

APPENDIX

APPENDIX A -**OPINION, COURT OF APPEALS FOR THE SECOND CIRCUIT, JULY 13, 2020
[A-1 - A-5]**

Case 18-1417, Document 125-1, 07/13/2020, 2882403, Page 1 of 5

18-1417-cr
United States v. Clinton

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

SUMMARY ORDER

Rulings by summary order do not have precedential effect. Citation to a summary order filed on or after January 1, 2007, is permitted and is governed by Federal Rule of Appellate Procedure 32.1 and this Court's Local Rule 32.1.1. When citing a summary order in a document filed with this Court, a party must cite either the Federal Appendix or an electronic database (with the notation "summary order"). A party citing a summary order must serve a copy of it on any party not represented by counsel.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 13th day of July, two thousand twenty.

PRESENT: JOSÉ A. CABRANES,
RAYMOND J. LOHIER, JR.,
STEVEN J. MENASHI,
Circuit Judges.

UNITED STATES OF AMERICA,

Appellee,

18-1417-cr

v.

JAMAL CLINTON, AKA MORELESS,

Defendant-Appellant,

MARCUS FISHER, AKA FISH, ROMELL HEARN, AKA RAH,
AKA MEL RECARDO LANGSTON, AKA GEEZY,
JONATHON JONES, EUNICE ALLEN, AKA NIECY,
JALEN ALLEN, AKA J SKRAP, EMILIANO ALONSO,
GUY CAIN, AKA G, MARC DOUGLAS, KEVIN DRAKE,
JOSE FRANCESQUINI, AKA FEATHER, GREG HARDY,
MARK HOWARD, AKA DOUBLE R, CORDAL JOHNSON,
AKA GHETTO PO, PHILLIP KEITH, AKA BEANS,
KAREEM MCFARLANE, AKA MANNY, ROBERT MEDLEY,
AKA BOB-O, MICHAEL MONSANTO, JR., AKA MB,
RYAN RIOS, AKA RY, DWAN SCAFE, AKA WEST,
DIONN SPENCER, AKA D, LEONARD VANDYKE,

AKA LENNY, DANIEL WILLIAMS, AKA LITE, KEISHA WILLIAMS,

*Defendants.*¹

FOR APPELLEE:

PAUL D. SILVER, Assistant United States Attorney *for* Grant C. Jaquith, United States Attorney for the Northern District of New York, Syracuse, NY.

FOR DEFENDANT-APPELLANT:

JESSE M. SIEGEL, Law Office of Jesse M. Siegel, New York, NY.

Appeal from a May 9, 2018 judgment of the United States District Court for the Northern District of New York (Lawrence E. Kahn, *Judge*).

UPON DUE CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the District Court be and hereby is **AFFIRMED**.

Defendant-Appellant Jamal Clinton (“Clinton”), appeals from a May 9, 2018 judgment of conviction following a guilty plea sentencing Clinton principally to a term of 210 months’ imprisonment for conspiracy to possess with the intent to distribute and to distribute cocaine, in violation of 21 U.S.C. §§ 846, 841(a)(1) and (b)(1)(C). We assume the parties’ familiarity with the underlying facts, the procedural history of the case, and the issues on appeal.

Clinton challenges his sentence as both procedurally and substantively unreasonable. We address each of Clinton’s arguments in turn.

I. Procedural Reasonableness

Clinton argues his sentence is procedurally unreasonable because the District Court incorrectly concluded that Clinton’s offense qualifies as a controlled substance offense under the career offender provisions of the Sentencing Guidelines, and because the District Court did not consider sentencing disparities between Clinton and those of his co-defendants who had a greater degree of culpability, or those who played a similar role to Clinton and had comparable criminal records.

¹ The Clerk of Court is directed to amend the official caption to conform to the above.

Because Clinton did not challenge the procedural reasonableness of his sentence before the District Court, we review for plain error. *See United States v. Carter*, 489 F.3d 528, 537 (2d Cir. 2007); *see also United States v. Marcus*, 560 U.S. 258, 262 (2010) (holding that an appellate court may reverse for plain error where “(1) there is an error; (2) the error is clear or obvious . . . ; (3) the error affected the appellant’s substantial rights, which in the ordinary case means it affected the outcome of the district court proceedings; and (4) the error seriously affect[s] the fairness, integrity or public reputation of proceedings” (internal quotation marks omitted)).

U.S.S.G. § 4B1.1(a) provides:

(a) A defendant is a career offender if (1) the defendant was at least eighteen years old at the time the defendant committed the instant offense of conviction; (2) the instant offense of conviction is a felony that is either a crime of violence or a controlled substance offense; and (3) the defendant has at least two prior felony convictions of either a crime of violence or a controlled substance offense.

If a defendant is determined to be a career offender according to Section 4B1.1(a), and the offense level is greater than otherwise would have applied, the offense level is determined in accordance with a table in Section 4B1.1(b) and the defendant’s criminal history category is VI. *See* U.S.S.G. § 4B1.1(b). U.S.S.G. § 4B1.2(b) defines a controlled substance offense as:

an offense under federal or state law, punishable by imprisonment for a term exceeding one year, that prohibits the manufacture, import, export, distribution, or dispensing of a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense.

This definition includes “the offenses of aiding and abetting, conspiring, and attempting to commit such offenses.” U.S.S.G. § 4B1.2 cmt. n.1.

In *United States v. Tabb*, decided after Clinton filed this appeal, we held that a 21 U.S.C. § 846 conspiracy qualifies as a controlled substance offense for purposes of the career offender guideline. 949 F.3d 81, 89 (2d Cir. 2020); *see also United States v. Richardson*, 958 F.3d 151, 155 (2d Cir. 2020). In adhering to this precedent, we reject Clinton’s arguments to the contrary. We also disagree with Clinton’s contention that the District Court committed reversible error because it failed to consider sentencing disparities between Clinton and his co-defendants. We have repeatedly held that a district court is not required to consider such disparities. *United States v. Alcius*, 952 F.3d 83, 89 (2d Cir. 2020); *see also United States v. Frias*, 521 F.3d 229, 236 (2d Cir. 2008) (“We have held that section 3553(a)(6) requires a district court to consider nationwide sentencing disparities, but does not require a district court to consider disparities between co-defendants.”). Nevertheless, we note that the District Court stated that it was “aware” of the arguments of defense counsel that the District

Court should consider Clinton’s role in the conspiracy compared to that of his co-defendants in order to avoid sentencing disparities. *See App’x 145.* We therefore cannot conclude that the District Court erred, much less plainly so, in selecting the sentence it imposed.

II. Substantive Reasonableness

Clinton argues that his sentence is substantively unreasonable in light of his “limited role” in the conspiracy as well as the sentences imposed on his co-defendants. We review a sentence’s substantive reasonableness for abuse of discretion, “taking into account the totality of the circumstances.” *United States v. Rigas*, 583 F.3d 108, 121 (2d Cir. 2009) (internal quotation marks omitted). “A district court has abused its discretion if it based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence, or rendered a decision that cannot be located within the range of permissible decisions.” *In re Sims*, 534 F.3d 117, 132 (2d Cir. 2008) (internal quotation marks, alteration, and citation omitted); *see also In re City of New York*, 607 F.3d 923, 943 n.21 (2d Cir. 2010) (explaining that “abuse of discretion” is a nonpejorative “term of art”). We will vacate the sentence imposed by the district court only if permitting the sentence to stand would “damage the administration of justice because the sentence imposed was shockingly high, shockingly low, or otherwise unsupportable as a matter of law.” *Rigas*, 583 F.3d at 123. Because a “sentencing judge has very wide latitude to decide the proper degree of punishment for an individual offender and a particular crime,” our review is necessarily deferential to the determination of the district court. *United States v. Cawera*, 550 F.3d 180, 188 (2d Cir. 2008) (en banc).

For a sentence to be substantively unreasonable, the defendant must show that the district court abused its discretion in finding that the sentence was supported by the factors in 18 U.S.C. § 3553(a). *See United States v. Jones*, 531 F.3d 163, 170 (2d Cir. 2008); *United States v. Fernandez*, 443 F.3d 19, 27 (2d Cir. 2006) (noting that “in the overwhelming majority of cases, a Guidelines sentence will fall comfortably within the broad range of sentences that would be reasonable in the particular circumstances”); *see also United States v. Mumuni Saleh*, 946 F.3d 97, 107 (2d Cir. 2019) (remarking that “a sentence is outside the range of permissible decisions when it is manifestly unjust or when it shocks the conscience” (internal quotation marks omitted)).

We are not persuaded that Clinton’s within-Guidelines sentence of 210 months—one-and-a-half months shy of the exact midpoint of the Guidelines range of 188 to 235 months—was substantively unreasonable based on the circumstances presented here. As observed by the District Court at sentencing, Clinton’s criminal history spanned over two decades, the instant offense was Clinton’s seventh felony drug conviction, and prior sentences of imprisonment had been insufficient in deterring Clinton from committing crimes. *See App’x 153.* Based on the record before us, we cannot conclude that the District Court abused its discretion with respect to the sentence imposed. Accordingly, we agree with the District Court that 210 months is “sufficient, but not greater than necessary, to comply with the purposes set forth in” Section 3553(a)(2).

CONCLUSION

We have reviewed all of the arguments raised by Clinton on appeal and find them to be without merit. For the foregoing reasons, we **AFFIRM** the May 9, 2018 judgment of the District Court.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

Catherine O'Hagan Wolfe



APPENDIX B -
OPINION, COURT OF APPEALS FOR THE
SECOND CIRCUIT, OCTOBER 1, 2020

Case 18-1417, Document 138, 10/01/2020, 2943412, Page 1 of 1

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 1st day of October, two thousand twenty.

United States of America,

Appellee,

ORDER

Docket No: 18-1417

v.

Jamal Clinton, AKA Moreless,

Defendant - Appellant,

Marcus Fisher, AKA Fish, et al.,

Defendants.

Appellant, Jamal Clinton, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk




APPENDIX C -
**JUDGMENT, UNITED STATES DISTRICT COURT FOR THE
 NORTHERN DISTRICT OF NEW YORK, MAY 9, 2018**
[C-1 - C-7]

UNITED STATES DISTRICT COURT

Northern District of New York

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

Jamal Clinton
 a/k/a
 "Moreless"

Case Number: DNYN116CR000300-009
 USM Number: 24446-052
 Marc A. Zuckerman
 P.O. Box 158
 Bolton Landing, NY 12814
 518-644-5500
 Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) 1 of the Indictment on November 16, 2017.
 pleaded nolo contendere to count(s) which was accepted by the court.
 was found guilty on count(s) of the on after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21 U.S.C. §§ 846, 841(a)(1) and (b)(1)(C)	Conspiracy to Possess with Intent to Distribute a Controlled Substance (Cocaine)	10/12/2016	1

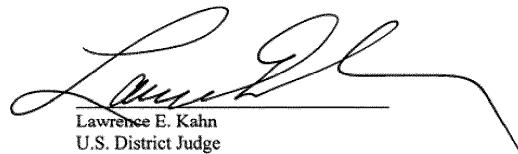
The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed in accordance with 18 U.S.C. § 3553 and the Sentencing Guidelines.

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.

May 2, 2018

Date of Imposition of Judgment



Lawrence E. Kahn
 U.S. District Judge

May 09, 2018

Date

DEFENDANT: Jamal Clinton
CASE NUMBER: DNYN116CR000300-009

IMPRISONMENT

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

210 months

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

If appropriate, the defendant be housed in a facility closest to Poughkeepsie, New York.

The defendant is remanded to the custody of the United States Marshal.
 The defendant shall surrender to the United States Marshal for this district:
 at a.m. p.m. on.
 as notified by the United States Marshal.
 The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
 before 2 p.m. on.
 as notified by the United States Marshal.
 as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____ with a certified copy of this judgment.

UNITED STATES MARSHAL

BY DEPUTY UNITED STATES MARSHAL

DEFENDANT: Jamal Clinton
CASE NUMBER: DNYN116CR000300-009

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:

6 years

MANDATORY CONDITIONS

1. You must not commit another federal, state, or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. You must cooperate in the collection of DNA as directed by the probation officer. *(deselect if inapplicable)*
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 the location where 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)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that you pay in accordance with the Schedule of Payments sheet of this judgment.

You must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

DEFENDANT: Jamal Clinton
CASE NUMBER: DNYN116CR000300-009

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.
14. You must provide the probation officer with access to any requested financial information.
15. You must submit your person, and any property, house, residence, vehicle, papers, effects, computer, electronic communications devices, and any data storage devices or media, to search at any time, with or without a warrant, by any federal probation officer, or any other law enforcement officer from whom the Probation Office has requested assistance, with reasonable suspicion concerning a violation of a condition of probation or supervised release or unlawful conduct by you. Any items seized may be removed to the Probation Office or to the office of their designee for a more thorough examination.

DEFENDANT: **Jamal Clinton**
CASE NUMBER: **DNYN116CR000300-009****SPECIAL CONDITIONS OF SUPERVISION**

1. You must participate in a program for substance abuse which will include testing for use of controlled substances, controlled substance analogues, and alcohol. This may include outpatient treatment as recommended by the treatment provider based upon your risk and needs. You may also be required to participate in inpatient treatment upon recommendation of the treatment provider and upon approval of the Court. The probation office will approve the location, frequency, and duration of outpatient treatment. You must abide by the rules of any treatment program which may include abstaining from the use of any alcohol. You must contribute to the cost of any evaluation and/or treatment in an amount to be determined by the probation officer based on your ability to pay and the availability of third party payments.
2. Based on your past substance abuse history, and for the purpose of effective substance abuse treatment programming, you shall refrain from the use of alcohol and be subject to alcohol testing and treatment while under supervision.

DEFENDANT'S ACKNOWLEDGMENT OF APPLICABLE CONDITIONS OF SUPERVISION

Upon a finding of a violation of probation or supervised release, I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

The conditions of supervision have been read to me. I fully understand the conditions and have been provided a copy of them. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant

Date

U.S. Probation Officer/Designated Witness

Date

DEFENDANT: Jamal Clinton
CASE NUMBER: DNYN116CR000300-009

CRIMINAL MONETARY PENALTIES

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

<u>TOTALS</u>	<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
	\$ 100.00	\$ 0	\$ 0	\$ 0

- 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	\$ _____	\$ _____	

- 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: Jamal Clinton
CASE NUMBER: DNYN116CR000300-009**SCHEDULE OF PAYMENTS**

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A In full immediately; or
- B Lump sum payment of \$ due immediately; balance due
 - not later than, or
 - in accordance with D, E, F, or G below; or
- C Payment to begin immediately (may be combined with D, E, or G below); or
- D Payment in equal installments of \$ over a period of, to commence after the date of this judgment; or
- E Payment in equal installments of \$ over a period of, to commence after release from imprisonment to a term of supervision; or
- F Payment during the term of supervised release will commence within 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
- G Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to **Clerk, U.S. District Court, Federal Bldg., 100 S. Clinton Street, P.O. Box 7367, Syracuse, N.Y. 13261-7367**, unless otherwise directed by the court, the probation officer, or the United States attorney. If a victim cannot be located, the restitution paid to the Clerk of the Court for that victim shall be sent to the Treasury, to be retrieved when the victim is located.

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 Court gives notice that this case involves other defendants who may be held jointly and severally liable for payment of all or part of the restitution ordered herein and may order such payment in the future.
- 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:

The property outlined in the Preliminary Order of Forfeiture.

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