

**UNPUBLISHED**

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

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**No. 19-4793**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RENALDO DEMARQUIS METCALF,

Defendant - Appellant.

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Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. William L. Osteen, Jr., District Judge. (1:19-cr-00041-WO-1)

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Submitted: September 2, 2020

Decided: September 21, 2020

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Before KEENAN and DIAZ, Circuit Judges, and SHEDD, Senior Circuit Judge.

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Affirmed by unpublished per curiam opinion.

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Louis C. Allen, Federal Public Defender, John A. Duberstein, Assistant Federal Public Defender, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Greensboro, North Carolina, for Appellant. Matthew G.T. Martin, United States Attorney, Michael F. Joseph, Assistant United States Attorney, Terry Michael Meinecke, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Greensboro, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

## PER CURIAM:

Renaldo Demarquis Metcalf pled guilty, pursuant to a written plea agreement, to possession with intent to distribute methamphetamine, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C) (2018). Metcalf's Sentencing Guidelines range was 37 to 46 months, but the district court determined that an upward departure to a 71-month sentence was warranted under U.S. Sentencing Guidelines Manual § 4A1.3, p.s. (2018), because Metcalf's criminal history category of IV substantially underrepresented the seriousness of his criminal history. Alternatively, the district court explained that an upward variance was appropriate under the sentencing factors in 18 U.S.C. § 3553(a) (2018). Metcalf appeals, contending that the district court erroneously applied the de facto career offender doctrine and that his sentence is procedurally unreasonable. We affirm.

We review a sentence, whether within, above, or below the Guidelines range, for reasonableness, applying "a deferential abuse-of-discretion standard." *Gall v. United States*, 552 U.S. 38, 41 (2007). This review entails consideration of both the procedural and substantive reasonableness of the sentence. *Id.* at 51. In assessing procedural reasonableness, we consider whether the district court properly calculated the defendant's advisory Guidelines range, afforded the parties an opportunity to argue for an appropriate sentence, considered the 18 U.S.C. § 3553(a) factors, and sufficiently explained the selected sentence. *Id.* at 49-51. "The district court must address the parties' nonfrivolous arguments in favor of a particular sentence, and if the court rejects those arguments, it must explain why in a sufficiently detailed manner to allow this [c]ourt to conduct a meaningful appellate review." *United States v. Provance*, 944 F.3d 213, 218 (4th Cir. 2019) (internal

quotation marks omitted). We will not vacate a sentence based on a procedural error that is harmless. An error is harmless if the Government shows “that the error did not have a substantial and injurious effect or influence on the result.” *United States v. Boulware*, 604 F.3d 832, 838 (4th Cir. 2010) (internal quotation marks omitted).

Under USSG § 4A1.3, p.s., “[a]n upward departure may be warranted when a sentencing court finds a defendant’s criminal history category to inadequately represent his criminal history or his likelihood of recidivism.” *United States v. Myers*, 589 F.3d 117, 125 (4th Cir. 2009). We have explained that a district court departing upwardly under § 4A1.3, p.s., must do so incrementally, and while the court need not move one level at a time, the court “should move to successively higher categories only upon finding that the prior category does not provide a sentence that adequately reflects the seriousness of the defendant’s criminal conduct.” *United States v. Dalton*, 477 F.3d 195, 199 (4th Cir. 2007) (internal quotation marks omitted).

Metcalf contends that the district court committed procedural error by failing to depart incrementally. We conclude that, even if Metcalf is correct on that point, the district court properly explained its alternate conclusion that an upward variance to a sentence of 71 months was appropriate in light of the 18 U.S.C. § 3553 factors and addressed Metcalf’s arguments for a lower sentence. *See United States v. Evans*, 526 F.3d 155, 165 (4th Cir. 2008) (explaining that district court’s failure to properly apply incremental analysis may be harmless error where upward variance is justified by district court’s analysis of § 3553(a) factors). Finally, although the district court expressed a belief that Metcalf should be a career offender based on his criminal history, we reject Metcalf’s contention

that the district court in fact sentenced him as a de facto career offender because the district court did not use the career offender Guidelines range as a baseline or benchmark for the sentence the court ultimately imposed. *See Myers*, 589 F.3d at 125 (discussing de facto career offender doctrine).

Because Metcalf's sentence is procedurally reasonable, we affirm the district court's judgment. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

*AFFIRMED*

FILED: September 21, 2020

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 19-4793  
(1:19-cr-00041-WO-1)

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UNITED STATES OF AMERICA

Plaintiff - Appellee

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J U D G M E N T

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In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

FILED: October 13, 2020

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 19-4793  
(1:19-cr-00041-WO-1)

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UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

RENALDO DEMARQUIS METCALF

Defendant - Appellant

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M A N D A T E

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The judgment of this court, entered September 21, 2020, takes effect today.

This constitutes the formal mandate of this court issued pursuant to Rule  
41(a) of the Federal Rules of Appellate Procedure.

/s/Patricia S. Connor, Clerk

# United States District Court Middle District of North Carolina

UNITED STATES OF AMERICA

**JUDGMENT IN A CRIMINAL CASE**

v.

RENALDO DEMARQUIS METCALF

Case Number: 1:19-CR-00041-1

USM Number: 20484-057

John A. Dusenbury, Jr., Assistant Federal Public Defender  
Defendant's Attorney

**THE DEFENDANT:**

- ☒ pleaded guilty to count 1.  
☐ pleaded nolo contendere to count(s) \_\_\_\_\_ which was accepted by the court.  
☐ was found guilty on count(s) \_\_\_\_\_ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21:841(a)(1) and (b)(1)(C)	Possess with Intent to Distribute Methamphetamine	01/02/2019	1

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count(s)  
☐ Count(s) ☐ is ☐ are dismissed on the motion of the United States.

IT IS ORDERED that the defendant 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 economic circumstances.

September 13, 2019  
Date of Imposition of Judgment

*William L. Osteen, Jr.*  
Signature of Judge

William L. Osteen, Jr., United States District Judge

Name & Title of Judge

**OCT 10 2019**

Date

DEFENDANT: RENALDO DEMARQUIS METCALF  
CASE NUMBER: 1:19-CR-00041-1

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: **71 months**.

[The term of imprisonment imposed shall run consecutively to the sentence the defendant is presently serving as described in paragraph 30 of the presentence report.]

☒ The court makes the following recommendations to the Bureau of Prisons: that the defendant be designated to a facility where he may participate in an intensive substance abuse treatment program and where he may receive a psychological evaluation and mental health counseling and treatment.

☒ 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 \_\_\_\_\_ am/pm 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 pm 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: RENALDO DEMARQUIS METCALF  
CASE NUMBER: 1:19-CR-00041-1

### SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of: **four (4) 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 the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*
  4. ☐ You must make restitution in accordance with 18 U.S.C §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
  5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
  6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(Check, if applicable.)*
  7. ☐ You must participate in an approved program for domestic violence. *(Check, if applicable.)*
- . You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: RENALDO DEMARQUIS METCALF  
CASE NUMBER: 1:19-CR-00041-1

## STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

## U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: [www.uscourts.gov](http://www.uscourts.gov).

Defendant's Signature \_\_\_\_\_

Date \_\_\_\_\_

DEFENDANT: RENALDO DEMARQUIS METCALF  
CASE NUMBER: 1:19-CR-00041-1

### **SPECIAL CONDITIONS OF SUPERVISION**

The defendant shall abide by the mandatory and standard conditions of supervised release.

The defendant shall cooperatively participate in a mental health treatment program, which may include inpatient treatment, and pay for those treatment services, as directed by the probation officer.

The defendant shall submit to substance abuse testing, at any time, as directed by the probation officer. The defendant shall cooperatively participate in a substance abuse treatment program, which may include drug testing and inpatient/residential treatment, and pay for those treatment services, as directed by the probation officer. During the course of treatment, the defendant shall abstain from the use of alcoholic beverages.

The defendant shall provide any requested financial information to the probation officer.

The defendant shall submit his person, residence, office, vehicle, or any property under his control to a warrantless search. Such search shall be conducted by a United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to such a search may be grounds for revocation; the defendant shall warn any residents that the premises may be subject to searches.

The defendant shall abide by all conditions and terms of the location monitoring curfew program for a period not to exceed six (6) months. At the direction of the probation officer, the defendant shall wear a location monitoring device which may include GPS or other monitoring technology and follow all program procedures specified by the probation officer. The defendant shall pay for the location monitoring services as directed by the probation officer.

DEFENDANT: RENALDO DEMARQUIS METCALF  
CASE NUMBER: 1:19-CR-00041-1

### CRIMINAL MONETARY PENALTIES

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

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

☐ The determination of restitution is deferred until \_\_\_\_\_. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

☐ 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 pursuant to 18 U.S.C. Section 3612(f)(3) 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: RENALDO DEMARQUIS METCALF  
CASE NUMBER: 1:19-CR-00041-1

### SCHEDULE OF PAYMENTS

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

- A ☒ Lump sum payment of \$100.00 due immediately, balance due  
☐ not later than \_\_\_\_\_, or  
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal \_\_\_\_\_ (e.g. weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal \_\_\_\_\_ (e.g. weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

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 to be made to the Clerk of Court, United States District Court for the Middle District of North Carolina, 324 West Market Street, Greensboro, NC 27401-2544, unless otherwise directed by the court, the probation officer, or the United States Attorney. **Nothing herein shall prohibit the United States Attorney from pursuing collection of outstanding criminal monetary penalties.**

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

☐ Joint and Several

Defendant and Co-Defendant Names, Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

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

DEFENDANT: RENALDO DEMARQUIS METCALF  
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### DISPOSITION OF EVIDENCE

**Any controlled substances seized shall be destroyed at the conclusion of any appeals period.**

United States Code Annotated

Federal Sentencing Guidelines (Refs & Annos)

Chapter Four. Criminal History and Criminal Livelihood (Refs & Annos)

Part A. Criminal History (Refs & Annos)

USSG, § 4A1.3, 18 U.S.C.A.

§ 4A1.3. Departures Based on Inadequacy of Criminal History Category (Policy Statement)

Currentness

**(a)** Upward Departures.--

**(1)** Standard for Upward Departure.--If reliable information indicates that the defendant's criminal history category substantially under-represents the seriousness of the defendant's criminal history or the likelihood that the defendant will commit other crimes, an upward departure may be warranted.

**(2)** Types of Information Forming the Basis for Upward Departure.--The information described in subsection (a)(1) may include information concerning the following:

**(A)** Prior sentence(s) not used in computing the criminal history category (e.g., sentences for foreign and tribal convictions).

**(B)** Prior sentence(s) of substantially more than one year imposed as a result of independent crimes committed on different occasions.

**(C)** Prior similar misconduct established by a civil adjudication or by a failure to comply with an administrative order.

**(D)** Whether the defendant was pending trial or sentencing on another charge at the time of the instant offense.

**(E)** Prior similar adult criminal conduct not resulting in a criminal conviction.

**(3)** Prohibition.--A prior arrest record itself shall not be considered for purposes of an upward departure under this policy statement.

**(4)** Determination of Extent of Upward Departure.--

**(A)** In General.--Except as provided in subdivision (B), the court shall determine the extent of a departure under this subsection by using, as a reference, the criminal history category applicable to defendants whose criminal history or likelihood to recidivate most closely resembles that of the defendant's.

**§ 4A1.3. Departures Based on Inadequacy of Criminal History..., FSG § 4A1.3**

**(B)** Upward Departures from Category VI.--In a case in which the court determines that the extent and nature of the defendant's criminal history, taken together, are sufficient to warrant an upward departure from Criminal History Category VI, the court should structure the departure by moving incrementally down the sentencing table to the next higher offense level in Criminal History Category VI until it finds a guideline range appropriate to the case.

**(b) Downward Departures.--**

**(1)** Standard for Downward Departure.--If reliable information indicates that the defendant's criminal history category substantially over-represents the seriousness of the defendant's criminal history or the likelihood that the defendant will commit other crimes, a downward departure may be warranted.

**(2) Prohibitions.--**

**(A)** Criminal History Category I.--A departure below the lower limit of the applicable guideline range for Criminal History Category I is prohibited.

**(B)** Armed Career Criminal and Repeat and Dangerous Sex Offender.--A downward departure under this subsection is prohibited for (i) an armed career criminal within the meaning of § 4B1.4 (Armed Career Criminal); and (ii) a repeat and dangerous sex offender against minors within the meaning of § 4B1.5 (Repeat and Dangerous Sex Offender Against Minors).

**(3) Limitations.--**

**(A)** Limitation on Extent of Downward Departure for Career Offender.--The extent of a downward departure under this subsection for a career offender within the meaning of § 4B1.1 (Career Offender) may not exceed one criminal history category.

**(B)** Limitation on Applicability of § 5C1.2 in Event of Downward Departure to Category I.--A defendant whose criminal history category is Category I after receipt of a downward departure under this subsection does not meet the criterion of subsection (a)(1) of § 5C1.2 (Limitation on Applicability of Statutory Maximum Sentences in Certain Cases) if, before receipt of the downward departure, the defendant had more than one criminal history point under § 4A1.1 (Criminal History Category).

**(c) Written Specification of Basis for Departure.--**In departing from the otherwise applicable criminal history category under this policy statement, the court shall specify in writing the following:

**(1)** In the case of an upward departure, the specific reasons why the applicable criminal history category substantially under-represents the seriousness of the defendant's criminal history or the likelihood that the defendant will commit other crimes.

**(2)** In the case of a downward departure, the specific reasons why the applicable criminal history category substantially over-represents the seriousness of the defendant's criminal history or the likelihood that the defendant will commit other crimes.



**CREDIT(S)**

(Effective November 1, 1987; amended effective November 1, 1991; November 1, 1992; October 27, 2003; November 1, 2018.)

Federal Sentencing Guidelines, § 4A1.3, 18 U.S.C.A., FSG § 4A1.3  
As amended to 1-11-21



# Federal Sentencing of Career Offenders

*Report to the Congress: Career Offender Sentencing Enhancements*

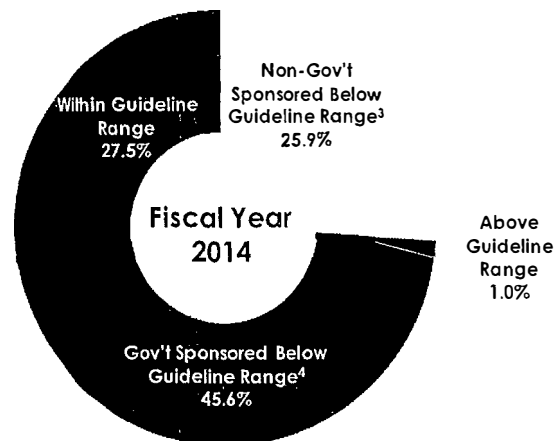
## Overview

The United States Sentencing Commission was directed by Congress to set sentencing guidelines for repeat violent offenders or repeat drug trafficking offenders, known as "Career Offenders," at or near the statutory maximum penalty.<sup>1</sup> Tracking statutory criteria, a defendant qualifies as a Career Offender in the sentencing guidelines if 1) the defendant was at least 18 years of age at the time he or she committed the instant offense; 2) the instant offense is a felony that is 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.<sup>2</sup> Following a multi-year examination of the application and impact of the Career Offender guideline, the Commission amended the guidelines and published a comprehensive report recommending statutory changes (*Report to the Congress: Career Offender Sentencing Enhancements*). Below are some key findings and recommendations of the full report.

## Report Highlights

- While career offenders account for just 3% of the annual federal caseload, they account for more than 11% of the federal prison population due to their lengthy prison sentences (on average, more than 12 years, or 147 months, in prison).
- Career offenders often receive sentences below the guideline range (often at the government's request), especially when they qualify as career offenders on the basis of drug trafficking offenses alone ("drug trafficking only" pathway).

## Sentences Relative to the Guideline Range for Career Offenders



## Guideline Minimum & Sentence Imposed by Career Offender Pathway<sup>5</sup>

	Average Guideline Minimum	Average Sentence Imposed
Drug Trafficking Only	207 months (17.3 years)	134 months (11.2 years)
Mixed	212 months (17.7 years)	145 months (12.1 years)
Violent Only	209 months (17.4 years)	179 months (14.9 years)

- Although career offenders with a violent instant or prior offense often have more serious criminal histories, the career offender directive has the most significant impact on drug trafficking offenders because they often carry higher statutory maximum penalties than some violent offenses.<sup>6</sup>
- Despite similar average guideline minimums, "drug trafficking only" career offenders are generally sentenced less severely than other career offenders. In these cases, federal judges impose sentences similar to the sentences recommended in the guidelines for the underlying drug trafficking offense.

## Recidivism of Career Offenders

- While career offenders, as a group, tend to recidivate at higher rates than non-career offenders, the Commission found a lower recidivism rate among career offenders qualifying on the basis of drug trafficking offenses alone (see the "drug trafficking only" group in the table below).
- In addition to having a more serious and extensive criminal history, career offenders who have committed a violent offense recidivate at a higher rate and are more likely to commit another violent offense in the future (see the "violent only" and "mixed" groups in the table below).

### U.S. Sentencing Commission's Recidivism Study Cohort Followed For Eight Years After Release in 2005<sup>7</sup>

	Drug Trafficking Only	Mixed	Violent Only
<b>Recidivism Rate</b>	54.4%	69.4%	69.0%
<b>Median Time to Recidivism</b>	26 Months	20 Months	14 Months
<b>Most Serious Post-Release Event (%)</b>	Drug Trafficking (26.5%)	Assault (28.6%)	Robbery (35.3%)

### U.S. Sentencing Commission Recommendations

- The career offender directive should be amended to differentiate between career offenders with different types of criminal records, and is best focused on those offenders who have committed at least one "crime of violence."
- Career offenders qualifying only on the basis of "drug trafficking offenses" should not categorically be subject to the significant increases in penalties required by the career offender directive.
- To achieve greater clarity and judicial efficiency in these cases, Congress should adopt a single, uniform definition of "crime of violence." The Commission's recent amendment to the guideline definitions referenced in the career offender guideline provides a good framework for this change.<sup>8</sup>

#### Endnotes

- See 28 U.S.C. § 994(h).
  - See USSG §§4B1.1, 4B1.2.
  - "Non-Government Sponsored Below Range" consists of cases in which the defendants were sentenced below the applicable guideline range that are not classified as a government sponsored below range sentence.
  - "Government Sponsored Below Range" consists of cases in which a reason for a sentence below the range was attributed to the government, including, for example, substantial assistance (USSG §5K1.1), Early Disposition Program (USSG §5K3.1), and below range sentences pursuant to a plea agreement or other government motion.
  - For more information on pathways to becoming a career offender, see Report to the Congress: Career Offender Sentencing Enhancements, at 26.
  - See 21 U.S.C. § 841(b) (providing for up to life imprisonment for certain drug offenses).
  - For a discussion of the 2005 cohort, see Report to the Congress: Career Offender Sentencing Enhancements, at 38, and App. C.
  - See USSG App. C, amend. 798 (effective August 1, 2016).
- SOURCE: Recidivism and Criminal History Datafiles.

www.ussc.gov  
pubaffairs@ussc.gov  
@theusscgov





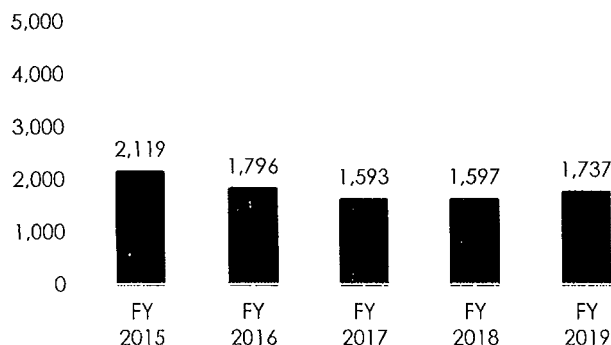
# Quick Facts

## — Career Offenders —

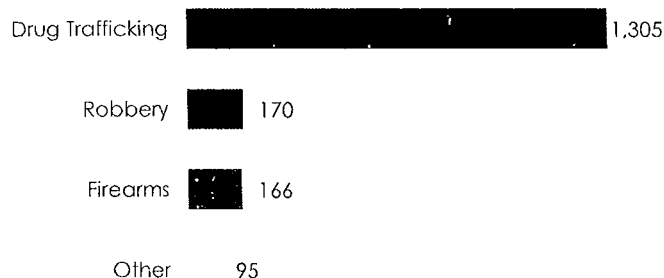
### Fiscal Year 2019

- ▶ IN FY 2019, 76,538 CASES WERE REPORTED TO THE U.S. SENTENCING COMMISSION.
- ▶ 1,737 INVOLVED CAREER OFFENDERS.<sup>1</sup>
- ▶ IN 91.7% OF CASES, THE CAREER OFFENDER STATUS INCREASED THE GUIDELINE RANGE.

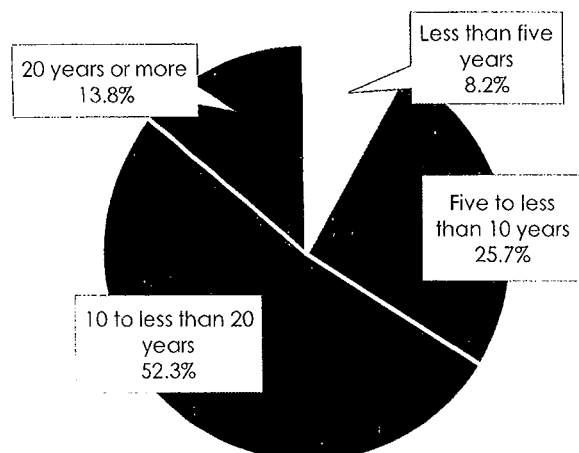
Number of Career Offenders



Most Common Guidelines for Career Offenders



Sentence Length of Career Offenders



### What is a Career Offender?

A career offender is someone who commits a crime of violence or a controlled substance offense after two prior felony convictions for those crimes. The sentencing guidelines assign all career offenders to Criminal History Category (CHC) VI and to offense levels at or near the statutory maximum penalty of the offense of conviction.<sup>2</sup>

### Offender and Offense Characteristics

- 96.7% of career offenders were men.
- 61.4% of career offenders were Black, 22.4% were White, 13.8% were Hispanic, and 2.3% were Other races.
- Their average age was 39 years.
- 97.9% were United States citizens.
- 41.4% would not change from CHC VI if the career offender provision had not been applied;
  - ♦ 0.2% would have been CHC II;
  - ♦ 10.6% would have been CHC III;
  - ♦ 23.3% would have been CHC IV;
  - ♦ 24.5% would have been CHC V.
- The top five districts for career offenders were:
  - ♦ Southern District of New York (82);
  - ♦ District of Maryland (81);
  - ♦ Middle District of Florida (57);
  - ♦ Southern District of Iowa (53);
  - ♦ Southern District of Florida (51).

### Punishment

- The average sentence for career offenders was 152 months.
- 99.7% were sentenced to prison.
- 59.0% were convicted of an offense carrying a mandatory minimum penalty.

### Impact of Career Offender Status<sup>3</sup>

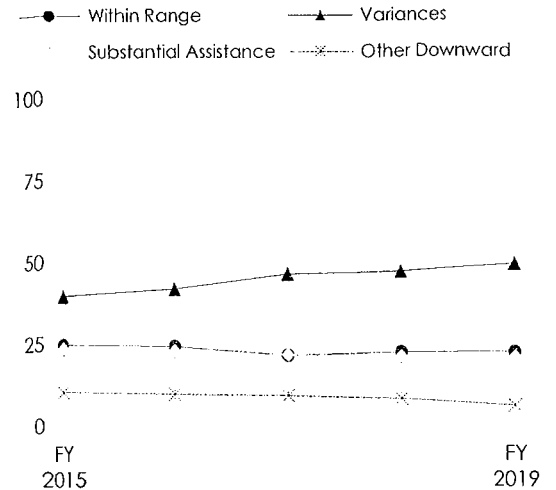
- 47.6% of career offenders had an increase in both Final Offense Level (FOL) and CHC.
  - ♦ Their average FOL increased from 23 to 31 and the average CHC increased from IV to VI.
- 33.9% of career offenders had an increase in just the FOL.
  - ♦ Their average FOL increased from 23 to 31.
- 10.2% of career offenders had an increase in just the CHC.
  - ♦ Their average CHC increased from IV to VI.
- 8.3% of career offenders had no increase in FOL or CHC.



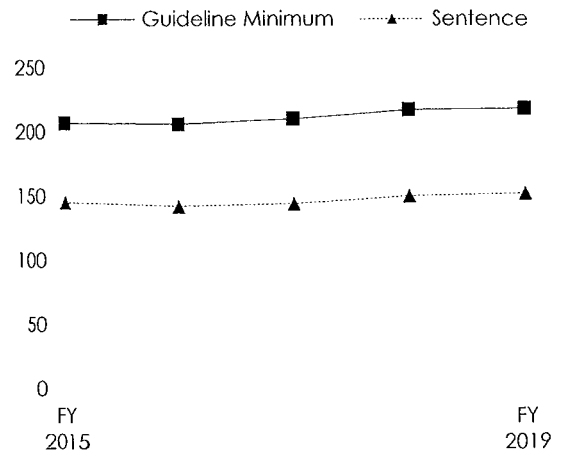
## Sentences Relative to the Guideline Range

- Of the 50.6% of career offenders sentenced under the *Guidelines Manual*:
  - 44.7% were sentenced within the guideline range.
  - 41.8% received a substantial assistance departure.
    - Their average sentence reduction was 47.7%.
  - 12.4% received some other downward departure.
    - Their average sentence reduction was 45.4%.
  - 0.8% received an Early Disposition Program (EDP) departure.<sup>4</sup>
    - Their average sentence reduction was 52.0%.
- 49.4% received a variance; of those offenders:
  - 98.6% received a below range variance.
    - Their average sentence reduction was 38.0%.
  - 1.4% received an above range variance.
    - Their average sentence increase was 15.7%.
- The average guideline minimum and average sentence imposed has increased over the past five years.
  - The average guideline minimum increased from 207 months in fiscal year 2015 to 218 months in fiscal year 2019.
  - The average sentence imposed increased from 145 months in fiscal year 2015 to 152 months in fiscal year 2019.

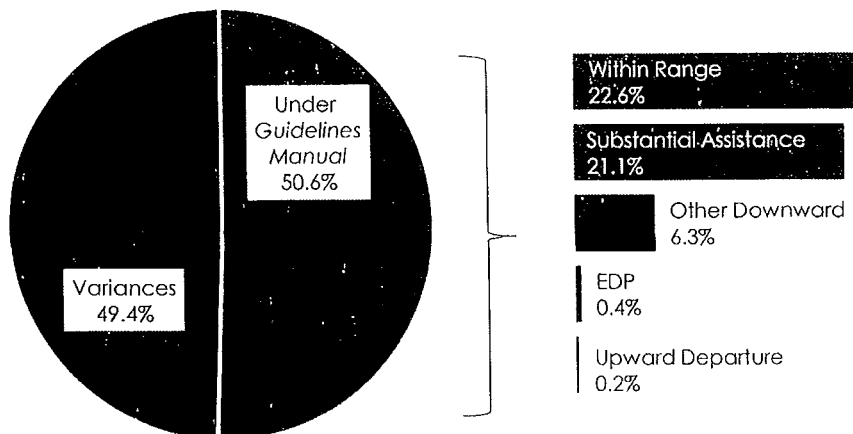
## Sentence Relative to the Guideline Range (%)



## Average Guideline Minimum and Average Sentence (months)



## Sentence Imposed Relative to the Guideline Range FY 2019



<sup>1</sup> Cases with incomplete sentencing information were excluded from the analysis.

<sup>2</sup> In some cases, a state offense classified under state law as a misdemeanor (e.g., in Iowa, Massachusetts, and Michigan) is considered a felony in determining career offender status. For more information, see USSG § 4B1.1.

<sup>3</sup> Cases missing Ch. 2 guideline data and cases in which § 4B1.1(c) applied were excluded for this part of the analysis. Cases where both § 4B1.1 and § 4B1.4 (Armed Career Criminal) applied were assigned to the provision with the higher offense level.

<sup>4</sup> "Early Disposition Program (or EDP) departures" are departures where the government sought a sentence below the guideline range because the defendant participated in the government's Early Disposition Program, through which cases are resolved in an expedited manner. See USSG § 5K3.1.

**EXECUTIVE SUMMARY**

Pursuant to its general authority under 28 U.S.C. §§ 994 and 995, the United States Sentencing Commission (“the Commission”) has undertaken a multi-year study of statutory and guideline definitions relating to the nature of a defendant’s prior conviction and the impact of such definitions on the relevant statutory and guideline provisions. The Commission analyzed the application and impact of the career offender guideline found at section 4B1.1 (Career Offender) of the *Guidelines Manual*, which implements a Congressional directive instructing the Commission to set the guideline range for offenders with specified instant and prior convictions *at or near the statutory maximum*. Tracking the statutory criteria, a defendant qualifies as a career offender if (1) the defendant was at least eighteen years old at the time he or she committed the instant offense of conviction; (2) the instant offense is a felony that is 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. Where these criteria are met, the directive, and therefore §4B1.1, provides for a guideline range “at or near the maximum [term of imprisonment] authorized” — typically resulting in a guidelines range significantly greater than would otherwise apply.

During the course of its study, the Commission found that:

- Career offenders are primarily convicted of drug trafficking offenses – nearly three-quarters (74.1%) of career offenders in fiscal year 2014 were convicted of a drug trafficking offense and would have been sentenced pursuant to §2D1.1 (Offenses involving drugs and narco-terrorism).
- Career offenders are sentenced to long terms of incarceration, receiving an average sentence of more than 12 years (147 months).

- As a result of these lengthy sentences, career offenders now account for more than 11 percent of the total BOP population.
- Even though they continue to receive lengthy sentences, career offenders are increasingly receiving sentences below the guideline range, often at the request of the government. During the past ten years, the proportion of career offenders sentenced within the applicable guideline range has decreased from 43.3 percent in fiscal year 2005 to 27.5 percent in fiscal year 2014, while government sponsored departures have steadily increased from 33.9 percent to 45.6 percent.

These findings prompted the Commission to explore concerns that the career offender directive fails to meaningfully distinguish among career offenders with different types of criminal records and has resulted in overly severe penalties for some offenders.

The Commission conducted a detailed analysis of career offenders’ prior criminal history and recidivism after release from federal prison. This allowed for distinctions to be made among career offenders based on the nature of their prior offenses. Specifically, the Commission assigned each career offender in the study to one of three categories based on the types of offenses in their record potentially relevant to career offender status: drug trafficking only, violent only, and mixed. The Commission found clear and notable differences between these distinct pathways to career offender status:

- Career offenders who have committed a violent instant offense or a violent prior offense generally have a more serious and extensive criminal history, recidivate at a higher rate than drug trafficking only career offenders,

and are more likely to commit another violent offense in the future.

- The career offender directive has the greatest impact on federal drug trafficking offenders because of the higher statutory maximum penalties for those offenders (offenders convicted under the primary drug trafficking statute at 21 U.S.C. § 841 face statutory maximum penalties up to life imprisonment).
- Drug trafficking only career offenders were most likely to receive a sentence below the guideline range (often at the request of the government), receiving an average sentence (134 months) that is nearly identical to the average guideline minimum (131 months) that would have applied to those offenders through the normal operation of the guidelines.

Consistent with these findings, the Commission has concluded that the career offender directive is best focused on those offenders who have committed at least one “crime of

violence.” The Commission recommends that Congress amend the directive to reflect this principle by no longer including those who currently qualify as career offenders based solely on drug trafficking offenses. These reforms would help ensure that federal sentences better account for the severity of the offenders’ prior records, protect the public, and avoid undue severity for certain less culpable offenders.

As part of its study, the Commission also observed the overall complexity of applying the career offender guideline and other similar recidivist enhancements. Federal statutes and the sentencing guidelines currently contain a patchwork of definitions attempting to specify which prior offenses are crimes of violence or violent felonies for purposes of recidivist enhancements. These definitions and the complex legal tests (most notably the “categorical approach”) have resulted in confusion and inefficient use of resources on the part of both litigants and courts. Congress should act to address the inconsistency and complexity that persists by adopting a single, uniform definition of “crime of violence” for all federal criminal law purposes.

## CONCLUSIONS

- The career offender directive should be amended to differentiate between career offenders with different types of criminal records, and is best focused on those offenders who have committed at least one “crime of violence.”
- Career offenders who have committed a violent instant offense or a violent prior offense generally have a more serious and extensive criminal history, recidivate at a higher rate than drug trafficking only career offenders, and are more likely to commit another violent offense in the future.
- Drug trafficking only career offenders are not meaningfully different from other federal drug trafficking offenders and should not categorically be subject to the significant increases in penalties required by the career offender directive.
- A single definition of the term “crime of violence” in the guidelines and other federal recidivist provisions is necessary to address increasing complexity and to avoid unnecessary confusion and inefficient use of court resources.