

APPENDIX

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Opinion of the Eleventh Circuit Court of Appeals, <i>United States v. Cornelius R. Caple</i> , 830 F. App'x 632 (11th Cir. Dec. 4, 2020)	A-1
Judgment In A Criminal Case, <i>United States v. Cornelius R. Caple</i> , No. 19-80177-Cr-Rosenberg (January 24, 2020)	A-6

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-10457
Non-Argument Calendar

D.C. Docket No. 9:19-cr-80177-RLR-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CORNELIUS R. CAPLE,
a.k.a. Murda,

Defendant-Appellant.

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

(December 4, 2020)

Before BRANCH, GRANT, and EDMONDSON, Circuit Judges.

PER CURIAM:

Cornelius Caple appeals his 132-month total sentence imposed after Caple pleaded guilty to four counts of possession with intent to distribute controlled substances, in violation of 21 U.S.C. § 841(a) and (b)(1)(C). No reversible error has been shown; we affirm.

Before sentencing, a probation officer prepared a Presentence Investigation Report (“PSI”). In pertinent part, the PSI designated Caple as a career offender under U.S.S.G. § 4B1.1(a). As predicate offenses for the career-offender enhancement, the PSI listed (1) Caple’s 2006 Florida conviction for possession of cocaine and heroin with intent to sell, in violation of Fla. Stat. § 893.13(a)(1), and (2) Caple’s 2018 conviction for aggravated assault with a firearm, in violation of Fla. Stat. § 784.021. Based on Caple’s total offense level of 29 and criminal history category of VI, Caple’s advisory guideline range was calculated as 151 to 188 months’ imprisonment.

Caple objected to the PSI’s career-offender designation. Caple, however, acknowledged that his arguments were inconsistent with this Court’s existing precedent. The sentencing court overruled Caple’s career-offender objection and imposed a below-guidelines sentence of 132 months.

On appeal, Caple reasserts his arguments challenging his designation as a career offender. We review de novo the district court's application of the sentencing guidelines, including the district court's determination that a defendant qualifies as a career offender. See United States v. Pridgeon, 853 F.3d 1192, 1198 n.1 (11th Cir. 2017). We review de novo whether a prior conviction qualifies as a "controlled substance offense" or a "crime of violence" under the guidelines. See United States v. Lange, 862 F.3d 1290, 1293 (11th Cir. 2017) (controlled substance offense); United States v. Dixon, 874 F.3d 678, 680 (11th Cir. 2017) (crime of violence).

Under the sentencing guidelines, a defendant is subject to an enhanced sentence as a career offender if (1) he was at least 18 years' old when he committed the instant offense; (2) the instant offense is a felony that is also either a crime of violence or a controlled substance offense; and (3) "the defendant has at least two prior felony convictions of either a crime of violence or a controlled substance offense." U.S.S.G. § 4B1.1(a). That Caple satisfied the first two criteria is undisputed. Caple challenges only whether his prior Florida felony convictions qualify as predicate offenses under the career-offender enhancement.

Caple first contends that his 2006 Florida drug conviction is not a "controlled substance offense" as defined by the guidelines. Caple says the term

“controlled substance offense” should be interpreted to include an implied mens rea element. Because Fla. Stat. § 893.13 includes no mens rea requirement about the illicit nature of the controlled substance, Caple says his 2006 Florida drug conviction cannot serve as a predicate offense under section 4B1.1(a).

Caple concedes his controlled-substance-offense argument is foreclosed by our binding precedent. See United States v. Smith, 775 F.3d 1262, 1266-68 (11th Cir. 2014) (concluding that a conviction under Fla. Stat. § 893.13 constitutes a “controlled substance offense” within the meaning of the guidelines: a predicate state offense need not include “an element of mens rea with respect to the illicit nature of the controlled substance.”); see also Pridgeon, 853 F.3d at 1197-98 (upholding the decision in Smith).

Caple next argues that his 2018 Florida conviction for aggravated assault with a firearm constitutes no “crime of violence” under the guidelines. Caple concedes that this argument is foreclosed by our binding decisions in Turner and in Golden. See United States v. Turner, 709 F.3d 1328, 1338 (11th Cir. 2013) (concluding that Florida aggravated assault qualifies categorically as a violent felony under the “elements” clause of the Armed Career Criminal Act (“ACCA”)); United States v. Golden, 854 F.3d 1256, 1257 (11th Cir. 2017) (reaffirming Turner and concluding that Florida aggravated assault constitutes a “crime of violence”

under the elements clause of U.S.S.G. § 4B1.2(a)(1): a clause identical to the ACCA's elements clause).

To the extent Caple contends that our decisions in Smith, Turner, and Golden were wrongfully decided, we must decline to address those arguments on appeal. Under our prior panel precedent rule, "a prior panel's holding is binding on all subsequent panels unless and until it is overruled or undermined to the point of abrogation by the Supreme Court or by this court sitting en banc." See United States v. Archer, 531 F.3d 1347, 1352 (11th Cir. 2008).

AFFIRMED.

UNITED STATES DISTRICT COURT
Southern District of Florida
West Palm Beach Division

UNITED STATES OF AMERICA
v.
CORNELIUS R CAPLE

JUDGMENT IN A CRIMINAL CASE

Case Number: **9:19-CR-80177-001**
USM Number: **20467-104**

Counsel For Defendant: **Caroline McCrae**
Counsel For The United States: **Jennifer Nucci**
Court Reporter: **Pauline Stipes**

The defendant pleaded guilty to count(s) 1-4 of the Indictment.

The defendant is adjudicated guilty of these offenses:

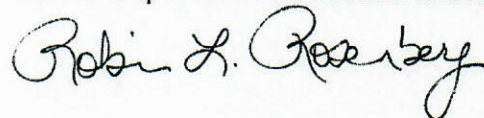
<u>TITLE & SECTION</u>	<u>NATURE OF OFFENSE</u>	<u>OFFENSE ENDED</u>	<u>COUNT</u>
21:841(a)(1), (b)(1)(C)	Possession with intent to distribute heroin and fentanyl	08/30/2019	1
21:841(a)(1), (b)(1)(C)	Possession with intent to distribute heroin	08/30/2019	2 and 3
21:841(a)(1), (b)(1)(C)	Possession with intent to distribute fentanyl	08/30/2019	4

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: **1/22/2020**



Robin L. Rosenberg
United States District Judge

Date: 1/24/2020

DEFENDANT: CORNELIUS R CAPLE

CASE NUMBER: 9:19-CR-80177-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **132 months as to each of counts one through four to run concurrently.**

The court makes the following recommendations to the Bureau of Prisons: that the defendant be permitted to participate in the RDAP program. The Court further recommends that the defendant be incarcerated in a facility in South Florida to facilitate family visitations.

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: CORNELIUS R CAPLE

CASE NUMBER: 9:19-CR-80177-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **3 years as to each of counts one through four to run concurrently.**

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: **CORNELIUS R CAPLE**

CASE NUMBER: **9:19-CR-80177-001**

SPECIAL CONDITIONS OF SUPERVISION

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.

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.

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: CORNELIUS R CAPLE

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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	\$400.00	\$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: CORNELIUS R CAPLE

CASE NUMBER: 9:19-CR-80177-001

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 \$400.00 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>TOTAL AMOUNT</u>	<u>JOINT AND SEVERAL AMOUNT</u>
<u>DEFENDANT AND CO-DEFENDANT NAMES</u> <u>(INCLUDING DEFENDANT NUMBER)</u>		

The Government shall file a preliminary order of forfeiture within 3 days.

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.