

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

AARON WALTON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent

PETITION FOR A WRIT OF CERTIORARI

APPENDIX

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This case was not selected for publication in West's Federal Reporter. See Fed. Rule of Appellate Procedure 32.1, generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S.Ct. of App. 8th Cir. Rule 32.1A. United States Court of Appeals, Eighth Circuit.

UNITED STATES of America Plaintiff-Appellee

v.

Aaron WALTON Defendant-Appellant

No. 20-1287

Submitted: January 11, 2021

Filed: March 4, 2021

Synopsis

Background: Defendant pled guilty in the United States District Court for the Western District of Arkansas, [Timothy L. Brooks, J.](#), to distribution of more than five grams of actual methamphetamine, and was sentenced as a career offender to 151 months' imprisonment. Defendant appealed.

Holdings: The Court of Appeals held that:

[1] prior state drug convictions were controlled substance offenses qualifying defendant as career offender for sentencing purposes, and

[2] district court acted within its discretion in imposing 151-month sentence, which was at bottom of guidelines range.

Affirmed.

Procedural Posture(s): Appellate Review; Sentencing or Penalty Phase Motion or Objection.

West Headnotes (2)

- [1] **Sentencing and Punishment** 🔑 Miscellaneous particular offenses

Prior felony convictions under Arkansas and Kansas law for possession of ecstasy and marijuana with purpose to deliver and for distribution or possession with intent to distribute marijuana were controlled substance offenses qualifying defendant as career offender for purposes of sentencing him for distribution of more than five grams of actual methamphetamine, even though prior offenses involved delivery or distribution of controlled substances, both of which were defined to include attempt. Comprehensive Drug Abuse Prevention and Control Act of 1970 § 401, 21 U.S.C.A. §§ 841(a)(1), 841(b)(1)(B); U.S.S.G. § 4B1.2(b); Ark. Code Ann. §§ 5-64-424, 5-64-436; Kan. Stat. Ann. § 21-5705.

- [2] **Sentencing and Punishment** 🔑 Drugs and narcotics

District court acted within its discretion in sentencing defendant as a career offender to 151 months' imprisonment, which was bottom of advisory guidelines sentencing range, for distribution of more than five grams of actual methamphetamine, where court gave due consideration to mitigating factors of defendant's youth, his troubled upbringing, his lack of parental guidance, and his substance addiction and weighed those factors against defendant's lack of respect for the law, his likelihood to recidivate, and need for sentence to protect the public and deter defendant from committing further crimes. Comprehensive Drug Abuse Prevention and Control Act of 1970 § 401, 21 U.S.C.A. §§ 841(a)(1), 841(b)(1)(B); U.S.S.G. § 4B1.1.

Appeal from United States District Court for the Western District of Arkansas - Fayetteville

Attorneys and Law Firms

Kimberly Nicole Harris, Assistant U.S. Attorney, U.S. Attorney's Office, Western District of Arkansas, Fort Smith, AR, for Plaintiff-Appellee

Jose Alfaro, Assistant Federal Public Defender, Anna Marie Williams, Assistant Federal Public Defender, Federal Public Defender's Office, Fayetteville, AR, for Defendant-Appellant

Aaron Walton, Pro Se

Before COLLOTON, WOLLMAN, and SHEPHERD, Circuit Judges.

[Unpublished]

PER CURIAM.

Aaron Walton pleaded guilty to distribution of more than five grams of actual *47 methamphetamine in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(B). The district court¹ determined that Walton qualified as a career offender under § 4B1.1 of the U.S. Sentencing Guidelines and sentenced him to 151 months' imprisonment, the bottom of the advisory guidelines sentencing range. We affirm.

[1] Walton contends that he does not qualify as a career offender because he does not have at least two prior felony convictions that meet § 4B1.2(b)'s definition of "controlled substance offense." Walton's prior felony convictions involved the "delivery" or "distribution" of controlled substances, both of which are defined to include attempt.² Walton maintains that the text of § 4B1.2(b) excludes such inchoate offenses. He recognizes that Application Note 1 to § 4B1.2 defines "controlled substance offense" to include "the offenses of aiding and abetting, conspiring, and attempting to commit such offenses," but argues that the Sentencing Commission exceeded its authority by expanding the definition in the commentary to include offenses not listed in the guideline itself.

In United States v. Mendoza-Figueroa, our en banc court concluded that Application Note 1 was "a reasonable interpretation of the career offender guidelines that [was]

well within the Sentencing Commission's statutory authority."

65 F.3d 691, 694 (8th Cir. 1995) (en banc). Accordingly, we "must enforce Note 1 in accordance with its terms." Id. at 693; see United States v. Merritt, 934 F.3d 809, 811 (8th Cir. 2019) (concluding that Mendoza-Figueroa foreclosed the argument that the defendant's drug conspiracy conviction did not satisfy § 4B1.2(b)'s definition of "controlled substance offense"); United States v. Bailey, 677 F.3d 816, 818 (8th Cir. 2012) (per curiam) (same). We are bound by Mendoza-Figueroa, and thus Walton's argument is foreclosed.³ Accord United States v. Lange, 862 F.3d 1290, 1294–96 (11th Cir. 2017); United States v. Chavez, 660 F.3d 1215, 1226–28 (10th Cir. 2011); United States v. Piper, 35 F.3d 611, 617 (1st Cir. 1994).

[2] Walton next argues that the totality of the circumstances supported a downward variance from the guidelines sentencing range. Walton contends that the district court failed to give adequate weight to the mitigating factors of Walton's youth, his troubled upbringing, his lack of parental guidance, and his substance addiction. The record reveals that the district court gave due consideration to those factors, however, weighing them against Walton's lack of respect for the law, his likelihood to recidivate, and the need for the sentence to protect the public *48 and deter Walton from committing further crimes. We conclude that the district court did not abuse its discretion in imposing a sentence at the bottom of the advisory guidelines range. See Gall v. United States, 552 U.S. 38, 51, 128 S.Ct. 586, 169 L.Ed.2d 445 (2007) (appellate court reviews a defendant's sentence under an abuse-of-discretion standard and may apply a presumption of reasonableness to a sentence within the advisory guidelines range); see also United States v. King, 898 F.3d 797, 810 (8th Cir. 2018) ("The district court's decision not to weigh mitigating factors as heavily as [the defendant] would have preferred does not justify reversal." (cleaned up)). The sentence is not substantively unreasonable.

The judgment is affirmed.

All Citations

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Footnotes

- 1 The Honorable Timothy L. Brooks, United States District Judge for the Western District of Arkansas.
- 2 Walton has been convicted of possession of marijuana with purpose to deliver in violation of [Ark. Code Ann. § 5-64-436](#) and possession of ecstasy and marijuana with purpose to deliver in violation of [Ark. Code Ann. §§ 5-64-424 and 5-64-436](#). *See id.* § 5-64-101(6) (defining “deliver” to include “attempted transfer”). He also has been convicted of distribution or possession with intent to distribute marijuana in violation of [Kan. Stat. Ann. § 21-5705](#). *See id.* § 21-5701(d) (defining “distribute” to include “attempted transfer”).
- 3 We have recognized that the D.C. Circuit and the Sixth Circuit have reached a contrary conclusion, *see* [United States v. Jefferson](#), 975 F.3d 700, 708 (8th Cir. 2020), *petition for cert. filed* (U.S. Dec. 31, 2020) (No. 20-6745), and that the Sentencing Commission has published a proposed amendment that would resolve the disagreement among the circuits, *see* [United States v. McWilliams](#), 807 F. App'x 589, 590 (8th Cir.) (per curiam), *cert. denied*, — U.S. —, 141 S. Ct. 572, 208 L.Ed.2d 186 (2020).

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