FILED
United States Court of Appeals
Tenth Circuit

February 7, 2022

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

THOMAS RANDALL AINSWORTH,

Petitioner - Appellant,

v.

ROBERT POWELL, Warden,

Respondent - Appellee.

No. 21-4038
(D.C. No. 2:17-CV-01205-RJS)
(D. Utah)

ORDER DENYING CERTIFICATE OF APPEALABILITY*

Before **McHUGH**, **MORITZ**, and **ROSSMAN**, Circuit Judges.

Thomas Randall Ainsworth seeks a certificate of appealability (COA) to appeal the judgment denying his 28 U.S.C. § 2254 habeas corpus petition and an order dismissing his post-judgment motion as an unauthorized second or successive habeas petition. We deny his request for a COA and dismiss this matter. We also deny his request for authorization to file a second or successive § 2254 habeas petition.

I. BACKGROUND

This case concerns two criminal offense classifications under Utah law for negligent operation of a motor vehicle causing serious bodily injury or death. The

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* This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

"APPENDIX A"

offense could be a second-degree felony under the "measurable substance" statute if the person had "any measurable amount of a [Schedule I or Schedule II] controlled substance" in their body. Utah Code Ann. § 58-37-8(2)(g)(i); *see also id.* § 58-37-8(2)(h)(i) (second-degree felony if involving Schedule I or II controlled substance). Or the offense could be a third-degree felony under the "DUI" statutory scheme if the person was "under the influence of alcohol, any drug, or the combined influence of alcohol and any drug to a degree that renders the person incapable of safely operating a vehicle." *Id.* § 41-6a-502(1)(b); *see also id.* §§ 41-6a-503(2)(a) (third-degree felony if causing serious bodily injury), 76-5-207(2)(a)(ii) (same if causing automobile homicide).

Ainsworth was charged in Utah state court with, among other things, three second-degree felony counts under the measurable-substance statute stemming from a motor vehicle accident that occurred when he drove across a median and hit another car. Two adults in the other car were seriously injured and their eighteen-month-old son was killed. Ainsworth told police he lost control of his car when he reached for his cell phone on the floorboard of the car. A blood test showed Ainsworth had 0.2 mg/L of methamphetamine in his system. Methamphetamine is a Schedule II substance. *See id.* § 58-37-4(2)(b)(iii)(B).

Ainsworth moved to amend the information to charge him with third-degree felonies under the DUI statutory scheme on the ground that the measurable-substance statute violated the Utah Constitution's Uniform Operation of Laws Clause and the due

process clauses of the Utah and United States Constitutions.[1] He argued the measurable-substance statute imposed a harsher penalty for what he viewed as less-culpable conduct—the DUI offense requires proof the driver was impaired but the measurable-substance offense does not. The trial court denied the motion. Ainsworth then pled guilty to the three measurable-substance offenses but reserved his right to appeal, among other things, the denial of his motion to amend the information. He was sentenced to three consecutive prison sentences of three to fifteen years.

Ainsworth was successful on direct appeal to the Utah Court of Appeals, which agreed with his argument that the measurable-substance statute violated the Uniform Operation of Laws Clause. Accordingly, the Court of Appeals vacated Ainsworth's convictions and remanded for entry of third-degree felony convictions and for resentencing. It did not reach Ainsworth's due process argument.

The State then obtained review in the Utah Supreme Court (USC), which reversed. *See State v. Ainsworth*, 423 P.3d 1229, 1231 (Utah 2017). The USC concluded that the measurable-substance "provisions do not define a 'lesser crime'" than the DUI provisions, and that "offenders under [the measurable-substance] provisions are not 'less culpable.'" *Id.* at 1233. The USC explained: "Schedule I and II drugs are those viewed

[1] The Uniform Operation of Laws Clause states: "All laws of a general nature shall have uniform operation." Utah Const. art. 1, § 24. The Fourteenth Amendment's Due Process Clause prohibits states from depriving "any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. The Utah Constitution's Due Process Clause provides that "[n]o person shall be deprived of life, liberty or property without due process of law." Utah Const. art. 1, § 7.

as having a greater potential for abuse and a greater risk of dependence than other controlled substances." *Id.* at 1234. And "[t]hat concern can certainly sustain a rational decision by the legislature to punish the use of these substances more harshly than the use of other substances." *Id.* The USC added that "the legislature apparently . . . considered the use of a Schedule I or II drug a sufficient concern that it deemed the mere presence of such a substance adequate to trigger a second degree felony—even without proof of impairment. And that is its prerogative." *Id.* at 1235. The USC stated it was "in no position to second-guess that decision by concluding that we think the element of impairment a more significant aggravator than the presence of a particular drug." *Id.* Accordingly, the USC concluded that there was no violation of the Uniform Operation of Laws Clause. The USC considered Ainsworth's argument that the measurable-substance statute violated his due process rights "a mere restatement of the uniform operation challenge" and rejected it for the same reasons. *Id.* at 1233 n.3.[2]

Ainsworth then pursued § 2254 relief pro se, arguing the measurable-substance statute's second-degree felony designation, as compared with the third-degree felony DUI designation, violated his substantive due process rights because it is not rationally related to a legitimate state interest. The district court denied his habeas petition because Ainsworth had "not met his burden of finding on-point United States Supreme Court precedent and arguing that the Utah Supreme Court unreasonably applied it." R., Vol. II

[2] A substantive due process analysis also involves a rational-basis test, at least where fundamental liberty interests are not at stake. *See Washington v. Glucksberg*, 521 U.S. 702, 728 (1997).

at 39. The district court itself searched for any such precedent and found none. *See id.* The court also denied a COA.

Ainsworth moved for relief under Federal Rule of Civil Procedure 60(b), raising multiple issues. The district court determined that the motion was an unauthorized second or successive § 2254 petition and denied it after determining it was not in the interests of justice to transfer the successive petition to this court. The district court again denied a COA.

Ainsworth has filed a pro se combined COA application and opening brief (COA Application) seeking review of both rulings.

II. COA STANDARD

To appeal the denial of a § 2254 petition or the dismissal[3] of an unauthorized second or successive § 2254 petition, a petitioner must first obtain a COA. *See* 28 U.S.C. § 2253(c)(1)(A); *cf. United States v. Harper*, 545 F.3d 1230, 1233 (10th Cir. 2008) (holding that the "dismissal of an unauthorized § 2255 motion is a final order in a proceeding under [§] 2255 such that § 2253 requires [a] petitioner to obtain a COA before he or she may appeal" (internal quotation marks omitted)). To obtain a COA on claims the district court denied on the merits, a petitioner must make "a substantial showing of the denial of a constitutional right," § 2253(c)(2), such "that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong," *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). For claims the district court

[3] Although the district court said it was denying the post-judgment motion, we construe its ruling as a dismissal.

denied on a procedural ground without reaching the merits, the petitioner must show "that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and . . . whether the district court was correct in its procedural ruling." *Id.*

Our consideration of Ainsworth's request for a COA must incorporate the "deferential treatment of state court decisions" mandated by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). *Dockins v. Hines*, 374 F.3d 935, 938 (10th Cir. 2004). We therefore "look to the District Court's application of AEDPA to [Ainsworth's] constitutional claims and ask whether that resolution was debatable amongst jurists of reason." *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003).

We liberally construe Ainsworth's pro se filings, but we may not act as his advocate. *See Yang v. Archuleta*, 525 F.3d 925, 927 n.1 (10th Cir. 2008).

III. DISCUSSION

A. Denial of § 2254 petition

Ainsworth first argues that in denying his § 2254 petition, the district court did not afford his pro se filings a liberal construction when it said that because Ainsworth "did not acknowledge the standard of review, he did not even begin to meet his burden to show that the Utah Supreme Court applied the wrong United States Supreme Court precedent and/or unreasonably applied that precedent." R., Vol. II at 37. Ainsworth contends he was not required to cite any legal authorities in the district court because this court's instructions to pro se litigants seeking a COA state that such litigants are encouraged, but not required, to cite legal authorities.

This argument fails for several reasons. First, the district court did not deny the petition because of any failure to cite cases regarding the standard of review. Rather, the court observed only that Ainsworth had not properly framed his argument by identifying any United States Supreme Court precedent the USC might have misapplied. The district court made this clear later in its decision when it stated it was "den[ying] habeas-corpus relief" because Ainsworth had "not met his burden of finding on-point United States Supreme Court precedent and arguing that the Utah Supreme Court unreasonably applied it." *Id.* at 39. Second, our instructions to pro se litigants seeking a COA do not apply in the district court, and Ainsworth has not suggested the district court instructs pro se habeas petitioners that they need not cite any legal authorities. Third, even if pro se habeas petitioners are not required to cite legal authority in the district court, the district court in this case reported that it had "searched for on-point United States Supreme Court precedent to assess whether [the] Utah Supreme Court unreasonably applied the rational-basis analysis" and had "found nothing on-point." *Id.* Hence, reasonable jurists would not debate whether the district court afforded Ainsworth's pleadings the liberal construction to which they were entitled.

Ainsworth also argues that the USC did not rule on the merits of his substantive due process claim when it declined to treat the claim separately but instead considered it "a mere restatement of the uniform operation challenge." *Ainsworth*, 423 P.3d at 1233 n.3. He therefore posits that § 2254(d)'s deferential review does not apply. We conclude reasonable jurists would not debate the district court's interpretation of the USC's statement to mean the USC rejected any due process claim for the same reasons it

rejected his uniform-operation challenge and therefore was a merits adjudication. The USC expressly stated it was doing so when it explained that although Ainsworth "vaguely asserts a due process basis for his [rational basis] challenge[,] . . . he does not identify a distinct basis in the Due Process Clause for his constitutional challenge." *Id.* The USC determined Ainsworth had "just recast[] his uniform operation arguments in due process terms," arguing "that the measurable substance classification falls short under the Due Process Clause because there is no rational basis for punishing the (purportedly lesser) measurable substance offense more harshly than the DUI offense." *Id.* For these reasons, the USC elected not to "treat the due process claim *separately* in [its] opinion," but instead "treat[ed] it as Ainsworth does—as a mere restatement of the uniform operation challenge—and *reject[ed] it* for [the] reasons set forth" in its discussion of the uniform-operation challenge. *Id.* (emphasis added). Clearly, the USC considered and rejected the due process argument on the merits. And contrary to Ainsworth's argument, the district court did the same.

Ainsworth next advances a semantic argument that does not withstand examination. In describing the DUI and measurable-substance offenses, the district court characterized them as "analogous." R., Vol. II at 33. Ainsworth contends the court's recognition of the two offenses as "analogous" contradicts its conclusion that the USC's rational-basis analysis is constitutional. We disagree. The district court did not rule that the USC's rational-basis analysis was constitutional. It held that Ainsworth failed to show that the USC's analysis was *un*constitutional. Furthermore, "analogous" does not mean "identical"; it means "similar or comparable to something else either in general or

in some specific detail." *Merriam-Webster.com Dictionary*, "analogous," https://www.merriam-webster.com/dictionary/analogous (last visited Jan. 26, 2021). The district court's use of "analogous" does not contradict its denial of Ainsworth's § 2254 petition.

Ainsworth also takes issue with the USC's merits analysis. He argues that because Schedule I and II drugs are necessarily included in the DUI scheme's reference to "any drug," Utah Code Ann. § 41-6a-502(1)(b), "[t]here is no rational basis, or legitimate governmental objective, for punishing individuals who have 'any measurable amount' of a controlled substance in their body more harshly than individuals who have an incapacitating amount of a controlled substance in their bodies," COA Appl. at 21 (emphasis omitted).

This argument misses the § 2254(d)(1) target. In the absence of "a fundamental liberty interest protected by the Due Process Clause," the Constitution requires only that a law "be rationally related to legitimate government interests." *Washington v. Glucksberg*, 521 U.S. 702, 728 (1997).[4] But the substantive-due-process question in federal habeas is not, as Ainsworth appears to argue, whether the Utah legislature had a rational basis for increasing the penalty for drivers who negligently cause serious bodily harm or death with a measurable amount of a Schedule I or II substance in their bodies,

[4] In the district court, Ainsworth argued only that his due process rights were violated because the measurable-substance statute "is not rationally related to a legitimate state interest." R., Vol. I at 196; *see also id.* at 207-10 (additional rational-relationship argument). He repeats that argument here and does not suggest any form of heightened scrutiny applies.

regardless of impairment. The question is whether the USC's decision that the legislature had a rational basis for doing so "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States," § 2254(d)(1).[5]

As recounted above, the USC explained why the distinction drawn between DUI and measurable-substance offenses has a rational basis. The first step in determining whether the USC's determination was contrary to or an unreasonable application of United States Supreme Court precedent is to identify the relevant Supreme Court precedent. *See House v. Hatch*, 527 F.3d 1010, 1018 (10th Cir. 2008) ("The absence of clearly established federal law is dispositive under § 2254(d)(1)."). Ainsworth has never identified, nor are we aware of, a Supreme Court case indicating that the USC's decision is contrary to clearly established federal law, which occurs when (1) "the state court applies a rule that contradicts the governing law set forth in Supreme Court cases" or (2) "the state court confronts a set of facts that are materially indistinguishable from a decision of the Supreme Court and nevertheless arrives at a result different from that precedent." *Id.* (brackets and internal quotation marks omitted).

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[5] The alternative basis for granting habeas relief under § 2254(d), that a state court's decision "was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding," § 2254(d)(2), applies to matters of "historical fact," not "mixed question[s] of law and fact" or "legal determination[s]," *Gilson v. Sirmons*, 520 F.3d 1196, 1233-34 (10th Cir. 2008). Section 2254(d)(2) is inapplicable here because the underlying issue in this case—whether the differing penalties established by the DUI and measurable-substance provisions violate substantive due process—is a constitutional question, not solely a matter of historical fact.

Nor has Ainsworth identified any Supreme Court precedent that the USC might have unreasonably applied. "A state court decision involves an unreasonable application of clearly established federal law when it identifies the correct governing legal rule from Supreme Court cases, but unreasonably applies it to the facts." *Id.* Arguably, the only "governing legal rule" here is the rational-basis test, but it is "one of the most deferential formulations of the standard for reviewing legislation," *United States v. Comstock*, 560 U.S. 126, 151 (2010) (internal quotation marks omitted) (Kennedy, J., concurring in judgment). To satisfy that test, a "'law need not be in every respect logically consistent with its aims to be constitutional. It is enough that there is an evil at hand for correction, and that it might be thought that the particular legislative measure was a rational way to correct it.'" *Id.* (quoting *Williamson v. Lee Optical of Okla., Inc.*, 348 U.S. 483, 487-88 (1955)).

When encountering a general rule such as the rational-basis test, courts have "more leeway . . . in reaching outcomes in case-by-case determinations." *Harrington v. Richter*, 562 U.S. 86, 101 (2011) (internal quotation marks omitted). Thus, "[a]n application of Supreme Court law may be incorrect without being unreasonable." *Stouffer v. Trammell*, 738 F.3d 1205, 1221 (10th Cir. 2013). Importantly, a decision is objectively unreasonable "only if all fairminded jurists would agree that the state court got it wrong." *Id.* (internal quotation marks omitted); *see Williams v. Taylor*, 529 U.S. 362, 409-10 (2000) (determining whether there has been an unreasonable application of clearly established federal law is an objective inquiry).

Having examined the USC's reasoning and taking into account the leeway the general rational-basis test affords courts, we conclude that not all fairminded jurists would agree that the USC "got it wrong" when it concluded that "Schedule I and II drugs are those viewed as having a greater potential for abuse and a greater risk of dependence than other controlled substances," *Ainsworth*, 423 P.3d at 1234, and that the Utah "legislature apparently . . . considered the use of a Schedule I or II drug a sufficient concern that it deemed the mere presence of such a substance adequate to trigger a second degree felony—even without proof of impairment," *id.* at 1235. The fact that negligently operating a motor vehicle and causing serious bodily injury or death with an impairing amount of a Schedule I or II controlled substance in the body could be a third-degree felony under the DUI scheme's reference to "any drug" is not an inconsistency that renders irrational the decision to increase the penalty to a second-degree felony based on any measurable amount of such a substance. Fairminded jurists could not disagree with the USC's conclusion that it was the Utah legislature's prerogative to view the presence of a Schedule I or II controlled substance as a more significant aggravator than impairment.

For the foregoing reasons, we conclude that reasonable jurists would not debate the correctness of the district court's denial of Ainsworth's § 2254 petition. Accordingly, we deny a COA to appeal the judgment denying the petition.

B. Post-judgment motion and request for authorization under § 2244(b)

The remainder of Ainsworth's COA Application either concerns the district court's denial of his post-judgment motion or reiterates substantive habeas claims he

asserted in that motion. The court determined that the motion, nominally filed under Federal Rule of Civil Procedure 60(b), was an unauthorized second or successive § 2254 petition. *See* 28 U.S.C. § 2244(b)(2)-(3) (setting out requirements and authorization procedures for filing second or successive § 2254 petitions).

In his COA Application, Ainsworth effectively concedes his "Motion For Relief" (i.e., his post-judgment motion) was a successive habeas petition, because he asks us to "grant him authorization to proceed with his Motion For Relief ('new issues')." COA Appl. at 41. And our own review confirms that his post-judgment motion was not a true Rule 60(b) motion. Ainsworth's motion did not raise any "defect in the integrity of the federal habeas proceedings," which is not subject to the authorization requirement for second or successive § 2254 petitions. *Gonzalez v. Crosby*, 545 U.S. 524, 532 (2005). He instead advanced "new ground[s] for relief" or "attack[ed] the federal court's previous resolution of a claim on the merits," which do require prior authorization. *Id.* (emphasis omitted). Specifically, Ainsworth asserted federal constitutional claims regarding his conviction and sentence under the Equal Protection, Due Process, and Privileges and Immunities Clauses. He asked the district court to apply the rule of lenity. He argued that the blood draw that detected methamphetamine in his system violated his Fourth Amendment rights. He asserted that his guilty plea was not knowing and voluntary. And he contended that his counsel was ineffective.[6] Because these claims presented new

[6] He also alleged he had inadequate access to a law library and sought relief under the Utah Constitution. The district court informed Ainsworth that his access claim must be asserted in a separate action under 42 U.S.C. § 1983 and that federal habeas relief is available only for errors of state law.

grounds for habeas relief or took issue with the district court's previous merits resolution, reasonable jurists would not debate the correctness of the district court's denial of the post-judgment motion as an unauthorized second or successive § 2254 petition.

Ainsworth also argues that the district court erred in refusing to transfer the motion to this court for authorization. *See In re Cline*, 531 F.3d 1249, 1252 (10th Cir. 2008) ("When a second or successive § 2254 . . . claim is filed in the district court without the required authorization from this court, the district court may transfer the matter to this court if it determines it is in the interest of justice to do so . . . ."). But he does not address the district court's reason for refusing to do so, which was that all of the claims advanced in his motion were subject to anticipatory procedural bar.[7] He argues only that when the district court characterized the DUI and measurable-substance provisions as "analogous," it "opened the door" for him to raise new issues because the court's statement constitutes "newly discovered evidence" for Rule 60(b)(2) purposes. COA Appl. at 28-29. But the statement is not "evidence," so this argument is meritless, even if construed as an attempt to satisfy § 2244(b)(2)(B), which allows the filing of a second or successive § 2254 claim based on a previously undiscoverable "factual predicate." And to the extent this argument is an attempt to satisfy § 2244(b)(2)(A), which allows the filing of a second or successive § 2254 claim if a petitioner "shows that the claim relies on a new rule of constitutional law, made retroactive to cases on

[7] "Anticipatory procedural bar occurs when the federal courts apply procedural bar to an unexhausted claim that would be procedurally barred under state law if the petitioner returned to state court to exhaust it." *Anderson v. Sirmons*, 476 F.3d 1131, 1139 n.7 (10th Cir. 2007) (internal quotation marks omitted).

collateral review by the Supreme Court, that was previously unavailable," the argument necessarily fails, because Ainsworth relies on the district court's statement in this case, not on any Supreme Court precedent.

We conclude that Ainsworth has not met his burden to show reasonable jurists could debate the correctness of the district court's refusal to transfer the motion to this court. We need not elaborate on the specific grounds the district court gave for doing so. *See Reedy v. Werholtz*, 660 F.3d 1270, 1275 (10th Cir. 2011) (explaining that when an "opening brief does not challenge the [district] court's reasoning on [a] point[,] . . . [w]e . . . do not address the matter"). But we note that a more fundamental reason dooms Ainsworth's challenge to the district court's refusal to transfer the motion and his request in this court that we grant authorization—his wholesale failure to address the § 2244(b)(2) requirements for authorization of a successive petition. Even if Ainsworth had attempted to address those requirements, he would have failed, because none of the claims in his motion rely on a new rule of constitutional law that the Supreme Court has made retroactively applicable on appeal, § 2244(b)(2)(A), or on any factual predicate he could not have previously discovered "through the exercise of due diligence," § 2244(b)(2)(B)(i). Accordingly, reasonable jurists would not debate whether the interests of justice required the district court to transfer the post-judgment motion to this court for authorization.

For the foregoing reasons, we deny a COA to appeal the dismissal of the post-judgment motion. We also deny Ainsworth's express request that we authorize

filing of his post-judgment motion as a second or successive § 2254 petition because he fails to meet the standards for authorization in § 2244(b)(2).

IV. CONCLUSION

We deny a COA and dismiss this matter. We also deny authorization to file the post-judgment motion as a second or successive § 2254 petition. The denial of authorization "shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari." 28 U.S.C. § 2244(b)(3)(E). We grant Ainsworth's IFP motion but remind him that he is required to pay the full amount of the appellate filing and docketing fees immediately. *See* 28 U.S.C. § 1915(a)(1) (excusing only "*pre*payment of fees" (emphasis added)).

Entered for the Court

Nancy L. Moritz
Circuit Judge

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

THOMAS RANDALL AINSWORTH, Petitioner, v. WARDEN BENZON, Respondent.	MEMORANDUM DECISION & ORDER DENYING HABEAS-CORPUS PETITION Case No. 2:17-CV-1205-RJS Chief District Judge Robert J. Shelby

In this federal habeas-corpus case, inmate Thomas Randall Ainsworth attacks his state conviction. 28 U.S.C.S. § 2254 (2020). Having carefully considered all relevant documents and law, the Court concludes that Petitioner has not surmounted the federal habeas standard of review. The petition is therefore denied.

BACKGROUND

> On Christmas Eve 2011, [Petitioner] drove his car over a median and crashed head-on into another vehicle. An 18-month-old boy was killed and both of his parents were seriously injured in the accident.
>
> Ainsworth had methamphetamine in his system at the time of the accident. He was charged with three counts of causing substantial bodily injury or death while negligently driving a car with a measurable amount of a Schedule II controlled substance in his body. The charged offenses were second degree felonies under Utah Code section 58-37-8(2).

State v. Ainsworth, 2017 UT 60, ¶¶ 5-6.

Utah Code fixes two sets of violations for motorists who, having ingested alcohol or drugs, cause death or serious bodily injury to another. Under DUI sections, it is a third-degree felony to kill or seriously injure someone when under the influence of alcohol or any drug "to a degree that renders the person incapable of safely operating a vehicle." Utah Code Ann. § 41-6a-

"APPENDIX B"

502(1)(b) (2021); *id.* § 41-6a-503(2) (designating as third-degree felony infliction of serious bodily injury when operating vehicle in negligent manner and violating § 502); *id.* § 76-5-207(2) (designating as third-degree felony causation of death of another by operating motor vehicle in negligent manner and under influence of alcohol or any drug rendering person incapable of safely operating vehicle). Meanwhile, the "measurable substance" sections establish an analogous offense--i.e., it is a second-degree felony to cause death or serious bodily injury with any "measurable" amount of a Schedule I or Schedule II drug in the driver's body. *Id.* § 41-6a-517 (defining elements of measurable-substance offense); *id.* § 58-37-8(2)(h) (designating as second-degree felony operation of vehicle in negligent manner while knowingly and intentionally having measurable amount of Schedule I or Schedule II substance in person's body and killing or seriously injuring another).

In the Utah Supreme Court, Petitioner unsuccessfully challenged these sections' constitutionality. *Ainsworth*, 2017 UT 60. He had been convicted of three second-degree felonies under measurable-substance sections, but argued constitutional grounds existed for reducing each charge to a third-degree felony under DUI sections. *Id.* ¶ 2. The supreme court upheld the constitutionality of the legislature's classification of Petitioner's offenses as second-degree felonies under the measurable-substance statute. *Id.* ¶ 4.

PETITIONER'S ASSERTED GROUND FOR FEDERAL-HABEAS RELIEF

Petitioner urges that the second-degree-felony designation in the measurable-amount statute--as it differs from the third-degree-felony designation in the DUI statute--violates his substantive due-process rights because it is not rationally related to a legitimate state interest. (ECF No. 12, at 5.) This is a purely legal issue.

MERITS ANALYSIS

A. Standard of Review

The standard of review to be applied in federal habeas cases is found in § 2254, under which this habeas petition is filed, stating in relevant part:

> An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim . . . resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States . . . .

28 U.S.C.S. § 2254(d) (2021).

This "highly deferential standard," *Cullen v. Pinholster*, 563 U.S. 170, 181 (2011) (quotation marks and citation omitted); *see Littlejohn v. Trammell*, 704 F.3d 817, 824 (10th Cir. 2013), is "'difficult to meet,' because [the statute's] purpose is to ensure that federal habeas relief functions as a 'guard against extreme malfunctions in the state criminal justice systems,' and not as a means of error correction." *Greene v. Fisher*, 565 U.S. 34, 38 (2011) (quoting *Harrington v. Richter*, 562 U.S. 86, 102-103 (2011) (citation omitted)). This Court is not to determine whether the supreme court's decisions were correct or whether this Court may have reached a different outcome. *See Lockyer v. Andrade*, 538 U.S. 63, 75-76 (2003). "The role of federal habeas proceedings, while important in assuring that constitutional rights are observed, is secondary and limited." *Barefoot v. Estelle*, 463 U.S. 880, 887 (1983). And, "[t]he petitioner carries the burden of proof." *Cullen*, 563 U.S. at 181.

Under *Carey v. Musladin*, 549 U.S. 70 (2006), the first step is determining whether clearly established federal law exists relevant to Petitioner's claims. *House v. Hatch*, 527 F.3d 1010, 1017-18 (10th Cir. 2008); *see also Littlejohn*, 704 F.3d at 825. Only after answering yes to

that "threshold question" may the Court go on to "ask whether the state court decision is either contrary to or an unreasonable application of such law." *Id.* at 1018.

> [C]learly established [federal] law consists of Supreme Court holdings in cases where the facts are at least closely-related or similar to the case *sub judice*. Although the legal rule at issue need not have had its genesis in the closely-related or similar factual context, the Supreme Court must have expressly extended the legal rule to that context.

Id. at 1016.

Further, "in ascertaining the contours of clearly established law, we must look to the '*holdings* as opposed to the dicta, of [the Supreme] Court's decisions as of the time of the relevant state-court decision.'" *Littlejohn*, 704 F.3d at 825 (quoting *Yarborough v. Alvarado*, 541 U.S. 652, 660-61 (2004) (emphasis added) (citations omitted)); *see also Fairchild v. Trammel*, 784 F.3d 702, 710 (10th Cir. 2015) (stating "Supreme Court holdings 'must be construed narrowly and consist only of something akin to on-point holdings'" (quoting *House*, 527 F.3d at 1015)). And, in deciding whether relevant clearly established federal law exists, this Court is not restricted by the state court's analysis. *See Bell v. Cone*, 543 U.S. 447, 455 (2005) ("[F]ederal courts are not free to presume that a state court did not comply with constitutional dictates on the basis of nothing more than a lack of citation."); *Mitchell v. Esparza*, 540 U.S. 12, 16 (2003) ("[A] state court need not even be aware of our precedents, 'so long as neither the reasoning nor the result of the state-court decision contradicts them.'") (citation omitted).

If that threshold is overcome, this Court may grant habeas relief only when the state court has "unreasonably applied the governing legal principle to the facts of the petitioner's case." *Walker v. Gibson*, 228 F.3d 1217, 1225 (10th Cir. 2000) (citing *Williams v. Taylor*, 529 U.S. 362, 412-13 (2000)). This deferential standard does not let a federal habeas court issue a writ merely because it determines on its own that the state-court decision erroneously applied

clearly established federal law. *See id.* "'Rather that application must also be unreasonable.'" *Id.* (quoting *Williams*, 529 U.S. at 411). Indeed, "'an *unreasonable* application of federal law is different from an *incorrect* application of federal law.'" *Harrington*, 562 U.S. at 100 (emphasis in original) (quoting *Williams*, 529 U.S. at 410).

This highly demanding standard means to pose a sizable obstacle to habeas petitioners. *Id.* at 786. Section 2254(d) "stops short of imposing a complete bar on federal court relitigation of claims already rejected in state proceedings." *Id.* It maintains power to issue the writ when no possibility exists that "fairminded jurists could disagree that the state court's decision conflicts with th[e Supreme] Court's precedents. It goes no farther." *Id.* To prevail in federal court, "a state prisoner must show that the state court's ruling on the claim being presented in federal court was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." *Id.* at 786-87. It is against this backdrop that the Court now applies the standard of review here.

B. Due Process Argument

Though Petitioner bears the burden of showing the Utah Supreme Court's analysis does not pass the federal standard of review, the way Petitioner framed his argument completely ignores the standard of review. Petitioner's ground for relief would accurately reflect the standard of review if it were restyled as follows: Was the Utah Supreme Court's decision (that the second-degree-felony designation in the measurable-amount statute--as it differs from the third-degree-felony designation in the DUI statute--did not violate his substantive due-process rights because it was rationally related to a legitimate state interest) "contrary to, or involv[ing] an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States"?

Because Petitioner did not acknowledge the standard of review, he did not even begin to meet his burden to show that the Utah Supreme Court applied the wrong United States Supreme Court precedent and/or unreasonably applied that precedent. He similarly missed the chance before the Utah Supreme Court to flesh out his federal due-process argument. As the supreme court put it:

> Ainsworth also vaguely asserts a due process basis for his challenge. But he does not identify a distinct basis in the Due Process Clause for his constitutional challenge. His briefing just recasts his uniform operation arguments in due process terms--asserting that the measurable substance classification falls short under the Due Process Clause because there is no rational basis for punishing the (purportedly lesser) measurable substance offense more harshly than the DUI offense. For that reason we do not treat the due process claim separately in this opinion. We treat it as Ainsworth does--as a mere restatement of the uniform operation challenge--and reject it for reasons set forth below.

Ainsworth, at ¶ 15 n.3. The Court thus reviews the supreme court's rational-basis analysis of the Utah Code's measurable-substance provisions under the Uniform Operation of Laws Clause, Utah Const. art. I, § 24 ("All laws of a general nature shall have uniform operation."), as including a rational-basis analysis under the Federal Due Process Clause, U.S. Const. amend. XIV, § 1 ("[N]or shall any State deprive any person of life, liberty, or property, without due process of law . . . .").

The narrow question before the Utah Supreme Court was whether there was a "rational basis for punishing individuals who have any *measurable amount* of controlled substance in their bodies more harshly than individuals who have an *incapacitating amount* of the substance in their bodies." *Ainsworth*, at ¶ 18 (quotation marks and citation omitted).

Remembering that review is tightly restricted by the federal habeas standard of review, this Court observes that Petitioner concedes that the Utah Supreme Court selected the correct

governing legal principle with which to analyze this alleged due-process issue: the rational-basis standard. (ECF No. 12, at 5 (arguing due-process rights violated because measurable-amount statute "is not rationally related to a legitimate state interest")); *see United States v. Comstock*, 560 U.S. 126, 151 (2010) ("The phrase 'rational basis' most often is employed to describe the standard for determining whether legislation that does not proscribe fundamental liberties nonetheless violates the Due Process Clause. Referring to this due process inquiry, and in what must be one of the most deferential formulations of the standard for reviewing legislation in all the Court's precedents, the Court has said: 'But the law need not be in every respect logically consistent with its aims to be constitutional. It is enough that there is an evil at hand for correction, and that it might be thought that the particular legislative measure was a rational way to correct it.' *Williamson v. Lee Optical of Okla., Inc.*, 348 U.S. 483, 487-488 (1955).").

The Utah Supreme Court set forth its rational-basis analysis regarding Petitioner's issue as follows:

> [W]e see a rational basis for this classification. It is true that the measurable substance provisions do not require proof of an "incapacitating amount" of a drug; "any measurable amount" is sufficient. *Id.* ¶ 9. But the measurable substance provisions require an element not required under the DUI laws: A second degree felony is established under the measurable substance provisions only upon a showing that the drug in question is a Schedule I or II substance. *See* Utah Code § 58-37-8(2)(h). The DUI provisions are different. They are triggered by the use of alcohol or any drug. *See id.* § 41-6a-502(1)(b); *id.* § 76-5-207(2). And the legislature obviously deemed that difference significant. It was so concerned about the use of Schedule I or II drugs by drivers that it deemed that element enough to bump the offense level to a second degree felony (even in cases in which there is no showing of actual impairment).
>
> We see nothing irrational in that decision. Schedule I and II drugs are those viewed as having a greater potential for abuse and a greater risk of dependence than other controlled substances. *See* Utah Code § 58-38a-204(1)-(5); 21 C.F.R. §§ 1308.11-1308.15. That concern can certainly sustain a rational decision by the

> legislature to punish the use of these substances more harshly than the use of other substances. *See State v. Outzen*, 2017 UT 30, ¶ 23, 408 P.3d 334 (upholding Utah Code section 41-6a-517 against similar constitutional attack; concluding that classification treating those with a valid prescription differently may be understood to "promote[] public safety by discouraging individuals who have ingested controlled substances from operating motor vehicles and creating potentially dangerous driving conditions"). And that is sufficient to sustain the constitutionality of this statutory scheme.

Ainsworth, at ¶¶ 19-20.

At this point, Petitioner has not met his burden of finding on-point United States Supreme Court precedent and arguing that the Utah Supreme Court unreasonably applied it. The Court therefore denies habeas-corpus relief.

The Court notes that the Supreme Court has described rational-basis review as "highly permissive," *Matal v. Tam*, 137 S. Ct. 1744, 1757 (2017); and, "one of the most deferential formulations of the standard for reviewing legislation in all the Court's precedents," *Comstock*, 560 U.S. at 151. This emphasizes the significant challenge Petitioner would have had if he had actually tried to show the Utah Supreme Court unreasonably applied on-point United States Supreme Court precedent. And, it bears noting the Court itself searched for on-point United States Supreme Court precedent to assess whether Utah Supreme Court unreasonably applied the rational-basis analysis. The Court found nothing on-point.

CONCLUSION

Petitioner's claim does not hurdle the federal habeas standard of review.

IT IS THEREFORE ORDERED that the petition for writ of habeas corpus is **DENIED** and the action **DISMISSED WITH PREJUDICE**.

IT IS ALSO ORDERED that a certificate of appealability is **DENIED**.

This action is **CLOSED**.

DATED this 10th of March, 2021.

BY THE COURT

CHIEF JUDGE ROBERT J. SHELBY
United States District Court

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

THOMAS RANDALL AINSWORTH, Petitioner v. WARDEN BENZON, Respondent.	**JUDGMENT IN A CIVIL CASE** Case No. 2:17-CV-1205-RJS Chief District Judge Robert J. Shelby

IT IS ORDERED AND ADJUDGED that Petitioner's action is dismissed with prejudice.

The Clerk of Court is directed to CLOSE this action.

DATED this 10th day of March, 2021.

BY THE COURT:

CHIEF JUDGE ROBERT J. SHELBY
United States District Court

FILED
United States Court of Appeals
Tenth Circuit

March 17, 2022

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

THOMAS RANDALL AINSWORTH,

Petitioner - Appellant,

v.

ROBERT POWELL, Warden,

Respondent - Appellee.

No. 21-4038
(D.C. No. 2:17-CV-01205-RJS)
(D. Utah)

ORDER

Before **McHUGH**, **MORITZ**, and **ROSSMAN**, Circuit Judges.

Appellant's petition for rehearing is denied.

The petition for rehearing en banc was transmitted to all of the judges of the court who are in regular active service. As no member of the panel and no judge in regular active service on the court requested that the court be polled, that petition is also denied.

Entered for the Court

CHRISTOPHER M. WOLPERT, Clerk

"APPENDIX C"

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

THOMAS RANDALL AINSWORTH, Petitioner, v. WARDEN BENZON, Respondent.	**MEMORANDUM DECISION & ORDER DENYING MOTION FOR RELIEF FROM FINAL ORDER OR JUDGMENT** Case No. 2:17-CV-1205 RJS Chief District Judge Robert J. Shelby

The Court denies Petitioner's post-judgment motion.

I. BACKGROUND

With methamphetamine in his system, Petitioner crashed into another vehicle, injuring two passengers and killing a child. *State v. Ainsworth*, 2017 UT 60, ¶¶ 5-6. Petitioner was sentenced to three prison terms of one-to-fifteen years, after he pleaded guilty to three second-degree-felony counts of negligently causing serious injury or death when driving with a measurable amount of a Schedule II-controlled substance in his body. (ECF Nos. 12, at 1; 23, at 6; 23-4, at 61.) On September 5, 2017, the Utah Supreme Court upheld (against Petitioner's substantive due-process argument) classification of Plaintiff's offenses as second-degree felonies. *Ainsworth*, at ¶¶ 15 n.3, 31.

In his federal habeas-corpus petition, Petitioner brought the following single claim under 28 U.S.C.S. § 2254 (2021): "The second-degree-felony designation in the measurable-amount statute--as it differs from the third-degree-felony designation in the DUI statute--violates his substantive due-process rights because it is not rationally related to a legitimate state interest."

"APPENDIX D"

(ECF No. 31, at 2.) Denying his petition, the Court reasoned that "Petitioner ha[d] not met his burden of finding on-point United States Supreme Court precedent and arguing that the Utah Supreme Court unreasonably applied it." (*Id.* at 8.)

Under Federal Rule of Civil Procedure 60(b), Petitioner moves for relief from the final order and judgment here. These are the issues he raises: "equal protection violation," (ECF No. 36, at 4-8); "denial of due process," apparently as to his sentence (*id.* at 10-13); application of "the rule of lenity," (*id.* at 13-15); application of the Utah Constitution, (*id.* at 18); ineffective assistance of counsel, (*id.* at 19-22); inadequate "access to a law library," (*id.* at 20); and, the involuntariness of his guilty plea, (*id.* at 20-22).

II. LEGAL-ACCESS CLAIM

Petitioner's claim that he has been denied adequate legal resources while in prison may be a civil-rights claim regarding the conditions of his confinement. If so, it is inappropriately broached here in this habeas case. If Petitioner wishes to pursue this further, it must be in a separate case with a civil-rights complaint.

III. RULE 60(b) ANALYSIS

In relevant part, Rule 60(b) reads:

> On motion and just terms, the court may relieve a party . . . from a final judgment, order, or proceeding for the following reasons:
>
> (1) mistake, inadvertence, surprise, or excusable neglect;
>
> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
>
> . . .
>
> (6) any other reason that justifies relief.

Fed. Civ. P. 60(b).

This rule interplays with the federal habeas statute about second or successive habeas petitions. The applicable statutory language states:

> A claim presented in a second or successive habeas corpus application under section 2254 that was not presented in a prior application shall be dismissed unless-- . . .
> (i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and
> (ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

28 U.S.C.S. § 2244(b)(1)(B) (2021).

Based on Tenth Circuit law, this Court must first determine "whether the motion is a true Rule 60(b) motion or a second or successive petition." *Spitznas v. Boone*, 464 F.3d 1213, 1217 (10th Cir. 2006); *Gonzalez v. Crosby*, 545 U.S. 524, 538 (2005) (clarifying that not all 60(b) motions in federal habeas cases are second or successive petitions). This Court may rule on true Rule 60(b) arguments here. However, "second or successive" issues must be "certified by a panel of the [10th Circuit] pursuant to § 2244 before [they] may proceed in district court." *Id.* at 1215 (citing 28 U.S.C.S. § 2244 (2021)).

Gonzalez explains that "a 60(b) motion is a second or successive petition if it in substance or effect asserts or reasserts a federal basis for relief from the petitioner's underlying conviction." *Spitznas*, 464 F.3d at 1215 (citing *Gonzalez*, 545 U.S. at 538). All of Petitioner's claims in his post-judgment motion meet the definition of a "second or successive petition"--i.e., they all "in substance or effect assert[] or resassert[] a federal basis for relief from the petitioner's underlying conviction."

IV. SECOND OR SUCCESSIVE ANALYSIS

Because Petitioner has already filed a habeas-corpus petition in this Court--in this case--in the past and it was denied, Petitioner's current federal petition is second or successive. *See* 28 U.S.C.S. § 2244(a) (2021). Petitioner may not file such a petition without authorization from the appropriate federal court of appeals. *Id.* § 2244(b)(3)(A) ("Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application."); *see* R.9, Rs. Governing § 2254 Cases; *In re Cline*, 531 F.3d 1249, 1251 (10th Cir. 2008) (citing *United States v. Nelson*, 465 F.3d 1145, 1148 (10th Cir. 2006)) ("A district court does not have jurisdiction to address the merits of a second or successive § 2255 or 28 U.S.C. § 2254 claim until [the Tenth Circuit] has granted the required authorization.").

Petitioner did not obtain authorization from the Tenth Circuit Court of Appeals to file his second or successive petition--i.e., this post-judgment motion, (ECF No. 36). This Court therefore does not have jurisdiction to address its merits.

When a successive § 2254 petition is filed in a district court without the necessary appellate court sanction, it may be transferred under 28 U.S.C. §1631 (2021) to the proper court. *Coleman v. United States*, 106 F.3d 339, 341 (10th Cir. 1997). However, all unauthorized successive habeas petitions should not automatically be transferred to the Tenth Circuit. This Court will only transfer the matter if it determines that it is in the interests of justice to do so.

In deciding that it would not be in the interests of justice to transfer this petition to the Tenth Circuit, this Court considered whether the claims would be time barred and whether the

claims are likely to have merit. A review of the claims and procedural history establishes that Petitioner's claims would not be valid.

First, Petitioner's challenge as to application of the Utah Constitution is irrelevant in this federal case. It is well-settled that a federal court may grant habeas relief only for violations of the Constitution or laws of the United States. *Estelle v. McGuire*, 502 U.S. 62, 68 (1991); *Rose v. Hodges*, 423 U.S. 19, 21 (1975). Errors of state law do not constitute a basis for relief. *Estelle*, 502 U.S. at 67; *Lewis v. Jeffers*, 497 U.S. 764, 780 (1990). Petitioner thus has no valid argument here based on state law.

The remaining "new" issues Petitioner raised in his Rule 60(b) appear to have been procedural defaulted. The United States Supreme Court has declared that when a petitioner has "'failed to exhaust his state remedies and the court to which the petitioner would be required to present his claims in order to meet the exhaustion requirement would now find the claims procedurally barred' the claims are considered exhausted and procedurally defaulted for purposes of federal habeas relief." *Thomas v. Gibson*, 218 F.3d 1213, 1221 (10th Cir. 2000) (quoting *Coleman v. Thompson*, 501 U.S. 722, 735 n.1 (1991)).

Utah's Post-Conviction Remedies Act states in relevant part:

> A person is not eligible for relief under this chapter upon any ground that:
> . . .
> (c) could have been but was not raised at trial or on appeal;
> (d) was raised or addressed in any previous request for post-conviction relief or could have been, but was not, raised in a previous request for post-conviction relief . . . .

Utah Code Ann. § 78B-9-106(1) (2021).

All Petitioner's remaining issues could have been raised, either in his direct appeal or in a state post-conviction petition. Under Utah law, then, Petitioner may not raise his current arguments in future state habeas petitions, and the state courts would determine them to be procedurally barred.

In addition, this Court noted that the Court of Appeals will not authorize the filing of a second or successive habeas petition in the district court unless the petitioner can meet the standard prescribed by § 2244(b)(2). Under that standard, the petitioner must show "that the claim relies on a new rule of constitutional law, made retroactive" or that "the factual predicate for the claim could not have been discovered previously through the exercise of due diligence" and the facts "would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense." 28 U.S.C. § 2244(b)(2) (2021). Petitioner has not addressed any of these requirements.

It would not be in the interests of justice to transfer the petition to the Tenth Circuit. Petitioner has not stated any appropriate legal basis for being allowed to proceed with this successive petition.

V. ORDER

IT IS ORDERED that:

(1) Petitioner's motion for relief from the judgment is **DENIED**. (ECF No. 36.)

(2) Petitioner's second or successive petition shall not be transferred to the Tenth Circuit Court of Appeals.

(3) A certificate of appealability is **DENIED**.

DATED this 18th day of June, 2021.

BY THE COURT:

ROBERT J. SHELBY
Chief United States District Judge

This opinion is subject to revision before final publication in the Pacific Reporter

2017 UT 60

IN THE

SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH
Petitioner,

v.

THOMAS RANDALL AINSWORTH
Respondent.

No. 20160173
Filed September 5, 2017

On Certiorari to the Utah Court of Appeals

Attorneys:

Sean D. Reyes, Att'y Gen., Jeffrey S. Gray, Asst. Solic. Gen., Sandi Johnson, Salt Lake City, for petitioner.

Lori J. Seppi, David P.S. Mack, Salt Lake City, for respondent.

ASSOCIATE CHIEF JUSTICE LEE authored the opinion of the Court, in which CHIEF JUSTICE DURRANT, JUSTICE DURHAM, JUSTICE PEARCE, and JUDGE POWELL joined.

Having recused himself, JUSTICE HIMONAS does not participate herein; FOURTH DISTRICT COURT JUDGE KRAIG J. POWELL sat.

ASSOCIATE CHIEF JUSTICE LEE, opinion of the Court:

¶1 The Utah Code prescribes two sets of offenses for drivers who cause death or serious bodily injury with alcohol or drugs in their system. Under the DUI provisions of the code it is a third degree felony to cause death or serious bodily injury while under the influence of alcohol or any drug "to a degree that renders the

"APPENDIX E"

person incapable of safely operating a vehicle."[1] The "measurable substance" provisions set forth a related offense. Under these provisions it is a second degree felony to cause death or serious bodily injury with any "measurable" amount of a Schedule I or Schedule II drug in the person's body.[2]

¶2 Thomas Ainsworth challenges the constitutionality of these provisions. Ainsworth was convicted of three second degree felonies under the measurable substance provisions. But he asserts constitutional grounds for a reduction of each charge to a third degree felony under the DUI provisions. And he also challenges the decision to impose consecutive sentences for the three counts against him.

¶3 The court of appeals agreed with Ainsworth in part. It deemed the measurable substance crime a "lesser offense" because the measurable substance provisions do not require proof of a driver's impairment. With this in mind, the court of appeals concluded that the classification of Ainsworth's crimes as second degree felonies under the measurable substance provisions ran afoul of the Uniform Operation of Laws Clause of the Utah Constitution. And it accordingly vacated Ainsworth's convictions and remanded for the entry of third degree felony convictions and for resentencing. In so doing, however, the court of appeals rejected Ainsworth's challenge to the imposition of consecutive sentences, affirming the district court's sentencing to that degree.

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[1] UTAH CODE § 41-6a-502(1)(b); *id.* § 41-6a-503(2) (third degree felony to inflict serious bodily injury as a result of operating a vehicle in a negligent manner and in violation of section 502); *id.* § 76-5-207(2) (third degree felony to cause death of another by operating motor vehicle in negligent manner and under the influence of alcohol or any drug rendering the person incapable of safely operating the vehicle).

[2] *Id.* § 41-6a-517 (defining the elements of the measurable substance offense); *id.* § 58-37-8(2)(h) (second degree felony to operate vehicle in negligent manner while knowingly and intentionally having measurable amount of Schedule I or Schedule II substance in the person's body and causing serious bodily injury or death of another).

¶4 We reverse in part and affirm in part. First, we uphold the constitutionality of the legislature's classification of offenses in the DUI and measurable substance statutes and reverse the court of appeals' decision vacating Ainsworth's second degree felony convictions under the Uniform Operation of Laws Clause. Second, we affirm the court of appeals' decision upholding the imposition of consecutive sentences for the three counts of conviction. Accordingly, we reinstate the convictions and sentences as entered and imposed against Ainsworth in the district court.

I

¶5 On Christmas Eve 2011, Thomas Ainsworth drove his car over a median and crashed head-on into another vehicle. An 18-month-old boy was killed and both of his parents were seriously injured in the accident.

¶6 Ainsworth had methamphetamine in his system at the time of the accident. He was charged with three counts of causing substantial bodily injury or death while negligently driving a car with a measurable amount of a Schedule II controlled substance in his body. The charged offenses were second degree felonies under Utah Code section 58-37-8(2).

¶7 Ainsworth moved to amend the charges on constitutional grounds. First, he challenged the classification of his alleged offenses—as second degree felonies—under the measurable substance provisions of the Utah Code. He noted that the alleged offenses would have been classified as third degree felonies if charged under the DUI provisions of the code. And he challenged the rationality of the legislature's decision to increase that classification through the measurable substance provisions under the Uniform Operation of Laws Clause of the Utah Constitution.

¶8 Ainsworth also asserted an alternative basis for challenging the measurable substance charges under the Uniform Operation of Laws Clause. He noted that the measurable substance provisions recognize a defense for those who have a prescription for the controlled substance, or otherwise use the substance in a legal manner. And he alleged that this amounts to irrational discrimination in favor of those who have a prescription and against those who don't.

¶9 The district court rejected both arguments. It upheld the prosecution's decision to classify the charges against Ainsworth as second degree felonies under the measurable substance provisions.

¶10 Ainsworth reserved his right to appeal but pled guilty to the three second degree felonies under the measurable substance provisions. The district court then sentenced Ainsworth to three prison terms of one to fifteen years. Over Ainsworth's objection, the district court ordered that those sentences should be served consecutively.

¶11 Ainsworth filed a timely appeal. The court of appeals endorsed the first of Ainsworth's uniform operation arguments. It noted that the measurable substance statute applies "in an offense not amounting to a violation of [the DUI statute]" where the defendant "knowingly and intentionally [has] in the person's body any measurable amount" of a controlled substance and "operates a motor vehicle . . . in a negligent manner." *State v. Ainsworth*, 2016 UT App 2, ¶ 8, 365 P.3d 1227 (second and third alterations in original) (quoting UTAH CODE § 58-37-8(2)(a)(i), (g) & (h)(i)). Thus, the court of appeals observed that the measurable substance provisions do not require proof of actual impairment of the driver. *Id.* ¶ 17. And on that basis the court of appeals deemed the measurable substance crime a "lesser crime." *Id.* ¶ 16. It accordingly held that the classification of this crime as a greater offense—a second degree felony rather than a third degree felony—ran afoul of the Uniform Operation of Laws Clause. *Id.* ¶ 17. Thus, the court vacated Ainsworth's sentence and remanded for resentencing—with the direction that Ainsworth be resentenced to three third degree felonies.

¶12 In so doing, the court of appeals nonetheless proceeded to affirm the district court's decision to impose Ainsworth's sentences consecutively. It acknowledged that the question presented was moot because there was no longer a sentence to evaluate. *Id.* ¶ 19. But the court of appeals still addressed the issue because it had been fully briefed and was likely to arise again on remand. *Id.* On this point the court of appeals affirmed the district court. It found no abuse of discretion because the district court considered all of the factors of relevance to this decision and balanced them in a permissible way. *Id.* ¶ 21.

¶13 We granted the State's petition for certiorari and Ainsworth's cross-petition on the imposition of consecutive sentences. We review the court of appeals' decision for correctness, without according any deference to its analysis. *Wasatch Cty. v. Okelberry*, 2008 UT 10, ¶ 8, 179 P.3d 768. In so doing, however, we note that our review of the correctness of the court of appeals' analysis may depend in part on whether it afforded the appropriate level of review to the district court's decisions. *Id.*

II

¶14 The State challenges the court of appeals' decision overriding the classification of Ainsworth's offenses on uniform operation of laws grounds. And Ainsworth on cross-petition asserts error in the decision upholding the imposition of consecutive sentences. We reverse the court of appeals on the first point but affirm it on the second.

A

¶15 Ainsworth advances two uniform operation grounds[3] for questioning the classification of his offenses as second degree felonies under the measurable substance provisions of the Utah Code. First is the assertion that it is irrational to classify a measurable substance-based offense as a more serious crime than a DUI-based offense. Second is the alleged lack of a rational basis for the distinction between those who have a prescription for a controlled substance and those who do not.

¶16 The court of appeals endorsed the first argument but rejected the second. We reject both. We uphold the

[3] Ainsworth also vaguely asserts a due process basis for his challenge. But he does not identify a distinct basis in the Due Process Clause for his constitutional challenge. His briefing just recasts his uniform operation arguments in due process terms—asserting that the measurable substance classification falls short under the Due Process Clause because there is no rational basis for punishing the (purportedly lesser) measurable substance offense more harshly than the DUI offense. For that reason we do not treat the due process claim separately in this opinion. We treat it as Ainsworth does—as a mere restatement of the uniform operation challenge—and reject it for reasons set forth below.

constitutionality of the classification of Ainsworth's offenses as second degree felonies under the measurable substance provisions.

1

¶17 A driver who causes death or serious bodily injury with alcohol or drugs in his body may be subject to one of two offense classifications under the Utah Code. The crime could be a third degree felony under the DUI provisions of the code—if it can be shown that the alcohol or drug influenced the driver "to a degree that renders the person incapable of safely operating a vehicle."[4] And the crime could be a second degree felony under the measurable substance provisions—without any proof of impairment of the driver's ability to safely operate a vehicle.[5]

¶18 This was the basis for the court of appeals' decision to override the classification of Ainsworth's crimes as second degree felonies. Because the measurable substance provisions do not require proof of impairment, the court of appeals viewed crimes charged under those provisions as "lesser crime[s]." *Ainsworth*, 2016 UT App 2, ¶ 16. And it accordingly found the governing statutory scheme unconstitutional under the Uniform Operation of Laws Clause. It concluded, specifically, that there was no "rational basis for punishing individuals who have 'any *measurable amount*' of controlled substance in their bodies more harshly than individuals who have an *incapacitating amount* of the substance in their bodies." *Id.* ¶ 9 (emphases added). And it

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[4] UTAH CODE § 41-6a-502(1)(b); *id.* § 41-6a-503(2) (third degree felony to inflict serious bodily injury as a result of operating a vehicle in a negligent manner and in violation of section 502); *id.* § 76-5-207(2) (third degree felony to cause death of another by operating motor vehicle in negligent manner and under the influence of alcohol or any drug rendering the person incapable of safely operating the vehicle).

[5] *Id.* § 41-6a-517 (defining the elements of the measurable substance offense); *id.* § 58-37-8(2)(h) (second degree felony to operate vehicle in negligent manner while knowingly and intentionally having measurable amount of Schedule I or Schedule II substance in the person's body and causing serious bodily injury or death of another).

accordingly endorsed Ainsworth's assertion that the code "punishes less culpable offenders with a significantly higher level of punishment." *Id.* ¶ 13.

¶19 We view the matter differently. The measurable substance provisions do not define a "lesser crime." And offenders under these provisions are not "less culpable." They are more culpable in the view of the legislature. Unlike the court of appeals, moreover, we see a rational basis for this classification. It is true that the measurable substance provisions do not require proof of an "incapacitating amount" of a drug; "any measurable amount" is sufficient. *Id.* ¶ 9. But the measurable substance provisions require an element not required under the DUI laws: A second degree felony is established under the measurable substance provisions only upon a showing that the drug in question is a Schedule I or II substance. *See* UTAH CODE § 58-37-8(2)(h). The DUI provisions are different. They are triggered by the use of alcohol or *any drug*. *See id.* § 41-6a-502(1)(b); *id.* § 76-5-207(2). And the legislature obviously deemed that difference significant. It was so concerned about the use of Schedule I or II drugs by drivers that it deemed that element enough to bump the offense level to a second degree felony (even in cases in which there is no showing of actual impairment).

¶20 We see nothing irrational in that decision. Schedule I and II drugs are those viewed as having a greater potential for abuse and a greater risk of dependence than other controlled substances. *See* UTAH CODE § 58-38a-204(1)-(5); 21 C.F.R. §§ 1308.11–1308.15. That concern can certainly sustain a rational decision by the legislature to punish the use of these substances more harshly than the use of other substances. *See State v. Outzen*, 2017 UT 30, ¶ 23, __ P.3d __ (upholding Utah Code section 41-6a-517 against similar constitutional attack; concluding that classification treating those with a valid prescription differently may be understood to "promote[] public safety by discouraging individuals who have ingested controlled substances from operating motor vehicles and creating potentially dangerous driving conditions"). And that is sufficient to sustain the constitutionality of this statutory scheme.

¶21 The court of appeals' contrary conclusion seems rooted in its concern about the arbitrariness of a prosecutor's charging decision in this field. In reversing Ainsworth's second degree felony convictions and reducing them to third degree felony convictions, the court of appeals expressed the view that there is no "rational basis for charging" a second degree felony under the

measurable substance provisions instead of a third degree felony under the DUI provisions. *Ainsworth*, 2016 UT App 2, ¶ 17. This concern implicates a line of our cases—tracing back to *State v. Shondel*, 453 P.2d 146 (Utah 1969). Yet neither the parties nor the court of appeals cited the *Shondel* line of cases in the court of appeals. And that line of cases alleviates the charging concern cited by the court of appeals.

¶22 *Shondel* enforces a narrow principle of uniform operation or equal protection of the laws. The *Shondel* principle is implicated at the intersection of duplicative criminal statutes. In that context our cases have warned of the risk of arbitrary prosecutorial discretion. And *Shondel* articulated a rule of interpretation aimed at eliminating that risk.

¶23 In *Shondel* we confronted a circumstance in which the legislature had simultaneously enacted two statutes criminalizing the possession of LSD—one classifying the crime as a misdemeanor and the other deeming it a felony. *Id.* at 147. The defendant, charged with a felony, raised a uniform operation objection, asserting a right to the lesser, misdemeanor charge. This court sustained that objection. *Id.* at 148. We held that the defendant could not properly be charged with a felony in those circumstances and was entitled to the misdemeanor charge. *Id.* We noted, in so holding, that the two statutes at issue had been "passed at the same session of the legislature" and had "the same effective date." *Id.* at 147. With that in mind, we noted that we could not give effect to the "generally-recognized rule that where there is conflict between two legislative acts the latest will ordinarily prevail." *Id.* Thus, because both statutes had the same effective date and classified the same crime differently, we treated the lesser (misdemeanor) provision as controlling.

¶24 *Shondel* was not a picture of clarity. The principle driving the decision, moreover, has been often misunderstood and frequently misapplied. Our more recent cases, however, have limited and clarified the *Shondel* decision. And they do so in a manner that avoids any *Shondel* issue here.

¶25 "[T]he *Shondel* doctrine treats as irrelevant the conduct of a particular defendant; only the content of the statutes matters." *State v. Williams*, 2007 UT 98, ¶ 14, 175 P.3d 1029. Thus, the *Shondel* doctrine "applies only when 'two statutes are wholly duplicative as to the elements of the crime.'" *Id.* (citation omitted). "If each

statute 'requires proof of some fact or element not required to establish the other,' there is no *Shondel* problem. . . ." *State v. Arave*, 2011 UT 84, ¶ 13, 268 P.3d 163 (quoting *State v. Clark*, 632 P.2d 841, 844 (Utah 1981)).

¶26 The above implies a two-step formulation of the *Shondel* inquiry. A threshold question is whether the elements of two statutes are wholly duplicative. If each statute requires proof of some fact or element not required to establish the other, then there is no *Shondel* problem—no complete overlap and thus no barrier to a discretionary charge under one or the other provision.

¶27 The second question concerns the timing of enactment of the two statutory provisions. Even if two statutes are wholly duplicative, *Shondel* does not necessarily require a reduction to the lesser offense. This requirement is triggered only as to two provisions with identical effective dates. Otherwise the later-enacted provision will be deemed to impliedly repeal the earlier one.

¶28 This two-part test puts to rest the *Shondel* issue in this case. First, the DUI and measurable substance provisions are not wholly duplicative. Each set of statutes requires proof of an element not required by the other. The extra element in the DUI provisions is apparent: To establish a third degree felony under these provisions it must be shown that the defendant is "under the influence" of alcohol or a drug "to a degree that renders the person incapable of safely operating a vehicle." UTAH CODE § 41-6a-502(1)(b). Though less obvious, the measurable substance provisions also require an additional element: A second degree felony can be established under these provisions only upon proof of a measurable amount of a particular kind of drug—a Schedule I or II substance. *Id.* § 58-37-8(2)(h).

¶29 This shows that these two offenses are not wholly duplicative. And it forecloses the court of appeals' determination that the measurable substance crime is a "lesser crime." It is possible to see it that way given that the DUI provisions require proof of impairment. But the legislature apparently viewed the matter differently. It considered the use of a Schedule I or II drug a sufficient concern that it deemed the mere presence of such a substance adequate to trigger a second degree felony—even without proof of impairment. And that is its prerogative. We are in no position to second-guess that decision by concluding that we

think the element of impairment a more significant aggravator than the presence of a particular drug.

¶30 Second, and in any event, the measurable substance provisions were enacted after the DUI provisions. This is an independent basis for our holding. Even if the two provisions defined duplicative crimes we would give effect to the legislature's final say in the matter—and that is to classify Ainsworth's crime as a second degree felony.

¶31 For these reasons we reverse the court of appeals. We uphold the classification of Ainsworth's offense as a second degree felony against his first argument under the Uniform Operation of Laws Clause.

2

¶32 A defendant charged with a second degree felony under the measurable substance provisions may defend on the ground that the substance in question was "prescribed by a practitioner for use by the accused." UTAH CODE § 41-6a-517(3)(b). This provision accordingly distinguishes between those who use Schedule I or II drugs under a prescription and those who have no prescription. And Ainsworth challenges this distinction on uniform operation grounds. He asserts that there is no rational basis for a preference for drug use under a prescription, contending that the existence of a prescription has no effect on the level of a driver's impairment.

¶33 We reject this argument on the basis of our recent decision in *State v. Outzen*. 2017 UT 30. In *Outzen* we upheld the reasonableness of the prescription defense in the measurable substance statute against a uniform operation challenge. We held that the statute deters illegal drug use and promotes public safety by "discouraging individuals who have [illegally] ingested controlled substances from operating motor vehicles and creating potentially dangerous driving conditions." *Id.* ¶ 23. This is a reasonable objective. And we reject Ainsworth's second uniform operation argument on that basis.

B

¶34 Ainsworth also challenges the district court's decision to order him to serve his three sentences consecutively. The court of

appeals rejected this argument under an abuse of discretion standard of review. We affirm.

¶35 Ainsworth does not claim that the district court failed to consider any of the factors it was required by law to account for. *See* UTAH CODE § 76-3-401(2). He complains only that the court abused its discretion by "fail[ing] to *adequately* consider" them. And he points to several potential mitigating factors that would support a decision to impose concurrent sentences.

¶36 That is insufficient. District courts have "wide latitude in sentencing." *State v. Bluff*, 2002 UT 66, ¶ 66, 52 P.3d 1210, *abrogated on other grounds by Met v. State*, 2016 UT 51, 388 P.3d 447. They exceed the bounds of their discretion only "when [they fail] to consider all legally relevant factors, or if the sentence imposed exceeds the limits prescribed by law." *Id.*

¶37 This showing has not been made here. We affirm the sentence imposed in this case because Ainsworth has not carried his burden of establishing an abuse of discretion.

III

¶38 For the reasons set forth above we reverse the court of appeals in part and affirm it in part. And we reinstate the judgment and sentence imposed against Ainsworth in the district court.

THE UTAH COURT OF APPEALS

STATE OF UTAH,
Appellee,
v.
THOMAS RANDALL AINSWORTH,
Appellant.

Opinion
No. 20130924-CA
Filed January 7, 2016

Third District Court, Salt Lake Department
The Honorable Deno G. Himonas
No. 121902706

David P.S. Mack, Caleb J. Cunningham, and Lori J. Seppi, Attorneys for Appellant

Sean D. Reyes and Jeffrey S. Gray, Attorneys for Appellee

SENIOR JUDGE RUSSELL W. BENCH authored this Opinion, in which JUDGES J. FREDERIC VOROS JR. and STEPHEN L. ROTH concurred.[1]

BENCH, Senior Judge:

¶1 Thomas Randall Ainsworth appeals his convictions and sentences for three counts of driving with a measurable amount of a controlled substance in his body and negligently causing death or serious bodily injury, second-degree felonies. *See* Utah Code Ann. § 58-37-8(2)(g)–(h) (LexisNexis Supp. 2015). We vacate Ainsworth's second-degree felony convictions and remand for the district court to enter a judgment of conviction

1. The Honorable Russell W. Bench, Senior Judge, sat by special assignment as authorized by law. *See generally* Utah R. Jud. Admin. 11-201(6).

"APPENDIX F"

for three third-degree felonies and to resentence him accordingly.

BACKGROUND

¶2 Ainsworth's actions led to a great tragedy. On December 24, 2011, Ainsworth drove over a median into oncoming traffic and crashed head-on into another vehicle. The driver and front passenger sustained serious injury as a result of the crash, and their eighteen-month-old child was killed. Ainsworth informed police that he had dropped his cell phone on the floor of his vehicle and was reaching for it when he lost control of the vehicle. Following the accident, Ainsworth's blood tested positive for methamphetamine.

¶3 Ainsworth was charged with three counts of driving with a measurable amount of a controlled substance in the body and negligently causing death or serious bodily injury, each a second-degree felony. Ainsworth moved to amend one of these counts to automobile homicide, a third-degree felony, and the other two to driving under the influence of alcohol or drugs and causing serious bodily injury (DUI With Serious Injury), also a third-degree felony, on the ground that section 58-37-8(2)(g) and (h) of the Utah Code (the Measurable Amount Statute), under which he was charged, violate the Utah Constitution's uniform operation of laws provision. In the alternative, he moved the court to reduce all three of his charges to third-degree felonies. The district court denied Ainsworth's motion. Ainsworth then moved the court to declare the Measurable Amount Statute unconstitutional as applied and to reconsider the motion to amend. The district court again denied Ainsworth's motion.

¶4 Ainsworth pleaded guilty to all three charges under the Measurable Amount Statute but reserved his right to appeal the constitutionality of the statute. Ainsworth requested concurrent sentencing, but the district court ordered that Ainsworth serve

three consecutive prison terms of one to fifteen years each. Ainsworth now appeals.

ISSUES AND STANDARDS OF REVIEW

¶5 Ainsworth first asserts that the district court erred in concluding that the Measurable Amount Statute was constitutional. "Constitutional challenges to statutes present questions of law, which we review for correctness." *State v. Robinson*, 2011 UT 30, ¶ 7, 254 P.3d 183 (citation and internal quotation marks omitted).

¶6 Ainsworth also asserts that the district court exceeded its discretion by imposing consecutive sentences. "Because trial courts are afforded wide latitude in sentencing, a court's sentencing decision is reviewed for an abuse of discretion." *State v. Epling*, 2011 UT App 229, ¶ 8, 262 P.3d 440 (citation and internal quotation marks omitted).

ANALYSIS

I. Constitutionality of the Measurable Amount Statute

¶7 Ainsworth asserts that the Measurable Amount Statute violates Article I, Section 24 of the Utah Constitution, known as the uniform operation of laws provision, by making impermissible distinctions between those who may be charged under the Automobile Homicide Statute and the DUI With Serious Injury Statute and those who may be charged under the Measurable Amount Statute.

¶8 Under the Automobile Homicide Statute, a person who, while "under the influence of alcohol, any drug, or the combined influence of alcohol and any drug to a degree that renders the person incapable of safely operating a vehicle," "operates a

motor vehicle in a negligent manner causing the death of another" commits a third-degree felony. Utah Code Ann. § 76-5-207(2)(a) (LexisNexis 2012). Under the DUI With Serious Injury Statute, a person who, while "under the influence of alcohol, any drug, or the combined influence of alcohol and any drug to a degree that renders the person incapable of safely operating a vehicle," "inflicted serious bodily injury upon another as a proximate result of having operated the vehicle in a negligent manner" also commits a third-degree felony. *Id.* §§ 41-6a-502(1)(b), -503(2)(a) (2014). But under the Measurable Amount Statute, a person who, "in an offense not amounting to a violation of [the Automobile Homicide Statute]," "knowingly and intentionally [has] in the person's body any measurable amount" of a Schedule I or II controlled substance (such as methamphetamine) without a valid prescription, "operates a motor vehicle . . . in a negligent manner," and causes either death or serious bodily injury to another commits a second-degree felony. *Id.* § 58-37-8(2)(a)(i), (g), (h)(i) (Supp. 2015).

¶9 Ainsworth asserts that the Measurable Amount Statute violates the uniform operation of laws provision in two ways: first, by distinguishing between those who have a prescription for a controlled substance and those who do not and, second, by classifying a violation of the Measurable Amount Statute by use of a Schedule I or II controlled substance as a second-degree felony, while classifying the more culpable offenses of Automobile Homicide and DUI With Serious Injury as third-degree felonies. We agree with the State that the legislature has a reasonable objective for distinguishing between prescription and nonprescription users of controlled substances. However, there does not appear to be any rational basis for punishing individuals who have "any measurable amount" of controlled substance in their bodies more harshly than individuals who have an incapacitating amount of the substance in their bodies.

¶10 The uniform operation of laws provision mandates that "[a]ll laws of a general nature shall have uniform operation." Utah Const. art. I, § 24. This provision is an "analogue to the federal due process guarantee," *Wood v. University of Utah Med. Ctr.*, 2002 UT 134, ¶ 33, 67 P.3d 436, but may, "in some circumstances, [be] more rigorous than the standard applied under the federal constitution," *Gallivan v. Walker*, 2002 UT 89, ¶ 33, 54 P.3d 1069 (citation and internal quotation marks omitted).

> In analyzing the constitutionality of a statutory scheme under the uniform operation of laws provision[] we engage in a three-part inquiry. First, we determine what, if any, classification is created under the statute. Second, we inquire into whether the classification imposes on similarly situated persons disparate treatment. Finally, we analyze the scheme to determine if the legislature had any reasonable objective that warrants the disparity.

State v. Drej, 2010 UT 35, ¶ 34, 233 P.3d 476 (citations and internal quotation marks omitted). To determine whether the legislature had a reasonable objective to warrant a disparity, we must consider "(1) whether the classification is reasonable, (2) whether the objectives of the legislative action are legitimate, and (3) whether there is a reasonable relationship between the classification and the legislative purpose." *State v. Robinson*, 2011 UT 30, ¶ 22, 254 P.3d 183. "Broad deference is given to the legislature when assessing the reasonableness of its classifications and their relationship to legitimate legislative purposes." *Id.* ¶ 23 (citation and internal quotation marks omitted).

¶11 Ainsworth first challenges the Measurable Amount Statute's distinction between those who use controlled substances without a prescription and those who use them with

a prescription. Those who have a prescription for a controlled substance may be charged only under the Automobile Homicide Statute or the DUI With Serious Injury Statute, not the Measurable Amount Statute. *See* Utah Code Ann. § 58-37-8(2)(a)(i), (g)(i) (exempting from the Measurable Amount Statute those who have a valid prescription). In other words, unlike nonprescription users, prescription users can be charged with no more than a third-degree felony[2] and can be convicted only if the State demonstrates that they were intoxicated to a degree that rendered them incapable of safely operating a motor vehicle. *See id.* § 41-6a-503(2)(a) (2014); *id.* § 76-5-207(2)(a) (2012). Thus, the Measurable Amount Statute creates a classification. Because the same drugs may be used by both types of users and the existence of a prescription presumably does not alter the effect of the drug, we conclude that prescription and nonprescription users of controlled substances are similarly situated.

¶12 However, the classification does not violate the uniform operation of laws provision, because the legislature had a reasonable basis for making the classification. Ainsworth asserts that the distinction between prescription and nonprescription users of methamphetamine is not supported by a reasonable legislative objective "because the harm presented by a person driving with methamphetamine in his system is the same regardless of whether he has a prescription." Ainsworth's assertion rests on the mistaken assumption that the only rational objective the legislature could have in distinguishing between prescription and nonprescription users of controlled substances

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2. Automobile homicide may be a second-degree felony if the defendant was criminally negligent or had a previous DUI-related conviction, *see* Utah Code Ann. § 76-5-207(2)(b), (3) (LexisNexis 2012), but Ainsworth was not charged with either of those variations of automobile homicide, and they are not at issue in this case.

is the relative danger they pose when driving. But the legislature also has a legitimate interest in regulating the use of controlled substances due to their high potential for abuse. Those who use such substances pursuant to a valid prescription are subject to controls and safeguards, including, among other things, limits on their dosages and regulation of manufacturing consistency and quality, while those who obtain controlled substances illegally are not subject to any such constraints. Thus, the legislature has an interest in deterring the illegal use of controlled substances. The legislature has no concomitant interest in deterring the legal use of prescribed medications so long as that use does not render the patient incapable of safely operating a motor vehicle. Charging nonprescription controlled-substance users that have "any measurable amount" of such substances in their bodies, while charging prescription users only when they are demonstrably unsafe to drive, is rationally related to the reasonable objectives of the legislature.

¶13 Ainsworth next challenges the Measurable Amount Statute's distinction between those whose bodies contain "any measurable amount of a controlled substance," Utah Code Ann. § 58-37-8(g)(i) (LexisNexis Supp. 2015), and those who are under the influence of any controlled substance "to a degree that renders the person incapable of safely operating a vehicle," *see id.* § 41-6a-502(1)(b) (2014); *id.* § 76-5-207(2)(a)(ii) (2012). He asserts that, as applied to users of Schedule I and II controlled substances,[3] this distinction is not related to a reasonable

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3. Although users of other types of controlled substances are also subject to this classification, the degree of crime they can be charged with is lesser or equal to what they would be charged with under the Automobile Homicide Statute or the DUI With Serious Injury Statute. Because Ainsworth's argument concerning this classification is premised on the fact that the Measurable Amount Statute imposes a greater penalty for a (continued...)

legislative objective, because it punishes less culpable offenders with a significantly higher level of punishment.

¶14 The State asserts that no classification is created by this provision of the Measurable Amount Statute because the Automobile Homicide Statute and the DUI With Serious Injury Statute govern only drivers who are under the influence of legal intoxicants (alcohol or prescription drugs), not those who are under the influence of illegal intoxicants (nonprescribed controlled substances). Thus, according to the State, regardless of the degree of intoxication, negligently causing injury or death of another while driving with any measurable amount of a controlled substance for which the user does not have a prescription should be prosecuted under the Measurable Amount Statute, not the Automobile Homicide Statute or the DUI With Serious Injury Statute.

¶15 However, the plain language of the Measurable Amount, Automobile Homicide, and DUI With Serious Injury Statutes belies the State's interpretation. Both the Automobile Homicide Statute and the DUI With Serious Injury Statute apply to individuals under the influence of "any drug." *See* Utah Code Ann. § 41-6a-502(1)(b) (LexisNexis 2014); *id.* § 76-5-207(2)(a)(ii) (2012). Both statutes include controlled substances within the definition of "drug." *Id.* § 41-6a-501(1)(c)(i) (2014) (defining

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(...continued)
lesser crime, it challenges the constitutionality of the statute only as applied to Schedule I and II users. In requesting that his charges be reduced to third-degree felonies, Ainsworth's argument presumes that a charge equal to what a defendant could have been charged with under the Automobile Homicide Statute or the DUI With Serious Injury Statute would not violate the uniform operation of laws provision, so we assume, without deciding, that this is the case.

"drug" for purposes of the DUI With Serious Injury Statute to include controlled substances); *id.* § 76-5-207(1)(a)(i) (2012) (defining "drug" for purposes of the Automobile Homicide Statute to include controlled substances); *id.* § 58-37-2(1)(f) (Supp. 2015) (defining "controlled substance" to include substances listed in Schedules I, II, III, IV, or V of the Utah Controlled Substances Act and the federal Controlled Substances Act). Neither statute distinguishes between drugs used in accordance with a valid prescription and drugs used illegally. Thus, by their plain language, these statutes apply to the use of both prescription and nonprescription controlled substances. Furthermore, the Measurable Amount Statute implicitly identifies the Automobile Homicide Statute as defining an offense that could apply to users of illegal drugs by specifically distinguishing it from the Measurable Amount Statute, stating that "[a] person is subject to the penalties" of the Measurable Amount Statute when the person violates the statute "*in an offense not amounting to a violation of* [*the Automobile Homicide Statute*]." *Id.* § 58-37-8(g) (Supp. 2015) (emphasis added). This indicates that the legislature anticipated that the Automobile Homicide Statute would apply to nonprescription users of controlled substances under certain circumstances.

¶16 Thus, we agree with Ainsworth that the three statutes create a classification distinguishing between similarly situated persons—users of nonprescribed controlled substances who cause serious injury or death by negligently operating a motor vehicle—based on their degree of intoxication: Those who are intoxicated by legal *or* illegal substances to a degree that they are incapable of safely operating a vehicle are to be prosecuted under the Automobile Homicide Statute or the DUI With Serious Injury Statute. On the other hand, those who have consumed illegal substances to a lesser degree, but still have a measurable amount in their bodies, are to be prosecuted under the Measurable Amount Statute. Because a conviction under the Measurable Amount Statute is a second-degree felony when the

individual has a measurable amount of a Schedule I or II controlled substance in his or her body, while convictions under the other two statutes are third-degree felonies regardless of the type of controlled substance used, unimpaired users of Schedule I and II controlled substances are ultimately subject to a greater charge for what is otherwise defined to be a lesser crime.

¶17 There does not appear to be any rational basis for charging users of nonprescribed Schedule I or II controlled substances who have a measurable amount of controlled substance in their body, but not enough to render them incapable of safely operating a motor vehicle, with a higher-degree crime than users of nonprescribed Schedule I or II controlled substances who have so much controlled substance in their body that they are demonstrably unsafe to operate a vehicle. Thus, we agree with Ainsworth that the second-degree designation in subsection (2)(h)(i) in the Measurable Amount Statute violates the uniform operation of laws provision of the Utah Constitution.

¶18 When a statutory provision is determined to be unconstitutional, the remainder of the statute will nevertheless be allowed to stand if it "is operable and still furthers the intended legislative purpose." *State v. Lopes*, 1999 UT 24, ¶ 19, 980 P.2d 191. The legislature has determined that "[i]f any provision of [the Measurable Amount Statute], or the application of any provision to any person or circumstances, is held invalid, the remainder of [the Measurable Amount Statute] shall be given effect without the invalid provision or application." Utah Code Ann. § 58-37-8(17) (LexisNexis Supp. 2015). Thus, striking the second-degree designation in subsection (2)(h)(i) of the Measurable Amount Statute does not undermine the legislative purpose of the statute. The only question remaining, then, is whether subsection (2)(h)(i) can remain operable without its second-degree designation. "An offense designated as a felony either in [the criminal code] or in another law, without

specification as to punishment or category, is a felony of the third degree." *Id.* § 76-3-103 (2012). Therefore, subsection (2)(h)(i) can remain operable as a third-degree felony. Accordingly, we vacate Ainsworth's convictions and remand with instructions for the district court to re-enter them as third-degree felonies.

II. Consecutive Sentencing

¶19 Because we must vacate Ainsworth's convictions and remand for the district court to adjust the degree of the convictions, which will require that the district court also resentence him, we need not address Ainsworth's argument that the district court erred in imposing consecutive sentences. Nevertheless, as this issue has been fully briefed and is likely to arise on remand, we elect to address it. *See State v. James*, 819 P.2d 781, 795 (Utah 1991).

¶20 Ainsworth asserts that the district court exceeded its discretion in imposing consecutive sentences because it failed to adequately consider his history, character, and rehabilitative needs. *See* Utah Code Ann. § 76-3-401(2) (LexisNexis 2012). Although "[a] court exceeds its discretion if it . . . fails to consider all legally relevant factors," *State v. Epling*, 2011 UT App 229, ¶ 8, 262 P.3d 440, "[i]t is the defendant's burden to demonstrate that the trial court failed to properly consider legally relevant factors," *State v. Bunker*, 2015 UT App 255, ¶ 3, 361 P.3d 155. A defendant cannot meet this burden by merely pointing to . . . the existence of mitigating circumstances." *Id.* "If the record shows that the trial court has reviewed information regarding the relevant legal factors, we can infer that the trial court adequately considered those factors." *Id.*

¶21 Ainsworth argues that the court failed to adequately consider the fact that his offenses arose out of a single criminal episode resulting from negligent rather than intentional behavior; that despite not having been amenable to rehabilitation in the past, he had expressed genuine remorse and

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MEMORANDUM

TO: Thomas Ainsworth 123835

DATE: May 13, 2022

RE: REQUESTED LEGAL SERVICES

We located the following published opinions matching the criteria you mention in your recent letter.

State v. Ainsworth, 365 P. 3d 1227 - Utah: Court of Appeals 2016 (resentenced)
State v. Ainsworth, 423 P. 3d 1229 - Utah: Supreme Court 2017 (affirmed in part, reversed in part)
Ainsworth v. Powell, Court of Appeals, 10th Circuit 2022 (certificate of appealability denied)
Ainsworth v. Benzon, Dist. Court, D. Utah 2021 (certificate of appealability denied)

Thank you,

USP Contract Attorney Staff

APPENDIX G

X

Notice Regarding Legal Services: Laws, court rules, and required forms can and do change. Do not rely on information received in the past or from a non-legal source. Consult with our office or another qualified legal professional before filing any action addressing post-conviction relief or living conditions at USP.