

APPENDIX

- A. Sixth Circuit opinion filed January 6, 2022. 1a
- B. Order denying Petition for Rehearing filed February 28, 2022. 5a

NOT RECOMMENDED FOR PUBLICATION

No. 21-5206

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,)	[FILED Jan 6, 2022]
)	[DEBORAH S. HUNT, Clerk]
Plaintiff-Appellee,)	
v.)	ON APPEAL FROM THE
)	UNITED STATES DISTRICT
)	COURT FOR THE EASTERN
)	OF KENTUCKY
TRAMONE HORNE,)	
)	
Defendant-Appellant.)	

O R D E R

Before: MOORE, GILMAN, and KETHLEDGE, Circuit Judges.

Tramone Horne appeals a district court judgment sentencing him to 270 months' imprisonment for his conviction upon a plea of guilty to one county of conspiracy to distribute 500 grams or more of methamphetamine. The parties have waived oral argument, and this panel unanimously agrees that oral argument is not needed. See Fed. R. App. P. 34(a).

Pursuant to a written plea agreement, Horne pleaded guilty to the above offense. The presentence report set the base offense level at 32 and applied a two-level enhancement under USSG § 2D1.1(b)(1) for possession of a firearm , a two-level enhancement under USSG § 2D1.1(b)(2) for use of

violence, and a three-level enhancement under USSG § 3B1.1(b) for Horne's leadership role in the conspiracy. A three-level reduction for acceptance of responsibility under USSG § 3E1.1 resulted in a total offense level of 36. That total offense level and Horne's criminal history category of IV yielded a guidelines imprisonment range of 262 to 327 months. Horne objected to the enhancements. Nothing that the applicable guidelines range would have been 121 to 151 months without enhancements, Horne argued that "given the dramatic impact the enhancements have upon his sentence under the sentencing guidelines the Court should consider the facts supporting the proposed enhancements with greater scrutiny than the typical standard, a preponderance of the evidence." The district court overruled Horne's objection and found that the government had met its burden of proof on all the enhancements. The court sentenced Horne to a within-guidelines term of 270 months' imprisonment, to be followed by five years of supervised release.

On appeal, Horne argues that Fifth and Sixth Amendments require that, at sentencing, the government be held to a higher burden of proof before application of a guidelines enhancement based on judge-found facts that significantly increases the sentencing range. He contends that, without the guidelines enhancements, his 270-month sentence is substantively unreasonable. Horne recognizes that circuit precedent on this issue forecloses

his request for relief but seeks to preserve the issue for further review.

We review de novo Horne's constitutional challenge to his sentence. *United States v. Graham*, 622 F.3d 445, 452 (6th Cir. 2010).

As Horne acknowledges, we have rejected his argument for a higher standard of proof at sentencing, "holding that 'due process does not require sentencing courts to employ a standard higher than preponderance-of-the-evidence, even in cases dealing with large enhancements.'" *United States v. Jones*, 829 F.3d 476, 477 (6th Cir. 2016) (per curiam) (quoting *United States v. Brika*, 487 F.3d 450, 462 (6th Cir. 2007)). To the extent Horne argues that the application of enhancements based on judge-found facts violated his Sixth Amendment right to a jury trial, we have also rejected that argument. The Sixth Amendment does not bar the use of judicial fact-finding by a preponderance of the evidence under an advisory guidelines scheme, provided that the sentence does not exceed the statutory maximum. *United States v. White*, 551 F.3d 381, 384 (6th Cir. 2008) (en banc). And as we made clear in *Jones*, the Supreme Court's ruling in *Alleyne v. United States*, 570 U.S. 99, 103 (2013), that any fact that increases the mandatory minimum sentence must be submitted to a jury, "did not disturb a district court's authority to impose a sentence within the statutory range" or "address the standard of proof for judicial factfinding at sentencing." 829 F.3d at 477. "In the absence

of an inconsistent decision for the Supreme Court, this panel will not overrule the court's precedent upholding the application of the preponderance standard at sentencing." Id.

Accordingly, we AFFIRM Horne's sentence.

ENTERED BY ORDER OF THE COURT.

/s/ Deborah S. Hunt
Deborah S. Hunt, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

[FILED Feb 28, 2022]

UNITED STATES OF AMERICA,)	[DEBORAH S. HUNT, Clerk]
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Plaintiff-Appellee,)	
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v.)	
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TRAMONE HORNE,)	
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Defendant-Appellant.)	

Before: MOORE, GILMAN, and KETHLEDGE, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT.

/s/ Deborah S. Hunt
Deborah S. Hunt, Clerk