

**NOT RECOMMENDED FOR PUBLICATION**

File Name: 20a0626n.06

No. 19-6319

**UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT****FILED**

Nov 04, 2020

DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

BRYAN KEITH GOINS,

Defendant-Appellant.

) ON APPEAL FROM THE UNITED  
) STATES DISTRICT COURT FOR  
) THE EASTERN DISTRICT OF  
) TENNESSEE  
)  
)

BEFORE: ROGERS, NALBANDIAN, and MURPHY, Circuit Judges:

PER CURIAM. Bryan Keith Goins appeals his 50-month sentence for being a felon in possession of a firearm. We **AFFIRM**.

Goins pled guilty to being a felon in possession of a firearm. *See* 18 U.S.C. § 922(g)(1). Before sentencing, Goins's presentence report set a base offense level of 24 based on two prior convictions for controlled substance offenses. The first was a Georgia conviction for possession with intent to distribute methamphetamine. *See* Ga. Code Ann. § 16-13-30(b). And the second was a Tennessee conviction for possession with intent to sell or deliver methamphetamine. *See* Tenn. Code Ann. § 39-17-417(a)(4). After a reduction for accepting responsibility, Goins's total offense level was 21. Combined with his criminal history category of V, this led to a Guidelines range of 70 to 87 months of imprisonment.

Goins objected to the presentence report. He argued that his two prior drug offenses do not qualify as controlled substance offenses under the Sentencing Guidelines. So, according to Goins, his base offense level should be 14, his total offense level 12, and his Guidelines range 27

Appendix A (A)

**FEDERAL DEFENDER SERVICES  
OF EASTERN TENNESSEE, INCORPORATED**

800 S. Gay Street, Suite 2400  
Knoxville, Tennessee 37929-9714

Elizabeth B. Ford  
Federal Community Defender

Telephone 865-637-7979  
Fax 865-637-7999

November 6, 2020

Mr. Bryan Keith Goins, No. 54011-074  
FCI Beckley  
PO Box 350  
Beaver, WV 25813

Re: Your appeal

Dear Mr. Goins:

Your case was reviewed by the Sixth Circuit earlier than December 3rd, and I am sorry to inform you that the court affirmed the district court's judgment. I have enclosed a copy of the opinion they issued. You have lost your appeal.

Your case did not present any issues the Supreme Court would be interested in evaluating, so I cannot file a petition for writ of certiorari (an appeal to the Supreme Court). However, you have one year from the date of this opinion to file a "2255" petition. You would file the 2255 petition yourself. Your law library would have the necessary forms.

Because there is nothing more I or my office can do to assist you at this time, I will be closing your file.

Sincerely,

FEDERAL DEFENDER SERVICES  
OF EASTERN TENNESSEE, INC.

By: /s/ Jennifer Niles Coffin  
Jennifer Niles Coffin  
Assistant Federal Defender

JNC/gc

Enclosure

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to 33 months of imprisonment. But the district court overruled Goins's objections at sentencing and adopted the presentence report. After considering the factors under 18 U.S.C. § 3553(a), the district court varied downward from the Guidelines and sentenced Goins to 50 months of imprisonment.

Goins appealed. He continues to argue that the district court was wrong to count his prior Georgia and Tennessee convictions as controlled substance offenses under the Sentencing Guidelines. And for support he relies on our recent decision in *United States v. Havis*, 927 F.3d 382, 387 (6th Cir. 2019) (en banc). *Havis* held that the definition of "controlled substance offense" in U.S.S.G. § 4B1.2(b) does not include attempt crimes. *Id.* at 386. Goins correctly notes that the Georgia and Tennessee criminal codes proscribe "deliver[ing]" controlled substances. Ga. Code Ann. § 16-13-30(b); Tenn. Code Ann. § 39-17-417(a). And he's right that delivery includes "attempted transfer." Ga. Code Ann. § 16-13-21(7); Tenn. Code Ann. § 39-17-402(6). But he is wrong that possession with intent to distribute or deliver a controlled substance under either Georgia or Tennessee law encompasses attempt crimes and cannot qualify as a controlled substance offense under the Sentencing Guidelines.

Indeed, as the government points out, we recently rejected Goins's argument. In *United States v. Garth*, 965 F.3d 493, 498 (6th Cir. 2020), we held that possession with intent to deliver a controlled substance under Tennessee law is categorically a controlled substance offense under the Sentencing Guidelines. And we noted that attempted transfer is not an attempt crime but is instead completed delivery. *Id.* at 497. So "possession with intent to deliver"—or, using the statute's definition of "deliver," possession with intent to attempt to transfer—"is a completed crime, not

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an attempted one that *Havis* puts beyond the guidelines' reach." *Id.* This reasoning applies with equal force to the Georgia offense, which uses nearly identical language.<sup>1</sup>

The district court correctly determined that Goins's prior Georgia and Tennessee convictions for possession with intent to distribute or deliver a controlled substance qualify as controlled substance offenses under the Sentencing Guidelines. Thus, we **AFFIRM** Goins's sentence.

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<sup>1</sup> Goins initially appeared to argue, albeit inartfully, that the Georgia statute is not divisible. Presumably, this matters because when employing the categorical approach, we look to the "least of the acts criminalized by the elements of [the] statute" that led to the conviction. *Havis*, 927 F.3d at 384 (citation omitted). And the Georgia statute criminalizes distribution and delivery, which, according to Goins, encompass attempt crimes. *See* Ga. Code Ann. §§ 16-13-30, 16-13-21 (7), (11). Goins recognizes, however, that under the modified categorical approach, he was convicted of "possession with intent to distribute," and he later admits he likely conceded that § 16-13-30(b) is divisible into multiple crimes. We therefore express no opinion on whether the Georgia statute is divisible and confine our analysis to whether "possession with intent to distribute" is a completed crime.

**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF TENNESSEE CHATTANOOGA DIVISION**

UNITED STATES OF AMERICA

**JUDGMENT IN A CRIMINAL CASE**

(For Offenses committed on or after November 1, 1987)

v.

Case Number: **1:18-CR-00132-TRM-CHS(1)**

BRYAN KEITH GOINS  
 USM#54011-074

**Myrlene R. Marsa**  
 Defendant's Attorney

**THE DEFENDANT:**

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

**ACCORDINGLY**, the court has adjudicated that the defendant is guilty of the following offense(s):

Title & Section and Nature of Offense	Date Violation Concluded	Count
18 U.S.C. § 922(g)(1), and 18 U.S.C. § 924(a)(2) Felon in Possession of a Firearm	05/15/2018	1

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984 and 18 U.S.C. 3553.

- ☐ The defendant has been found not guilty on count(s).
- ☐ All remaining count(s) as to this defendant are dismissed upon 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 the United States attorney of any material change in the defendant's economic circumstances.

**November 14, 2019**

Date of Imposition of Judgment

/s/ Travis R. McDonough

Signature of Judicial Officer

**Travis R. McDonough, United States District Judge**

Name & Title of Judicial Officer

**November 18, 2019**

Date

*Appendix (B)*

DEFENDANT: BRYAN KEITH GOINS  
CASE NUMBER: 1:18-CR-00132-TRM-CHS(1)

## IMPRISONMENT

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

**50 months as to Count One.**

- ☒ The court makes the following recommendations to the Bureau of Prisons: The court recommends that the defendant receive 500 hours of substance abuse treatment from the BOP Institution Residential Drug Abuse Treatment Program.
- ☒ 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:  
CASE NUMBER:

BRYAN KEITH GOINS  
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## SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **three (3) 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 sentencing 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: BRYAN KEITH GOINS  
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## 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. 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 mandatory, standard, and any special 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:  
CASE NUMBER:

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## SPECIAL CONDITIONS OF SUPERVISION

The defendant must participate in a program of testing and treatment for drug and/or alcohol abuse, as directed by the probation officer, until such time as the defendant is released from the program by the probation officer.

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

DEFENDANT: BRYAN KEITH GOINS  
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## CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments sheet of this judgment.

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

- ☐ The determination of restitution is deferred until *An Amended Judgment in a Criminal Case (AO245C)* 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 under the Schedule of Payments sheet of this judgment 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:
- |   |                               |  |
|---|-------------------------------|--|
| <input type="checkbox"/> the interest requirement is waived for the | <input type="checkbox"/> fine | <input type="checkbox"/> restitution                         |
| <input type="checkbox"/> the interest requirement for the           | <input type="checkbox"/> fine | <input type="checkbox"/> 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.

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## 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 payments 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 made to **U.S. District Court, 900 Georgia Avenue, Joel W. Solomon Federal Building, United States Courthouse, Chattanooga, TN, 37402**. Payments shall be in the form of a check or a money order, made payable to U.S. District Court, with a notation of the case number including defendant number.

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

- ☐ Joint and Several  
See above for Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.  
☐ Defendant shall receive credit on his restitution obligation for recovery from other defendants who contributed to the same loss that gave rise to defendant's restitution obligation.
- ☐ 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.