

## APPENDIX

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[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 19-14928  
Non-Argument Calendar

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D.C. Docket No. 9:19-cr-80125-RKA-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MARTAVIS HOLLIS SAMUEL,  
a.k.a. Tay Tay,

Defendant-Appellant.

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

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(September 8, 2020)

Before NEWSOM, GRANT, and LUCK, Circuit Judges.

PER CURIAM:

Martavis Samuel appeals his 84-month, below-guideline sentence for possession with intent to distribute cocaine, in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(C). He argues that the district court improperly classified him as a career offender under the Sentencing Guidelines because § 893.13 of the Florida Statutes lacks a mens rea requirement regarding the illicit nature of the controlled substance and, therefore, that his prior convictions under § 893.13 do not qualify as “controlled substance offense[s].” See U.S. Sentencing Guidelines Manual §§ 4B1.1(a), 4B1.2(b). Samuel acknowledges that we held in *United States v. Smith* that a conviction under § 893.13 qualifies as a controlled-substance offense and, therefore, a career-offender predicate. See 775 F.3d 1262, 1268 (11th Cir. 2014). He contends that *Smith* was in error given the Supreme Court’s holdings in *Elonis v. United States*, 135 S. Ct. 2001 (2015), and *McFadden v. United States*, 576 U.S. 186 (2015). Samuel also asserts that, while *Shular v. United States*, 140 S. Ct. 779 (2020) approved of part of *Smith*, it did not address *Smith*’s conclusion regarding mens rea and controlled-substance offenses.

## I

We review de novo the district court’s decision to classify a defendant as a career offender. *United States v. Pridgeon*, 853 F.3d 1192, 1198 n.1 (11th Cir. 2017). A prior panel’s holding is binding precedent on all subsequent panels unless it is overruled by this Court sitting en banc or the Supreme Court. *United*



*States v. Jordan*, 635 F.3d 1181, 1189 (11th Cir. 2011). “To constitute an overruling for the purposes of this prior panel precedent rule, the Supreme Court decision must be clearly on point.” *United States v. Kaley*, 579 F.3d 1246, 1255 (11th Cir. 2009) (quotation omitted). Additionally, the Supreme Court decision must “actually abrogate or directly conflict with, as opposed to merely weaken, the holding of the prior panel.” *Id.*

A defendant is considered a “career offender” under the Sentencing Guidelines if (1) “the defendant was at least eighteen years old at the time” of the current offense of conviction, (2) the current offense of conviction is “a felony that is 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. Sentencing Guidelines Manual § 4B1.1(a). A “controlled substance offense” is a federal or state-law offense, punishable by more than one year of imprisonment, “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).

In *Smith*, we held that a prior conviction under § 893.13 of the Florida Statutes is a “controlled substance offense” and that the definition of “controlled substance offense” does not require “that a predicate state offense include[] an

element of *mens rea* with respect to the illicit nature of the controlled substance.” *Smith*, 775 F.3d at 1268; *see also Pridgeon*, 853 F.3d at 1200 (explaining that *Smith* “squarely held that a § 893.13 offense qualifies as a ‘controlled substance offense’ despite the fact that the Florida legislature elided the element of *mens rea* as to the illicit nature of the controlled substance”).

The year after we decided *Smith*, the Supreme Court decided *Elonis* and *McFadden*. *Elonis* held that 18 U.S.C. § 875(c), which proscribes certain threats, “requires that the defendant be aware of the threatening nature of the communication.” 135 S. Ct. at 2004; *see also id.* at 2011–12. In *McFadden*, the Court held that the government must “establish that the defendant knew he was dealing with a controlled substance” to convict him in prosecutions involving a controlled-substance analogue, such as bath salts. 576 U.S. at 188–89 (quotation omitted).

## II

Here, the district court did not err in classifying Samuel as a career offender because he was over 18 years old at the time of the current offense, the current offense is a controlled-substance offense, and he has more than two prior convictions for controlled-substance offenses. *See* U.S. Sentencing Guidelines Manual § 4B1.1(a). Samuel’s argument that his prior convictions under § 893.13 were not controlled-substance offenses under the Guidelines because the state law



lacked a mens rea element is foreclosed by our decision in *Smith*. See *Smith*, 775 F.3d at 1268. And we are bound by our holding in *Smith* under the prior-panel-precedent rule. See *Jordan*, 635 F.3d at 1189.

Samuel's assertion that *Shular* did not address whether the career-offender guideline requires a predicate offense to have an element of mens rea regarding the illicit nature of the controlled substance is irrelevant—*Shular* would have had to abrogate or directly conflict with *Smith* for us to not apply the prior-panel-precedent rule. See *Kaley*, 579 F.3d at 1255. To the extent that Samuel argues that the prior-panel-precedent rule should not apply because of *Elonis* and *McFadden*, he fails to show how either case directly conflicts with *Smith*. See *Kaley*, 579 F.3d at 1255. Neither decision addressed the Sentencing Guidelines' definition of a "controlled substance offense," but instead dealt with the mental state required for the government to obtain a conviction under certain federal statutes.

For these reasons, the district court did not err in applying the career-offender enhancement based on its determination that Samuel's prior § 893.13 convictions were controlled-substance offenses.

**AFFIRMED.**

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

**UNITED STATES OF AMERICA**  
**v.**  
**MARTAVIS HOLLIS SAMUEL**

**JUDGMENT IN A CRIMINAL CASE**

Case Number: **9:19-80125-CR-ALTMAN-001**  
USM Number: **20163-104**

Counsel For Defendant: **M. Caroline McCrae, AFPD**  
Counsel For The United States: **Jennifer C. Nucci, AUSA**  
Court Reporter: **Francine Salopek**

**The defendant pleaded guilty to count one of the Information.**

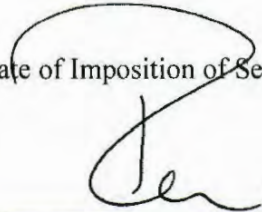
The defendant is adjudicated guilty of these offenses:

<u>TITLE &amp; SECTION</u>	<u>NATURE OF OFFENSE</u>	<u>OFFENSE ENDED</u>	<u>COUNT</u>
21 U.S.C. § 841(a)(1),(b)(1)(C)	Possession with intent to distribute cocaine	05/14/2019	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.

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: **11/25/2019**

  
\_\_\_\_\_  
**Roy K. Altman**  
**United States District Judge**

Date: 11/25/2019



DEFENDANT: MARTAVIS HOLLIS SAMUEL

CASE NUMBER: 9:19-80125-CR-ALTMAN-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 **84 months**.

**The court makes the following recommendations to the Bureau of Prisons: That the defendant be designated to a facility in South Florida for visitation with newborn son and participate in the 500 hour RDAP program administered by the Bureau of Prisons.**

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

**RETURN**

I have executed this judgment as follows:

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Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

\_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: **MARTAVIS HOLLIS SAMUEL**

CASE NUMBER: **9:19-80125-CR-ALTMAN-001**

**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: **MARTAVIS HOLLIS SAMUEL**  
CASE NUMBER: **9:19-80125-CR-ALTMAN-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: MARTAVIS HOLLIS SAMUEL

CASE NUMBER: 9:19-80125-CR-ALTMAN-001

**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: **MARTAVIS HOLLIS SAMUEL**CASE NUMBER: **9:19-80125-CR-ALTMAN-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 \$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 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 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.