

APPENDIX

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Opinion of the Eleventh Circuit Court of Appeals, <i>United States v. Cedric Durand Collins</i> , --- F.App'x ---, 2020 WL 7392900 (December 17, 2020)	A-1
Judgment imposing sentence	A-2

A-1

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-10578
Non-Argument Calendar

D.C. Docket No. 9:19-cr-80131-RS-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CEDRIC DURAND COLLINS,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida

(December 17, 2020)

Before MARTIN, BRANCH, and GRANT, Circuit Judges.

PER CURIAM:

Cedric Collins appeals his 151-month sentence following his conviction for one count of distributing a controlled substance containing a detectable amount of fentanyl in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C). He thinks the district

court erred in classifying him as a career offender under the United States Sentencing Guidelines because his prior drug-related convictions were not “controlled substance offenses.” Collins also argues that his 151-month sentence was unreasonable because the district court treated the Guidelines as mandatory and failed to properly weigh the 18 U.S.C. § 3553(a) factors. But because the district court did not err in classifying Collins as a career offender and the sentence it imposed was procedurally and substantively reasonable, we affirm.

I.

In reviewing a sentence, we review the district court’s interpretation and application of the Sentencing Guidelines de novo. *United States v. Shabazz*, 887 F.3d 1204, 1222 (11th Cir. 2018). We accordingly review de novo whether a prior conviction is a controlled substance offense as defined by section 4B1.2(b) of the Guidelines. *United States v. Lange*, 862 F.3d 1290, 1293 (11th Cir. 2017).

Under the Guidelines, a defendant is considered a career offender if: 1) he is at least 18 years old at the time of the instant offense, 2) his instant offense is a felony that is either a controlled substance offense or crime of violence, and 3) he has at least two prior felony convictions for either a crime of violence or a controlled substance offense. U.S.S.G. § 4B1.1(a). Collins disputes only the third element; he concedes that he has one prior felony conviction for a crime of

violence, but argues that his two prior convictions for drug-related crimes are not controlled substance offenses under the Guidelines. We disagree.

The Guidelines define 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 “the possession of a controlled substance” with “intent to manufacture, import, export, distribute, or dispense.” *Id.* § 4B1.2(b). The statute at issue in Collins’s prior drug-related convictions, section 893.13(1)(a) of the Florida Statutes, fits neatly into this definition—it is a state law that punishes the sale, manufacture, and delivery of a controlled substance, as well as possession of a controlled substance with intent to sell, manufacture, or deliver, by a term of imprisonment exceeding one year. Violations of section 893.13(1)(a) accordingly qualify as controlled substance offenses under section 4B1.2(b) of the Guidelines. *See United States v. Smith*, 775 F.3d 1262, 1268 (11th Cir. 2014).

Collins thinks it matters that section 893.13(1)(a) does not include a mens rea element; according to him, a defendant must have knowledge of the illicit nature of the substance he distributed or possessed for a prior conviction to qualify as a controlled substance offense. But we have already considered and rejected that argument before. In *United States v. Smith*, we held that section 4B1.2(b) of the Guidelines does not require that a predicate state offense include an element of

mens rea with respect to the illicit nature of the controlled substance. 775 F.3d at 1267.¹ We recognized that a “controlled substance offense” is defined unambiguously in the Guidelines, and the plain language of its definition requires only that the predicate offense prohibit certain activities related to controlled substances. *Id.* It does not expressly or impliedly include an element of mens rea. *See* U.S.S.G. § 4B1.2(b). Convictions under section 893.13(1)(a) of the Florida Statutes therefore qualify as controlled substance offenses even without proof the defendant knew the illicit nature of the substance he distributed or possessed. *Smith*, 775 F.3d at 1267.

In short, Collins’s two prior drug-related convictions constitute controlled substance offenses under the Guidelines. And that means the district court correctly sentenced Collins as a career offender.

II.

We review the reasonableness of a sentence for abuse of discretion. *United States v. Livesay*, 587 F.3d 1274, 1278 (11th Cir. 2009). The party challenging the sentence bears the burden of establishing that it is unreasonable. *United States v. Tome*, 611 F.3d 1371, 1378 (11th Cir. 2010). We will vacate the sentence only if

¹ Under our prior panel precedent rule, we are bound to follow a prior panel’s holding unless and until it is overruled or undermined to the point of abrogation by an opinion of the Supreme Court or of this Circuit sitting en banc. *United States v. Archer*, 531 F.3d 1347, 1352 (11th Cir. 2008). This Circuit’s decision in *United States v. Smith* is still good law, as Collins concedes—and that means we must follow it here.

we are “left with the definite and firm conviction that the district court committed a clear error of judgment in weighing the § 3553(a) factors by arriving at a sentence that lies outside the range of reasonable sentences dictated by the facts of the case.” *United States v. Trailer*, 827 F.3d 933, 936 (11th Cir. 2016) (quotation omitted).

When reviewing the reasonableness of a sentence, our task is two-fold. We first ensure that the district court committed no significant procedural error, such as failing to calculate the Guidelines range or treating the Guidelines as mandatory. *Gall v. United States*, 552 U.S. 38, 51 (2007). We then consider the substantive reasonableness of the sentence; a sentence is substantively unreasonable if the district court 1) failed to consider relevant sentencing factors that were due significant weight, 2) gave significant weight to improper or irrelevant factors, or 3) committed a clear error of judgment in considering the factors. *United States v. Rosales-Bruno*, 789 F.3d 1249, 1256 (11th Cir. 2015).

Though Collins argues otherwise, the district court did not treat the Guidelines as mandatory or ignore the § 3553(a) factors. *Gall*, 552 U.S. at 51. The record shows that the district court treated the Guidelines as advisory—in fact, it referred to the Guidelines as “advisory” several times during Collins’s sentencing hearing and acknowledged that it had granted downward variances in the past. Though at one point it stated that it was “bound to follow the law,” that was in response to Collins’s argument that his prior convictions were not

controlled substance offenses, not in response to the weight it was giving the Guidelines. It also cited the § 3553(a) factors as the basis for Collins's sentence. Collins's sentence was accordingly procedurally reasonable.

It was also substantively reasonable. In addition to considering the advisory Guidelines range, the district court weighed other relevant § 3553(a) factors before sentencing Collins. It considered his history and characteristics, the nature and circumstances of the offense conduct, the need to provide specific deterrence, and the need to safeguard the community. *Rosales-Bruno*, 789 F.3d at 1256. The district court noted that Collins had “continued, from age 13, unfortunately, to engage in various criminal conduct,” and that it could not “in good conscience” give the 60-month sentence Collins sought. The 151-month sentence it chose was at the bottom of the Guidelines range and well below the statutory maximum of 240-months—which indicates that it was reasonable. *United States v. Dougherty*, 754 F.3d 1353, 1362 (11th Cir. 2014); *United States v. Asante*, 782 F.3d 639, 648 (11th Cir. 2015). Considering the record, the § 3553(a) factors, and the deference we afford to sentencing courts, Collins has not met his burden of showing that his sentence was substantively unreasonable.

Though Collins may have preferred a lower sentence, he did not demonstrate that the sentence he received was procedurally or substantively unreasonable. The

district court therefore did not abuse its discretion in sentencing Collins to 151-months' imprisonment.

* * *

Accordingly, we **AFFIRM** Collins's sentence.

UNITED STATES DISTRICT COURT
Southern District of Florida
Miami Division

UNITED STATES OF AMERICA
v.
CEDRIC DURAN COLLINS

JUDGMENT IN A CRIMINAL CASE

Case Number: **19-80131-CR-SMITH**
USM Number: **39555-480**

Counsel For Defendant: **Scott Berry**
Counsel For The United States: **Jennier Nucci**
Court Reporter: **Yvette Hernandez**

The defendant pleaded guilty to count(s) 1 of the Indictment.

The defendant is adjudicated guilty of these offenses:

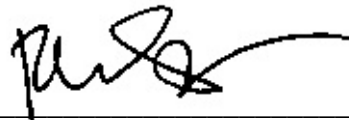
<u>TITLE & SECTION</u>	<u>NATURE OF OFFENSE</u>	<u>OFFENSE ENDED</u>	<u>COUNT</u>
21 U.S.C. §841(a)(1) and (b)(1)(C)	Distribution of Controlled Substance	12/12/2018	1

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

All remaining counts are dismissed on the motion of the government.

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.

Date of Imposition of Sentence: **2/12/2020**



Joan A. Lenard
United States District Judge

Date: 2/13/20

DEFENDANT: **CEDRIC DURAN COLLINS**

CASE NUMBER: **19-80131-CR-SMITH**

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **151 months as to count 1**.

The court makes the following recommendations to the Bureau of Prisons: Defendant be placed in a facility in South Florida to be near family. Defendant be placed in RDAP.

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

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

DEPUTY UNITED STATES MARSHAL

DEFENDANT: CEDRIC DURAN COLLINS

CASE NUMBER: 19-80131-CR-SMITH

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **3 years**.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. 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 from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

The defendant shall cooperate in the collection of DNA as directed by the probation officer.

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

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

STANDARD CONDITIONS OF SUPERVISION

1. The defendant shall not leave the judicial district without the permission of the court or probation officer;
2. The defendant shall report to the probation officer and shall submit a truthful and complete written report within the first fifteen days of each month;
3. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. The defendant shall support his or her dependents and meet other family responsibilities;
5. The defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6. The defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7. The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9. The defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11. The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: **CEDRIC DURAN COLLINS**
CASE NUMBER: **19-80131-CR-SMITH**

SPECIAL CONDITIONS OF SUPERVISION

Anger Control / Domestic Violence - The defendant shall participate in an approved treatment program for anger control/domestic violence. Participation may include inpatient/outpatient treatment. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

Financial Disclosure Requirement - The defendant shall provide complete access to financial information, including disclosure of all business and personal finances, to the U.S. Probation Officer.

Permissible Search - The defendant shall submit to a search of his/her person or property conducted in a reasonable manner and at a reasonable time by the U.S. Probation Officer.

Self-Employment Restriction - The defendant shall obtain prior written approval from the Court before entering into any self-employment.

Substance Abuse Treatment - The defendant shall participate in an approved treatment program for drug and/or alcohol abuse and abide by all supplemental conditions of treatment. Participation may include inpatient/outpatient treatment. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

Support of Dependents - The defendant shall support his or her dependent(s).

Unpaid Restitution, Fines, or Special Assessments - If the defendant has any unpaid amount of restitution, fines, or special assessments, the defendant shall notify the probation officer of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay.

DEFENDANT: CEDRIC DURAN COLLINS

CASE NUMBER: 19-80131-CR-SMITH

CRIMINAL MONETARY PENALTIES

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

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

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>
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* 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.

**Assessment due immediately unless otherwise ordered by the Court.

DEFENDANT: **CEDRIC DURAN COLLINS**

CASE NUMBER: **19-80131-CR-SMITH**

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.

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 the clerk of the court.

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

This assessment/fine/restitution is payable to the CLERK, UNITED STATES COURTS and is to be addressed to:

U.S. CLERK'S OFFICE

ATTN: FINANCIAL SECTION

400 NORTH MIAMI AVENUE, ROOM 08N09

MIAMI, FLORIDA 33128-7716

The assessment/fine/restitution is payable immediately. The U.S. Bureau of Prisons, U.S. Probation Office and the U.S. Attorney's Office are responsible for the enforcement of this order.

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

<u>CASE NUMBER</u> <u>DEFENDANT AND CO-DEFENDANT NAMES</u> <u>(INCLUDING DEFENDANT NUMBER)</u>	<u>TOTAL AMOUNT</u>	<u>JOINT AND SEVERAL</u> <u>AMOUNT</u>

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) penalties, and (8) costs, including cost of prosecution and court costs.