to manufacture a controlled substance except as authorized by this subchapter;

(2) possesses or distributes a listed chemical knowing, or having reasonable cause to believe, that the listed chemical will be used to manufacture a controlled substance except as authorized by this subchapter; or

(3) with the intent of causing the evasion of the recordkeeping or reporting requirements of section 830 of this title, or the regulations issued under that section, receives or distributes a reportable amount of any listed chemical in units small enough so that the making of records or filing of reports under that section is not required;

shall be fined in accordance with Title 18 or imprisoned not more than 20 years in the case of a violation of paragraph (1) or (2) involving a list I chemical or not more than 10 years in the case of a violation of this subsection other than a violation of paragraph (1) or (2) involving a list I chemical, or both.

(d) Boobytraps on Federal property; penalties; "boobytrap" defined

(1) Any person who assembles, maintains, places, or causes to be placed a boobytrap on Federal property where a controlled substance is being manufactured, distributed, or dispensed shall be sentenced to a term of imprisonment for not more than 10 years or fined under Title 18, or both.

(2) If any person commits such a violation after 1 or more prior convictions for an offense punishable under this subsection, such person shall be sentenced to a term of imprisonment of not more than 20 years or fined under Title 18, or both.

(3) For the purposes of this subsection, the term “boobytrap” means any concealed or camouflaged device designed to cause bodily injury when triggered by any action of any unsuspecting person making contact with the device. Such term includes guns, ammunition, or explosive devices attached to trip wires or other triggering mechanisms, sharpened stakes, and lines or wires with hooks attached.

(e) Ten-year injunction as additional penalty

In addition to any other applicable penalty, any person convicted of a felony violation of this section relating to the receipt, distribution, manufacture, exportation, or importation of a listed chemical may be enjoined from engaging in any transaction involving a listed chemical for not more than ten years.

(f) Wrongful distribution or possession of listed chemicals

(1) Whoever knowingly distributes a listed chemical in violation of this subchapter (other than in violation of a recordkeeping or reporting requirement of section 830 of this title) shall, except to the extent that paragraph (12), (13), or (14) of section 842(a) of this title applies, be fined under Title 18 or imprisoned not more than 5 years, or both.

(2) Whoever possesses any listed chemical, with knowledge that the recordkeeping or reporting requirements of section 830 of this title have not been adhered to, if, after such knowledge is acquired, such person does not take immediate steps to remedy the violation shall be fined under Title 18 or imprisoned not more than one year, or both.

(g) Internet sales of date rape drugs

(1) Whoever knowingly uses the Internet to distribute a date rape drug to any person, knowing or with reasonable cause to believe that--

(A) the drug would be used in the commission of criminal sexual conduct; or

(B) the person is not an authorized purchaser;

shall be fined under this subchapter or imprisoned not more than 20 years, or both.

(2) As used in this subsection:

(A) The term “date rape drug” means--

- (i)** gamma hydroxybutyric acid (GHB) or any controlled substance analogue of GHB, including gamma butyrolactone (GBL) or 1,4-butanediol;
- (ii)** ketamine;
- (iii)** flunitrazepam; or
- (iv)** any substance which the Attorney General designates, pursuant to the rulemaking procedures prescribed by section 553 of Title 5, to be used in committing rape or sexual assault.

The Attorney General is authorized to remove any substance from the list of date rape drugs pursuant to the same rulemaking authority.

(B) The term “authorized purchaser” means any of the following persons, provided such person has acquired the controlled substance in accordance with this chapter:

- (i)** A person with a valid prescription that is issued for a legitimate medical purpose in the usual course of professional practice that is based upon a qualifying medical relationship by a practitioner registered by the Attorney General. A “qualifying medical relationship” means a medical relationship that exists when the practitioner has conducted at least 1 medical evaluation with the authorized purchaser in the physical presence of the practitioner, without regard to whether portions of the evaluation are conducted by other health¹ professionals. The preceding sentence shall not be construed to imply that 1 medical evaluation demonstrates that a prescription has been issued for a legitimate medical purpose within the usual course of professional practice.
- (ii)** Any practitioner or other registrant who is otherwise authorized by their registration to dispense, procure, purchase, manufacture, transfer, distribute, import, or export the substance under this chapter.
- (iii)** A person or entity providing documentation that establishes the name, address, and business of the person or entity and which provides a legitimate purpose for using any “date rape drug” for which a prescription is not required.

(3) The Attorney General is authorized to promulgate regulations for record-keeping and reporting by persons handling 1,4-butanediol in order to implement and enforce the provisions of this section. Any record or report required by such regulations shall be considered a record or report required under this chapter.

(h) Offenses involving dispensing of controlled substances by means of the Internet

(1) In general

It shall be unlawful for any person to knowingly or intentionally--

- (A) deliver, distribute, or dispense a controlled substance by means of the Internet, except as authorized by this subchapter; or
- (B) aid or abet (as such terms are used in section 2 of Title 18) any activity described in subparagraph (A) that is not authorized by this subchapter.

(2) Examples

Examples of activities that violate paragraph (1) include, but are not limited to, knowingly or intentionally--

- (A) delivering, distributing, or dispensing a controlled substance by means of the Internet by an online pharmacy that is not validly registered with a modification authorizing such activity as required by section 823(f) of this title (unless exempt from such registration);
- (B) writing a prescription for a controlled substance for the purpose of delivery, distribution, or dispensation by means of the Internet in violation of section 829(e) of this title;
- (C) serving as an agent, intermediary, or other entity that causes the Internet to be used to bring together a buyer and seller to engage in the dispensing of a controlled substance in a manner not authorized by sections² 823(f) or 829(e) of this title;
- (D) offering to fill a prescription for a controlled substance based solely on a consumer's completion of an online medical questionnaire; and
- (E) making a material false, fictitious, or fraudulent statement or representation in a notification or declaration under subsection (d) or (e), respectively, of section 831 of this title.

(3) Inapplicability

- (A) This subsection does not apply to--
 - (i) the delivery, distribution, or dispensation of controlled substances by nonpractitioners to the extent authorized by their registration under this subchapter;
 - (ii) the placement on the Internet of material that merely advocates the use of a controlled substance or includes pricing information without attempting to propose or facilitate an actual transaction involving a controlled substance; or
 - (iii) except as provided in subparagraph (B), any activity that is limited to--

(I) the provision of a telecommunications service, or of an Internet access service or Internet information location tool (as those terms are defined in section 231 of Title 47); or

(II) the transmission, storage, retrieval, hosting, formatting, or translation (or any combination thereof) of a communication, without selection or alteration of the content of the communication, except that deletion of a particular communication or material made by another person in a manner consistent with section 230(c) of Title 47 shall not constitute such selection or alteration of the content of the communication.

(B) The exceptions under subclauses (I) and (II) of subparagraph (A)(iii) shall not apply to a person acting in concert with a person who violates paragraph (1).

(4) Knowing or intentional violation

Any person who knowingly or intentionally violates this subsection shall be sentenced in accordance with subsection (b).

CREDIT(S)

(Pub.L. 91-513, Title II, § 401, Oct. 27, 1970, 84 Stat. 1260; Pub.L. 95-633, Title II, § 201, Nov. 10, 1978, 92 Stat. 3774; Pub.L. 96-359, § 8(c), Sept. 26, 1980, 94 Stat. 1194; Pub.L. 98-473, Title II, §§ 224(a), 502, 503(b)(1), (2), Oct. 12, 1984, 98 Stat. 2030, 2068, 2070; Pub.L. 99-570, Title I, §§ 1002, 1003(a), 1004(a), 1005(a), 1103, Title XV, § 15005, Oct. 27, 1986, 100 Stat. 3207-2, 3207-5, 3207-6, 3207-11, 3207-192; Pub.L. 100-690, Title VI, §§ 6055, 6254(h), 6452(a), 6470(g), (h), 6479, Nov. 18, 1988, 102 Stat. 4318, 4367, 4371, 4378, 4381; Pub.L. 101-647, Title X, § 1002(e), Title XII, § 1202, Title XXXV, § 3599K, Nov. 29, 1990, 104 Stat. 4828, 4830, 4932; Pub.L. 103-322, Title IX, § 90105(a), (c), Title XVIII, § 180201(b)(2) (A), Sept. 13, 1994, 108 Stat. 1987, 1988, 2047; Pub.L. 104-237, Title II, § 206(a), Title III, § 302(a), Oct. 3, 1996, 110 Stat. 3103, 3105; Pub.L. 104-305, § 2(a), (b)(1), Oct. 13, 1996, 110 Stat. 3807; Pub.L. 105-277, Div. E, § 2(a), Oct. 21, 1998, 112 Stat. 2681-759; Pub.L. 106-172, §§ 3(b)(1), 5(b), 9, Feb. 18, 2000, 114 Stat. 9, 10, 13; Pub.L. 107-273, Div. B, Title III, § 3005(a), Title IV, § 4002(d)(2)(A), Nov. 2, 2002, 116 Stat. 1805, 1809; Pub.L. 109-177, Title VII, §§ 711(f)(1)(B), 732, Mar. 9, 2006, 120 Stat. 262, 270; Pub.L. 109-248, Title II, § 201, July 27, 2006, 120 Stat. 611; Pub.L. 110-425, § 3(e), (f), Oct. 15, 2008, 122 Stat. 4828, 4829; Pub.L. 111-220, §§ 2(a), 4(a), Aug. 3, 2010, 124 Stat. 2372; Pub.L. 115-391, Title IV, § 401(a) (2), Dec. 21, 2018, 132 Stat. 5220.)

Notes of Decisions (8146)

Footnotes

1 So in original. Probably should be “health”.

2 So in original. Probably should be “section”.

21 U.S.C.A. § 841, 21 USCA § 841

Current through P.L. 116-182.

United States Code Annotated

Title 21. Food and Drugs (Refs & Annos)

Chapter 13. Drug Abuse Prevention and Control (Refs & Annos)

Subchapter I. Control and Enforcement

Part D. Offenses and Penalties

21 U.S.C.A. § 846

§ 846. Attempt and conspiracy

Currentness

Any person who attempts or conspires to commit any offense defined in this subchapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

CREDIT(S)

(Pub.L. 91-513, Title II, § 406, Oct. 27, 1970, 84 Stat. 1265; Pub.L. 100-690, Title VI, § 6470(a), Nov. 18, 1988, 102 Stat. 4377.)

Notes of Decisions (3925)

21 U.S.C.A. § 846, 21 USCA § 846

Current through P.L. 116-182.

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United States Code Annotated

Title 28. Judiciary and Judicial Procedure (Refs & Annos)

Part IV. Jurisdiction and Venue (Refs & Annos)

Chapter 81. Supreme Court (Refs & Annos)

28 U.S.C.A. § 1254

§ 1254. Courts of appeals; certiorari; certified questions

Currentness

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

CREDIT(S)

(June 25, 1948, c. 646, 62 Stat. 928; Pub.L. 100-352, § 2(a), (b), June 27, 1988, 102 Stat. 662.)

Notes of Decisions (518)

28 U.S.C.A. § 1254, 28 USCA § 1254

Current through P.L. 116-182.

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United States Code Annotated

Federal Sentencing Guidelines (Refs & Annos)

Chapter Two. Offense Conduct (Refs & Annos)

Part D. Offenses Involving Drugs and Narco-Terrorism (Refs & Annos)

1. Unlawful Manufacturing, Importing, Exporting, Trafficking, or Possession; Continuing Criminal Enterprise

USSG, § 2D1.1, 18 U.S.C.A.

§ 2D1.1. Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy

Currentness

(a) Base Offense Level (Apply the greatest):

(1) 43, if the defendant is convicted under 21 U.S.C. § 841(b)(1)(A), (b)(1)(B), or (b)(1)(C), or 21 U.S.C. § 960(b)(1), (b)(2), or (b)(3), and the offense of conviction establishes that death or serious bodily injury resulted from the use of the substance and that the defendant committed the offense after one or more prior convictions for a similar offense; or

(2) 38, if the defendant is convicted under 21 U.S.C. § 841(b)(1)(A), (b)(1)(B), or (b)(1)(C), or 21 U.S.C. § 960(b)(1), (b)(2), or (b)(3), and the offense of conviction establishes that death or serious bodily injury resulted from the use of the substance; or

(3) 30, if the defendant is convicted under 21 U.S.C. § 841(b)(1)(E) or 21 U.S.C. § 960(b)(5), and the offense of conviction establishes that death or serious bodily injury resulted from the use of the substance and that the defendant committed the offense after one or more prior convictions for a similar offense; or

(4) 26, if the defendant is convicted under 21 U.S.C. § 841(b)(1)(E) or 21 U.S.C. § 960(b)(5), and the offense of conviction establishes that death or serious bodily injury resulted from the use of the substance; or

(5) The offense level specified in the Drug Quantity Table set forth in subsection (c), except that if (A) the defendant receives an adjustment under § 3B1.2 (Mitigating Role); and (B) the base offense level under subsection (c) is (i) level 32, decrease by 2 levels; (ii) level 34 or level 36, decrease by 3 levels; or (iii) level 38, decrease by 4 levels. If the resulting offense level is greater than level 32 and the defendant receives the 4-level (“minimal participant”) reduction in § 3B1.2(a), decrease to level 32.

(b) Specific Offense Characteristics

(1) If a dangerous weapon (including a firearm) was possessed, increase by 2 levels.

(2) If the defendant used violence, made a credible threat to use violence, or directed the use of violence, increase by 2 levels.