

No. 20-

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IN THE  
**Supreme Court of the United States**

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OTTO EDWARD CHRISTOFFERSON ,

*Petitioner,*  
v.

UNITED STATES OF AMERICA,

*Respondent.*

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**On Petition for Writ of Certiorari  
to the United States Court of Appeals  
for the Fifth Circuit**

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**APPENDIX VOLUME**

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## APPENDIX A

United States Court of Appeals  
for the Fifth Circuit

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No. 19-51095  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit  
**FILED**  
September 4, 2020  
Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

OTTO EDWARD CHRISTOFFERSON,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 7:19-CR-118-1

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Before JOLLY, ELROD, and GRAVES, *Circuit Judges.*

PER CURIAM:\*

Otto Edward Christofferson pleaded guilty to one count of possession with intent to distribute five grams or more of actual methamphetamine, and the district court sentenced him within the advisory guidelines range to 293 months of imprisonment. He now appeals and challenges only his sentence.

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\* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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First, Christofferson argues that the district court erred in assigning him a base offense level of 36 under U.S.S.G. § 2D1.1(a)(5) based on its estimate of the drug quantity attributable to him. He challenges the reliability of his statements to police about his prior drug distribution because he was intoxicated at the time of his arrest and also contends that laboratory tests did not establish the purity of the unseized methamphetamine. Christofferson also asserts that the drug quantity approximation was unreliable because there was no evidence to corroborate the finding that he sold three ounces of methamphetamine for 21 days.

For preserved error, we review the district court's interpretations of the Guidelines *de novo* and the district court's factual findings for clear error. *United States v. Haines*, 803 F.3d 713, 743 (5th Cir. 2015).

As to the reliability of his statements to police, the district court did not err in relying upon them to extrapolate the drug quantity. *See United States v. Barfield*, 941 F.3d 757, 764 (5th Cir. 2019), *cert. denied*, 140 S. Ct. 1282 (2020); *Haines*, 803 F.3d at 743. Christofferson alleges that his intoxication rendered the statements unreliable, but medical officials cleared him twice after his arrest. Therefore, the finding that Christofferson's statements regarding his prior drug distribution were reliable was plausible in the light of the record as a whole. *See United States v. Alaniz*, 726 F.3d 586, 618 (5th Cir. 2013). In addition, given that the Guidelines specifically allow for estimating drug quantity, a straightforward multiplication based on the amounts and time span provided by Christofferson was not clearly erroneous. *See* § 2D1.1, comment. (n.5); *Barfield*, 941 F.3d at 764.

Similarly, Christofferson has not shown that the district court clearly erred by estimating the drug purity based on the unrebutted facts in the presentence report. *See United States v. Dinh*, 920 F.3d 307, 313 (5th Cir. 2019); *Alaniz*, 726 F.3d at 618-19. The record reflected that the purity rate

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of the drugs seized from Christofferson's safe was 98%. In the absence of any evidence to the contrary, the district court plausibly could have found that the methamphetamine distributed by Christofferson prior to his arrest had a similar purity rate. *See United States v. Rodriguez*, 666 F.3d 944, 947 (5th Cir. 2012). Because the challenged factual findings are plausible in light of the record as a whole, Christofferson has shown no clear error in the district court's calculation of the drug quantity attributable to him. *See Alaniz*, 726 F.3d at 618.

Second, Christofferson asserts that the district court imposed a substantively unreasonable sentence because the sentence was greater than necessary to comply with the goals of the 18 U.S.C. § 3553(a) sentencing factors. Christofferson's conclusional assertion that a lower sentence would have satisfied the goals of § 3553(a) constitutes a mere disagreement with the district court's weighing of those factors, which is insufficient to justify reversal. *See United States v. Ruiz*, 621 F.3d 390, 398 (5th Cir. 2010); *United States v. Cooks*, 589 F.3d 173, 186 (5th Cir. 2009). Accordingly, Christofferson fails to rebut the presumption of reasonableness that applies to his within-guidelines sentence. *See Cooks*, 589 F.3d at 186.

AFFIRMED.

## **APPENDIX B**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
MIDLAND-ODESSA DIVISION

UNITED STATES OF AMERICA

v.

Case Number: 7:19CR00118(1) DC  
USM Number: 32123-480

**OTTO EDWARD CHRISTOFFERSON**

Alias(es):

AKA Otto Christofferson; AKA Otto Edward IV  
Christofferson;  
Defendant.

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

The defendant, Otto Edward Christofferson, was represented by Brian Jose Chavez.

The defendant pled guilty to Count(s) 1, of the Indictment on June 26, 2019. Accordingly, the defendant is adjudged guilty of such Count(s), involving the following offense(s):

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count(s)</u>
21 U.S.C. § 841(a)(1) and 21 U.S.C. § 841(b)(1)(B)	Possession with Intent to Distribute 5 Grams or More of Actual Methamphetamine	April 24, 2019	1

As pronounced on October 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 shall notify the Court and United States Attorney of any material change in the defendant's economic circumstances.

Signed this 16th day of October, 2019.



David Counts  
United States District Judge

DEFENDANT: OTTO EDWARD CHRISTOFFERSON  
CASE NUMBER: 7:19CR00118(1) DC

## IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of **Two Hundred Ninety-Three (293) months** with credit for time served while in custody for this federal offense pursuant to 18 U.S.C. § 3585(b).

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

That the defendant serve this sentence at F.C.I., Leavenworth.

The defendant shall remain in custody pending service of sentence.

## RETURN

I have executed this judgment as follows:

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Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_ with a certified copy of the Judgment.

\_\_\_\_\_  
United States Marshal

DEFENDANT: OTTO EDWARD CHRISTOFFERSON  
CASE NUMBER: 7:19CR00118(1) DC

## **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 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: OTTO EDWARD CHRISTOFFERSON  
 CASE NUMBER: 7:19CR00118(1) DC

**CONDITIONS OF SUPERVISED RELEASE**  
 (As Amended November 28, 2016)

It is ORDERED that the Conditions of Probation and Supervised Release applicable to each defendant committed to probation or supervised release in any division of the Western District of Texas, are adopted as follows:

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.

DEFENDANT: OTTO EDWARD CHRISTOFFERSON  
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- [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.
- [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: OTTO EDWARD CHRISTOFFERSON  
 CASE NUMBER: 7:19CR00118(1) DC

## CRIMINAL MONETARY PENALTIES/ SCHEDULE

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, 200 E. Wall St. Room 222, Midland, TX 79701.

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

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTAL:	\$100.00	\$0.00	\$0.00	\$0.00	\$0.00

### Special Assessment

It is ordered that the defendant shall pay to the United States a special assessment of **\$100.00**.

### 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) fine interest, (6) community restitution, (7) JVTA Assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

\* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

\*\* 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.