

APPENDIX A

(Judgment and Opinion of the United States Court of Appeals for the
Fifth Circuit)



Neutral

As of: June 14, 2021 9:34 PM Z

United States v. Leal

United States Court of Appeals for the Fifth Circuit

March 24, 2021, Filed

No. 20-10790 Summary Calendar

Reporter

840 Fed. Appx. 806 *; 2021 U.S. App. LEXIS 8567 **; 2021 WL 1133853

UNITED STATES OF AMERICA, Plaintiff-Appellee, versus JONATHAN AARON LEAL, Defendant-Appellant.

Notice: PLEASE REFER TO *FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1* GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

Subsequent History: Appeal dismissed by, Motion granted by [*United States v. Adair*, 2021 U.S. App. LEXIS 13393, 2021 WL 1805831 \(5th Cir. Tex., May 5, 2021\)](#)

Prior History: **[**1]** Appeal from the United States District Court for the Northern District of Texas. USDC No. 4:19-CR-238-1.

Counsel: For United States of America, Plaintiff - Appellee: Jonathan Glen Bradshaw, Assistant United States Attorney, Leigha Amy Simonton, Assistant U.S. Attorney, U.S. Attorney's Office, Dallas, TX.

For Jonathan Aaron Leal, Defendant - Appellant: William Reynolds Biggs, Fort Worth, TX.

Judges: Before CLEMENT, HIGGINSON, and ENGELHARDT, Circuit Judges.

Opinion

[*806] PER CURIAM:*

Pursuant to a written plea agreement, Jonathan Aaron Leal pleaded guilty to conspiracy to possess with intent to distribute 50 grams or more of a mixture or substance containing methamphetamine. The district court sentenced Leal below the guidelines range to 270 months of imprisonment. He now appeals his sentence.

While the Government asserts that Leal's appeal is barred by the appeal waiver in his plea agreement, Leal argues that he is entitled to appeal because the district court imposed a sentence above the statutory maximum punishment and imposed an illegal sentence. "This court reviews de novo whether an appeal waiver bars an appeal." [*United States v. Keele*, 755 F.3d 752, 754 \(5th Cir. 2014\)](#).

* Pursuant to **5TH CIRCUIT RULE 47.5**, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in **5TH CIRCUIT RULE 47.5.4**.

Leal's sentence did not exceed the 40-year statutory maximum, and there is no language in the appeal waiver **[**2]** that would suggest that "a sentence exceeding the statutory maximum punishment" should have a definition beyond its ordinary and natural meaning. See [*United States v. Cortez*, 413 F.3d 502, 503 \(5th Cir. 2005\)](#); see [21 U.S.C. § 841\(a\)\(1\), \(b\)\(1\)\(B\)](#). Moreover, we decline to consider an appeal waiver exception for challenging an illegal sentence. See [*United States v. Barnes*, 953 F.3d 383, 388-89 & n.11 \(5th Cir.\), cert. denied, 141 S. Ct. 438, 208 L. Ed. 2d 134 \(2020\)](#); [*Keele*, 755 F.3d at 756-57](#).

Under the plain language of the appeal waiver provision, Leal waived the right to appeal his sentence. He does not contend that the appeal waiver was unknowing or involuntary, and his claim of sentencing error does not fall within any exceptions to the appeal waiver. Thus, Leal's appeal waiver clearly bars his remaining claims. See [*United States v. Bond*, 414 F.3d 542, 544 \(5th Cir. 2005\)](#). The appeal is DISMISSED.

End of Document

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

March 24, 2021

Lyle W. Cayce
Clerk

No. 20-10790
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JONATHAN AARON LEAL,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:19-CR-238-1

Before CLEMENT, HIGGINSON, and ENGELHARDT, *Circuit Judges*.

J U D G M E N T

This cause was considered on the record on appeal and the briefs on file.

IT IS ORDERED and ADJUDGED that the appeal is DISMISSED.

APPENDIX B

(Judgment and Sentence of the United States District Court for the
Northern District of Texas)

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF TEXAS
Fort Worth Division

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v. Case Number: 4:19-CR-00238-P(01)
U.S. Marshal's No.: 59110-177
JONATHAN AARON LEAL Laura Montes, Assistant U.S. Attorney
William Biggs, Attorney for the Defendant

On November 20, 2019 the defendant, JONATHAN AARON LEAL, entered a plea of guilty as to Count One of the Indictment filed on August 14, 2020. Accordingly, the defendant is adjudged guilty of such Count, which involves the following offense:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21 U.S.C. § 846	Conspiracy to Possess with Intent to Distribute a Controlled Substance	8/01/2019	One

The defendant is sentenced as provided in pages 2 through 4 of this judgment. The sentence is imposed pursuant to Title 18, United States Code § 3553(a), taking the guidelines issued by the United States Sentencing Commission pursuant to Title 28, United States Code § 994(a)(1), as advisory only.

The defendant shall pay immediately a special assessment of \$100.00 as to Count One of the Indictment filed on August 14, 2020.

The defendant shall notify the United States Attorney for this district within thirty 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.

Sentence imposed July 22, 2020.



MARK T. PITTMAN
U.S. DISTRICT JUDGE

Signed July 22, 2020.

Judgment in a Criminal Case
Defendant: JONATHAN AARON LEAL
Case Number: 4:19-CR-00238-P(1)

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IMPRISONMENT

The defendant, JONATHAN AARON LEAL, is hereby committed to the custody of the Federal Bureau of Prisons (BOP) to be imprisoned for a term of **TWO HUNDRED SEVENTY (270) months** as to Count One of the Indictment filed on August 14, 2020. This sentence shall run consecutively with any future sentence which may be imposed in Case Nos. F1725472 and F1725473, in the 204th Judicial District Court, Dallas County, Texas, which are unrelated to the instant offense. This sentence shall run concurrently with any future sentence in the parole revocation, which may be imposed in Case No. F1256232, in the 282nd Judicial District Court, Dallas County, Texas.

The Court recommends to the BOP that the defendant be housed at an FCI facility within the D/FW area, if possible. The Court further recommends that the defendant be able to participate in the Residential Drug Treatment Program, if eligible.

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

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of **FIVE (5) years** as to Count One of the Indictment filed on August 14, 2020.

While on supervised release, in compliance with the standard conditions of supervision adopted by the United States Sentencing Commission, the defendant shall:

- 1) The defendant shall report to the probation office in the federal judicial district where he or she is authorized to reside within 72 hours of release from imprisonment, unless the probation officer instructs the defendant to report to a different probation office or within a different time frame;
- 2) After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when to report to the probation officer, and the defendant shall report to the probation officer as instructed;
- 3) The defendant shall not knowingly leave the federal judicial district where he or she is authorized to reside without first getting permission from the court or the probation officer;
- 4) The defendant shall answer truthfully the questions asked by the probation officer;
- 5) The defendant shall live at a place approved by the probation officer. If the defendant plans to change where he or she lives or anything about his or her living arrangements (such as the people the defendant lives with), the defendant shall 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, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change;
- 6) The defendant shall allow the probation officer to visit the defendant at any time at his or her home or elsewhere, and the defendant shall permit the probation officer to take any items prohibited by

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Defendant: JONATHAN AARON LEAL
Case Number: 4:19-CR-00238-P(1)

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the conditions of the defendant's supervision that he or she observed in plain view;

- 7) The defendant shall work full time (at least 30 hours per week) at a lawful type of employment, unless the probation excuses the defendant from doing so. If the defendant does not have full-time employment, he or she shall try to find full-time employment, unless the probation officer excuses the defendant from doing so. If the defendant plans to change where the defendant works or anything about his or her employment (such as the position or the job responsibilities), the defendant shall 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, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change;
- 8) The defendant shall not communicate or interact with someone the defendant knows is engaged in criminal activity. If the defendant knows someone has been convicted of a felony, the defendant shall not knowingly communicate or interact with that person without first getting the permission of the probation officer;
- 9) If the defendant is arrested or questioned by a law enforcement officer, the defendant shall notify the probation officer within 72 hours;
- 10) The defendant shall 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) The defendant shall not act or make an agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court;
- 12) If the probation officer determines that the defendant poses a risk to another person (including an organization), the probation officer may require the defendant to notify the person about the risk and the defendant shall comply with that instruction. The probation officer may contact the person and confirm that the defendant has notified the person about the risk; and,
- 13) The defendant shall follow the instructions of the probation officer related to the conditions of supervision.

In addition the defendant shall:

not commit another federal, state, or local crime;

not possess illegal controlled substances;

not possess a firearm, destructive device, or other dangerous weapon;

cooperate in the collection of DNA as directed by the U.S. probation officer;

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report in person to the U.S. Probation Office in the district to which the defendant is released within 72 hours of release from the custody of the Federal Bureau of Prisons;

from any unlawful use of a controlled substance. The defendant 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; and,

participate in a program approved by the probation officer for treatment of narcotic or drug or alcohol dependency that will include testing for the detection of substance use, abstaining from the use of alcohol and all other intoxicants during and after completion of treatment, contributing to the costs of services rendered (copayment) at the rate of at least \$25 per month.

FINE/RESTITUTION

The Court does not order a fine or costs of incarceration because the defendant does not have the financial resources or future earning capacity to pay a fine or costs of incarceration.

Restitution is not ordered because there is no victim other than society at large.

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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 Marshal