

**Appendix to  
Petition for *Writ of Certiorari***

**UNPUBLISHED****UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

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**No. 20-4407**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MILLARD JEROME STRICKLAND, JR.,

Defendant - Appellant.

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Appeal from the United States District Court for the District of South Carolina, at Anderson. Donald C. Coggins, Jr., District Judge. (8:18-cr-00855-DCC-1)

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Submitted: March 29, 2021

Decided: April 8, 2021

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Before GREGORY, Chief Judge, and NIEMEYER and MOTZ, Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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Howard W. Anderson, III, LAW OFFICE OF HOWARD W. ANDERSON III, LLC, Pendleton, South Carolina, for Appellant. Peter M. McCoy, Jr., United States Attorney, Robert F. Daley, Jr., Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Columbia, South Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Millard Jerome Strickland, Jr., pled guilty, without a plea agreement, to being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g), and possession with intent to distribute 50 grams or more of methamphetamine, in violation of 21 U.S.C. § 841(a)(1). Based on a total offense level of 31 and a criminal history category of VI, Strickland faced an advisory Sentencing Guidelines range of 188 to 235 months' imprisonment. The district court granted Strickland's motion for a variance and sentenced him to a below-Guidelines term of 168 months' imprisonment. Strickland noted a timely appeal, challenging the reasonableness of his sentence.

We review a defendant's sentence "under a deferential abuse-of-discretion standard." *Gall v. United States*, 552 U.S. 38, 41 (2007). Under the *Gall* standard, a sentence is reviewed for both procedural and substantive reasonableness. *Id.* at 51. In determining procedural reasonableness, we consider whether the district court properly calculated the defendant's advisory Guidelines range, gave the parties an opportunity to argue for an appropriate sentence, considered the 18 U.S.C. § 3553(a) factors, and sufficiently explained the selected sentence. *Id.* at 49-51. Procedural errors include failing to adequately explain the sentence. *United States v. Provance*, 944 F.3d 213, 218 (4th Cir. 2019).\*

Strickland first argues that the district court failed to consider his arguments for a lower sentence based on his increased risk of serious illness from COVID-19 due to his

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\* Strickland does not challenge the substantive reasonableness of his sentence.

obesity and race (Black). At sentencing, a district court must “set forth enough to satisfy the appellate court that it has considered the parties’ arguments and has a reasoned basis for exercising its own legal decisionmaking authority.” *United States v. Lozano*, 962 F.3d 773, 782 (4th Cir. 2020) (alterations and internal quotation marks omitted). “It is sometimes possible to discern a sentencing court’s rationale when an explanation is lacking.” *United States v. Lewis*, 958 F.3d 240, 243 (4th Cir. 2020) (alteration and internal quotation marks omitted). Moreover, where a court has fully addressed the defendant’s “central thesis” in mitigation, it need not “address separately each supporting data point marshalled on its behalf.” *United States v. Nance*, 957 F.3d 204, 214 (4th Cir. 2020). Our review of the record discloses that the district court appropriately took into account Strickland’s arguments for a variance, including the pandemic, in arriving at the below-Guidelines sentence imposed.

Next, Strickland claims that the district court improperly relied on facts surrounding a prior assault conviction. We find that the court appropriately considered the conviction, discussing it in the context of his entire criminal history—a history that placed him in criminal history category VI even without application of the career offender enhancement.

Finally, Strickland argues that his state drug convictions should not have been counted as “controlled substance offenses” for purposes of the career offender enhancement because the state definition of marijuana is broader than the federal definition. However, Strickland concedes—correctly—that this argument is foreclosed by circuit precedent. *See United States v. Mills*, 485 F.3d 219, 222 (4th Cir. 2007) (holding that a state-law conviction involving a substance controlled under state, but not federal,

law still qualifies as a “controlled substance offense” within the meaning of the Sentencing Guidelines).

Therefore, we affirm Strickland’s sentence. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

*AFFIRMED*

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF SOUTH CAROLINA  
SPARTANBURG DIVISION

\* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \*  
UNITED STATES OF AMERICA, \* CRIMINAL NO. 8:18-CR-0855  
Plaintiff, \* AUGUST 6, 2020 1:21 P.M.  
\* SENTENCING HEARING  
\* PAGES 1 - 41  
vs. \*  
\*  
MILLARD JEROME STRICKLAND, \* Before:  
JR. \* HONORABLE DONALD C. COGGINS, JR.  
\* UNITED STATES DISTRICT JUDGE  
Defendant. \* DISTRICT OF SOUTH CAROLINA  
\* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \*

APPEARANCES:

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Proceedings recorded by mechanical stenography, transcript  
produced by computer.

Michele Becker, RMR, CRR, RPR  
US District Court  
District of South Carolina

1 relevant one having anything to do with the calculation  
2 overall might have been number 31, and that's been removed.

3                   **THE COURT:** All right. I will note for the record  
4 that paragraph 31 on page 11 of the report does reflect that  
5 no criminal history point has been assessed for that, so I  
6 believe that that change has been made. With that change I  
7 believe that the report is appropriate and proper, and so I  
8 would overrule that objection.

9                   **MR. ANDERSON:** Thank you, Judge. In paragraph or  
10 objection 3, which carries through for several other of the  
11 paragraphs of the PSR about what is a controlled substance  
12 offense, Judge, I know that the probation office has found  
13 some Fourth Circuit authority that seems inconsistent with  
14 some of the authority from the other circuits. But for the  
15 purposes of the record, I would just say, Your Honor, that I  
16 think that the law should be that unless it is established to  
17 be a -- what would be a violation of the Federal Controlled  
18 Substances Act, that it shouldn't count for a guidelines  
19 purposes as some of the other Circuits have said. But it does  
20 appear that there's language in Mills that would seem to say  
21 that that's an argument for another day and another place,  
22 Judge.

23                   **THE COURT:** I agree, Mr. Anderson. I think since we  
24 are in the Fourth Circuit, that's the controlling law. And I  
25 will note that not only is Mills controlling I believe with

1 respect to this objection, but there was also a denial of cert  
2 on that case by the U.S. Supreme Court. So until you or I get  
3 a promotion, I think we are pretty much required to follow the  
4 law as it is, and I'll overrule that objection.

5 **MR. ANDERSON:** Thank you, Judge. Judge, for  
6 paragraph 4, I'll largely just stand on my objection as  
7 written. Essentially, I take issue with how the guideline is  
8 phrased. The first part before the parenthetical as i.e. the  
9 defendant's arrested for the first offense prior to committing  
10 the second offense, is somewhat intentioned with the use of  
11 the words, "intervening arrest". And so here we have a very  
12 old, I guess, conduct that results in an arrest. And so,  
13 Judge, I'll just stand on the papers and say that I don't  
14 think that it qualifies under the same day rule. I certainly  
15 understand what the government is going to argue in response.  
16 Thank you, Judge.

17 **THE COURT:** Mr. Cauthen.

18 **MR. CAUTHEN:** Your Honor, I would rely on the  
19 probation officer's response on page 3. These are separated  
20 by an intervening arrest and therefore are counted separately.  
21 Thank you.

22 **THE COURT:** They are. And unfortunately this does  
23 come up from time to time where we have multiple arrests. And  
24 because of court schedules, various offenses are handled at  
25 various times. But in this case I think it's pretty clear