

A P P E N D I X      A

1.    Unpublished Opinion Dated 03/31/2022.

**UNPUBLISHED**UNITED STATES COURT OF APPEALS  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

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No. 21-4276

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ANDRE MARCUS BUCHANAN,

Defendant - Appellant.

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Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. Catherine C. Eagles, District Judge. (1:20-cr-00274-CCE-1)

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Submitted: March 29, 2022

Decided: March 31, 2022

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Before HARRIS, QUATTLEBAUM, and HEYTENS, Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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**ON BRIEF:** Louis C. Allen, Federal Public Defender, Brittany S. Speas, Assistant Federal Public Defender, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Winston-Salem, North Carolina, for Appellant. Sandra J. Hairston, Acting United States Attorney, Lindsey A. Freeman, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Greensboro, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

## PER CURIAM:

Andre Marcus Buchanan pled guilty, pursuant to a written plea agreement, to possession with the intent to distribute cocaine base, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C). The district court sentenced Buchanan as a career offender to 151 months' imprisonment, at the low end of his advisory Sentencing Guidelines range. On appeal, Buchanan argues that his sentence is substantively unreasonable. We affirm.

We review a criminal sentence, "whether inside, just outside, or significantly outside the Guidelines range," for reasonableness "under a deferential abuse-of-discretion standard." *Gall v. United States*, 552 U.S. 38, 41 (2007); see *United States v. Blue*, 877 F.3d 513, 517 (4th Cir. 2017). This review requires consideration of both the procedural and substantive reasonableness of the sentence. *Blue*, 877 F.3d at 517. We have confirmed that Buchanan's sentence is procedurally reasonable. See *United States v. Provance*, 944 F.3d 213, 218 (4th Cir. 2019).

In assessing substantive reasonableness, we consider "the totality of the circumstances." *Gall*, 552 U.S. at 51. A sentence must be "sufficient, but not greater than necessary," to satisfy the statutory purposes of sentencing. 18 U.S.C. § 3553(a). "Any sentence that is within or below a properly calculated Guidelines range is presumptively [substantively] reasonable. Such a presumption can only be rebutted by showing that the sentence is unreasonable when measured against the 18 U.S.C. § 3553(a) factors." *United States v. Louthian*, 756 F.3d 295, 306 (4th Cir. 2014) (citation omitted).

Buchanan argues that his sentence is substantively unreasonable in light of the age of his predicate career offender convictions, the small amount of cocaine base involved in

this offense, and several mitigating factors, including his difficult childhood, mental health issues, and desire to support his children. However, the district court considered these factors and determined that they justified a sentence at the low end of the Guidelines range rather than a downward variance. The court carefully balanced Buchanan's personal history and characteristics with the seriousness of the offense, the need for deterrence, and the need to protect the public. Our review convinces us that the district court carefully evaluated the § 3553(a) factors and gave due consideration to Buchanan's mitigating arguments when imposing a sentence at the low end of the Guidelines range. Thus, Buchanan's sentence is substantively reasonable, and Buchanan has failed to rebut the presumption of reasonableness accorded his sentence.

Accordingly, we affirm the district court's judgment. 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*

A P P E N D I X        B

1.    Copy of North Carolina Statue

- (2) Possesses, in close proximity to the hemp extract, a certificate of analysis that indicates the hemp extract's ingredients, including its percentages of tetrahydrocannabinol and cannabidiol by weight.
  - (3) Is a caregiver, as defined in G.S. 90-113.101.
- (c) Notwithstanding any other provision of this Chapter, an individual who possesses hemp extract lawfully under this section may administer hemp extract to another person under the individual's care and is not subject to the penalties described in this Chapter for administering the hemp extract to the person if the individual is the person's caregiver, as defined in G.S. 90-113.101. (2014-53, s. 3; 2015-154, s. 1.)

**§ 90-95. Violations; penalties.**

- (a) Except as authorized by this Article, it is unlawful for any person:
- (1) To manufacture, sell or deliver, or possess with intent to manufacture, sell or deliver, a controlled substance;
  - (2) To create, sell or deliver, or possess with intent to sell or deliver, a counterfeit controlled substance;
  - (3) To possess a controlled substance.
- (b) Except as provided in subsections (h) and (i) of this section, any person who violates G.S. 90-95(a)(1) with respect to:
- (1) A controlled substance classified in Schedule I or II shall be punished as a Class H felon, except as follows: (i) the sale of a controlled substance classified in Schedule I or II shall be punished as a Class G felony, and (ii) the manufacture of methamphetamine shall be punished as provided by subdivision (1a) of this subsection.
  - (1a) The manufacture of methamphetamine shall be punished as a Class C felony unless the offense was one of the following: packaging or repackaging methamphetamine, or labeling or relabeling the methamphetamine container. The offense of packaging or repackaging methamphetamine, or labeling or relabeling the methamphetamine container shall be punished as a Class H felony.
  - (2) A controlled substance classified in Schedule III, IV, V, or VI shall be punished as a Class I felon, except that the sale of a controlled substance classified in Schedule III, IV, V, or VI shall be punished as a Class H felon. The transfer of less than 5 grams of marijuana or less than 2.5 grams of a synthetic cannabinoid or any mixture containing such substance for no remuneration shall not constitute a delivery in violation of G.S. 90-95(a)(1).
- (c) Any person who violates G.S. 90-95(a)(2) shall be punished as a Class I felon.
- (d) Except as provided in subsections (h) and (i) of this section, any person who violates G.S. 90-95(a)(3) with respect to:
- (1) A controlled substance classified in Schedule I shall be punished as a Class I felon. However, if the controlled substance is MDPV and the quantity of the MDPV is 1 gram or less, the violation shall be punishable as a Class 1 misdemeanor.
  - (2) A controlled substance classified in Schedule II, III, or IV shall be guilty of a Class 1 misdemeanor. If the controlled substance exceeds four tablets, capsules, or other dosage units or equivalent quantity of hydromorphone or if the quantity of the controlled substance, or combination of the controlled substances, exceeds one hundred tablets, capsules or other dosage units, or equivalent quantity, the violation shall be punishable as a Class I felony. If the controlled substance is methamphetamine, amphetamine, phencyclidine, or cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or coca leaves and

- a. A controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed such substance and which thereby falsely purports, or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser; or
  - b. Any substance which is by any means intentionally represented as a controlled substance. It is evidence that the substance has been intentionally misrepresented as a controlled substance if the following factors are established:
    - 1. The substance was packaged or delivered in a manner normally used for the illegal delivery of controlled substances.
    - 2. Money or other valuable property has been exchanged or requested for the substance, and the amount of that consideration was substantially in excess of the reasonable value of the substance.
    - 3. The physical appearance of the tablets, capsules or other finished product containing the substance is substantially identical to a specified controlled substance.
- (7) "Deliver" or "delivery" means the actual constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.
- (8) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.
- (9) "Dispenser" means a practitioner who dispenses.
- (10) "Distribute" means to deliver other than by administering or dispensing a controlled substance.
- (11) "Distributor" means a person who distributes.
- (12) "Drug" means a. substances recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; b. substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; c. substances (other than food) intended to affect the structure or any function of the body of man or other animals; and d. substances intended for use as a component of any article specified in a, b, or c of this subdivision; but does not include devices or their components, parts, or accessories.
- (13) "Drug dependent person" means a person who is using a controlled substance and who is in a state of psychic or physical dependence, or both, arising from use of that controlled substance on a continuous basis. Drug dependence is characterized by behavioral and other responses which include strong compulsion to take the substance on a continuous basis in order to experience its psychic effects, or to avoid the discomfort of its absence.
- (14) "Immediate precursor" means a substance which the Commission has found to be and by regulation designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit such manufacture.