IN THE SUPREME COURT
OF THE UNITED STATES
October Term 2021

CASE NO: _____

Eleventh Circuit Court of Appeals No. 21-10776
NDFL No. 3:19cr117-TKW

SAM JONES, JR.
Petitioner,

vs.

THE UNITED STATES OF AMERICA,
Respondent.

PETTION FOR A WRIT OF CERTIORARI to the UNITED STATES COURT OF APPEALS for the ELEVENTH CIRCUIT WITH INCORPORATED APPENDIX

SHERYL J. LOWENTHAL
CJA Appellate Counsel for
SAM JONES, JR.
221 East Government Street
Pensacola, Florida 32502-6018
Tel: 850-912-6710
Email: sjlowenthal@appeals.net
The Florida Bar No. 163475

South Florida Office: 9130 South Dadeland Boulevard Suite 1511
Miami, Florida 33156-7851 Tel: 305-912-6710

Questions Presented

QUESTION ONE

Whether in the exercise of its supervisory jurisdiction over the United States Courts, this Court should correct the correctable injustice, and violation of essential requirements of law that occurred when the Eleventh Circuit affirmed the district court's clear error and abuse of discretion by denying the motion for judgment of acquittal made after the government closed its case on August 3, 2020; and in denying the written post-trial motion for new trial on grounds of sentencing entrapment when the agents put not one, but two one-pound packages into the suitcase that Lieba rolled into Jones' home ?

QUESTION TWO

Whether in the the exercise of its supervisory jurisdiction over the United States Courts, this Court should correct the correctable injustice and violation of essential requirements of law that occurred when the Eleventh Circuit erred in affirming the district court's clear error and abuse of discretion by imposing a sentence of fifteen mandatory years on this less-culpable defendant?

Table of Contents and Citations

TABLE OF AUTHORITIES

Cases:

Other Authorities:

PETITION FOR WRIT OF CERTIORARI

Petitioner Sam Jones, Jr., respectfully petitions this Honorable Court for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit, addressed to its unjust, erroneous, and unconstitutional decision affirming his conviction and sentence for drug-related offenses.

PARTIES TO THE PROCEEDINGS

Petitioner Sam Jones, Jr., was the Appellant in the Eleventh Circuit Court of Appeals, and a Defendant in in the Northern District of Florida. There was one codefendant in the district court, Albert Lieba. The United States of America was the Plaintiff, Prosecution, and Appellee in the district and appellate courts and is the Respondent in these proceedings.

OPINION BELOW

The final judgment was entered in the Northern District of Florida in *United States. Sam Jones, Jr.*, No. 3:19cr117-TKW, on March 2, 2021. A notice of appeal was timely filed on March 8th. On April 19, 2022, the United States Court of Appeals for the Eleventh Circuit issued a seven-page non-published decision in *United States v. Jones,* Case No. 21-10776, affirming the conviction and sentence following a bench trial on two methamphetamine-related charges.

Copies of (1) the district court judgment and (2) the appellate opinion are in the Appendix at the end of this Petition.

STATEMENT OF JURISDICTION

The Eleventh Circuit had jurisdiction pursuant to 18 U.S.C. Section 1291. Subject matter jurisdiction over this petition is conferred by Supreme Court Rule 10(a). The opinion was entered on April 19, 2022. This Petition for Writ of Certiorari is timely-filed pursuant to Supreme Court Rule 13.1.

CONSTITUTIONAL PROVISION

The United States Constitution
Amendment 8

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

STATEMENT OF THE CASE

Course of Proceedings, Disposition in the Courts Below, And Statement of Relevant Facts

This is an unfortunate case about a good man, a family man in his 50's, hardworking, kind to all, trying to help a friend in need, learning a difficult lesson the hard way, that **No Good Deed Goes Unpunished.**

Sam Jones, Jr. was convicted on drug charges, and **sentenced to fifteen mandatory years in federal prison.** Defense counsel, the prosecutor and the Court all believed and stated on the record, that based on the facts and the character of the defendant, the sentence was excessive. But it was mandated under existing laws for the quantity of drugs involved.

In 2019 an indictment with forfeiture allegations was returned in the Northern District of Florida, charging Alberto Lieba and Sam Jones, Jr., with conspiracy to distribute and possess with intent to distribute 500 grams or more of methamphetamine in violation of 21 U.S.C. Sections 841(a)(1) and 841(1)(A)(viii), in violation of 21 U.S.C. Section 846; and that in July 2000 Sam Jones, Jr., was convicted of a serious drug felony, conspiracy to distribute cocaine base and possoin of cocaine base with intent to distribute. He served more than 12 months and was released in April 2005, within fifteen years of the alleged August 2019

commencement of the offense charged in Count One. **Count Two** charged Lieba and Jones with possession with intent to distribute 500 grams or more of methamphetamine from August 25 to September 10, 2019, and reiterated the information about Jones' prior conviction.

A jury trial was continued several times due to Covid court closures. A three-day bench trial was held in August 2020, resulting in a judgment finding Jones guilty on Counts One and Two. A motion for new trial was filed and denied.

The parties submitted responses, replies, letters, and photographs responding to the presentence investigation report. Jones was sentenced to prison for concurrent mandatory 17-year terms for Counts 1&2, and concurrent terms of 10-years' supervised release.

Bench Trial Day One

The government presented five witnesses: two Oklahoma Highway Patrol Troopers, an Oklahoma DEA Agent, a NW Florida DEA Agent, and cooperating codefendant Alberto Lieba. An Oklahoma Highway Patrol Trooper pulled over a white rental Nissan driven by Alberto Lieba, **for speeding 73 in a 70 MPH zone**. Two troopers testified that with a K-9, they found one pound of methamphetamine in a suitcase in the back seat of the car. After noticing a "lump" in the back seat, they found nine more pounds underneath the back seat. The substance field-tested

positive for methamphetamine. Oklahoma DEA agents conducted a post-Miranda interview of Lieba who said that he lived in Walton County, Florida. While visiting family in California, he was introduced to drug traffickers. They fronted him one-pound-quantities of methamphetamine that he planned to sell, bring the proceeds back to California, and keep some for himself.

Lieba called Sam Jones in DeFuniak Springs, Florida, asking if he wanted to buy methamphetamine that Lieba was bringing from California. He said Jones was in the drug-selling business. In the call Lieba agreed to drive ten pounds of methamphetamine to Jones in DeFuniak Springs. Jones would pay $70,000 once the drugs were sold at $7,000 per pound. On August 26th Lieba texted Jones "Home boys want to know if it's going to happen. They got all the produce." The following day Jones responded with an "okay" emoji text.

Lieba received 10 pounds of methamphetamine in Santa Ana, California, hidden in a rental car provided for him. Lieba knew "Primo" (Spanish for cousin). Primo introduced Lieba to a third party who fronted the drugs. That person got them from "Tio" (Spanish for Uncle). Lieba said he got the drugs from TJ. Primo rented the car. Jones told Lieba on the phone that he did not want to deal with methamphetamine.

Lieba began driving from California to Florida. He was stopped in Oklahoma, and agreed to cooperate. The Oklahoma Highway Patrol contacted the DEA. Oklahoma DEA contacted the North Florida DEA Task Force. They searched Lieba's phone and found text messages between Lieba and Jones, including one from Lieba mentioning $7,000 for "a car" (code for a pound of methamphetamine). Jones responded "Okay, we ready."

Lieba made a controlled delivery of methamphetamine to Jones. After driving for eleven hours from Oklahoma with two agents in the car, on September 10th Lieba was turned over to the DEA in Panama City, Florida, and began the controlled delivery. Lieba was wired. At around six p.m., Panama City DEA agents recorded a call from Lieba to Jones to arrange delivery. Two one-pound packages of methamphetamine were put into Lieba 's suitcase.

Wired for audio and video Lieba drove to Jones' home. They went into a bedroom. Lieba opened the suitcase on the bed, showed the two one-pound packages to Jones, and said he had more in the car. They went outside together. Both were arrested.

At trial Lieba refused to identify his California suppliers. He claimed that he did not know their real names, just Primo, Big Primo, Little Primo, Primo-I, Primo-2, and Tio. He denied knowing their names and said only that he dealt with

Primo-2, Tio, Uncle. He claimed he did not know their names and said only that he dealt with Primo and Big Primo, Little Primo, Tio and Uncle and Ernie Medina, who were associated with the Mexican Sinaloa Drug Cartel and were dangerous.

Jones was interviewed post-arrest. He spoke voluntarily with officers and agents. He said he did not mess with methamphetamine, he preferred cocaine; but admitted touching the packages brought into his house. He agreed that Lieba told him they contained methamphetamine. He agreed that he said $7,000 was okay for a car His goal was to sell the methamphetamine and "flip" it as a first step toward future cocaine deals. He said he was unfamiliar with methamphetamine and had to ask others about price. He admitted he was convicted in July 2000 in Florida State court for drug conspiracy and possession. The present case involved 500 grams of methamphetamine. Jones' release from the Florida drug conviction and sentence was barely within 15 years of the present offense.

At the end of day one, the government rested. The defense moved for a judgment of acquittal, arguing that the government showed nothing more than 36 or 37 minutes of telephone calls between Lieba and Jones, and mere presence during the controlled delivery. Lieba admitted that not all 36 or 37 minutes were discussions about drugs. There was nothing to indicate Jones would benefit from

the deal. He was not promised money or drugs. He does not use methamphetamine. There was no reason to believe that Jones was predisposed to use methamphetamine or to engage in this type of transaction.

Lieba apparently was afraid to identify the California suppliers, who were dangerous and were a threat to him and his family. When he got stopped, he selected Jones as low-hanging-fruit against whom to cooperate, and not divulge information about the California suppliers from the Sinaloa Cartel. He never identified those y "big fish."

The government relied on text messages from Lieba to Jones about $7,000 per car (per pound of meth), and Jones said "we ready." In a statement to authorities Jones said that he reached out to "Bug-eye and Cory" to ask about the price of methamphetamine.

By not identifying Primo, Tio, or the California participants, Lieba protected his family and himself. He was sentenced to three years, rather than ten. He benefitted substantially. The court accepted the evidence in the light most favorable to the prosecution and accepted Lieba 's testimony as truthful and honest. The motion was denied because the court said that it found Lieba's testimony and Jones' statements to be sufficient to create a jury question as to the elements of the offenses.

Bench Trial Day Two

On day two the defense introduced exhibits including Jones' bank records showing no unusual deposits or expenditures that one might expect for a drug dealer; paystubs from Jones' employer from 2012 until his arrest in 2019; a W-2 form from his current employer; letters supporting Jones; cell phone records, call logs and text messages; and information about Lieba including his (sealed) PSR and photographs from his Oklahoma arrest.

The first defense witness, Michael Wilson, worked with Jones from 2012 to 2016 at Waste Management. As "route manager" Wilson saw to it that the routes were picked up safely. He ensured compliance with DOT rules including random drug screens. Wilson said Sam Jones worked six days a week; never had a drug problem. The trucks depart at 5:00 a.m. Jones always arrived at 4:30. He did manual labor, picking up 30 tons of trash every day. The workday usually ended around 5:00 in the evening. Jones was never high or under the influence of drugs. He was truthful and honest, both important qualities. He never varied from the safety aspect of the job because his life and others' were on the line. He never tried to double-side (a forbidden, dangerous shortcut). Jones was true to his word. Mr. Wilson said Jones was "very dependable." If he owned his own business, he would hire Jones.

Leroy Day was site manager at Waste Management from 2012 until Jones' arrest in 2019. Jones worked from 45 to 60 hours a week as a residential trash truck driver and also as a loader. "Very hardworking man;" strenuous work, a lot of time, hours, and patience. Jones was dependable. He showed up at 4:30a.m. and worked until 5:00, sometimes later. There were no problems with his drug tests. Lieba worked at Waste Management, but was fired for tardiness and for threatening customers.

Jones trained drivers. He taught new drivers the rules, such as the prohibition against "zigzagging" and "double-siding." Jones taught new hires the rules and made sure they were up to the task of getting on and off the trucks, which was physically demanding. Sam was trusted to train new employees, make sure they would be safe, taken care of, and knew what to do. When there was a problem with a truck, Sam was the person they called to help catch up and make sure everything was working before the routes ended for the day. He tried to help Lieba get his job back after being fired, but they would not rehire someone who threatened a customer.

Mr. Day knew that Jones had a prior criminal case. He and his father hired people on probation in their Waste Management business because everyone deserved a second chance. Jones was a success. Others were not. Mr. Day never

knew Sam Jones to lie. The people Jones helped trusted him. If someone had a problem Jones would help. They trusted Jones; he knew his job; and knew right from wrong. Sam was a leader. He was raising his grandchildren. He swapped days off to pick up his grandchildren who previously were in foster care. "He was always talking about his grandkids."

Mary Randolph, Sam's fiancé, testified that they were together since his release from prison. They lived in the same house for four or five years, with four grandchildren (ages 5, 6, 8, and 9), Mary's biological grandchildren, Sam Jones takes care of them and is responsible for them. On Sundays he watches them all day because Mary works Sunday, Monday and Tuesday, from 7:00 a,m, until 9:30 p,m, and on Wednesday she works from 7:00 a.m. to about 2:30 p,m. Mary picks them up from the babysitter on Wednesdays. Mary and Sam were awarded custody of the four grandchildren because Mary's son and the children's mother used drugs and always fought. The children were in foster care until Sam and Mary got custody several years ago.

The Florida Department of Children and Families' Family First Network did background checks on Mary and Sam, took fingerprints, did drug tests, checked on the children at home and at school. Sometimes dropping by the house unscheduled to check on the children. A Guardian Ad Litem also checks on them. There

were no drugs in the house. Mary never saw Sam use drugs. When he worked at Waste Management Sam got up at around 3:00 in the morning, left the house at around 4:00 a.m. For his present job, he gets up around 4:30, Mary gets up at around 5:00. Sam leaves the house at around 5:15.

Mary has worked for six years for the Department of Juvenile Justice as a "Coach-Counselor" in the Rite of Passage Program, a DJJ program in which delinquent children are "sentenced" to the program rather than incarceration.

Mary said that she met Lieba a few times. Lieba knew that Sam had been in federal prison for drugs because she heard Sam telling Lieba him that he missed out raising his own children when he was in prison.

Sam Jones did not testify. The defense rested after Mary's testimony. The government had no rebuttal. Following closing arguments, and a brief recess, the court announced its judgment:

> …I'm very confident in my review of the evidence and very confident in the findings … that I'm going to try to give. And so if the appellate court …decides that they want to send it back for a redo, then we'll redo it. But I think the evidence, to me, was very clear as to how this case should come out.
>
> In evaluating… I took the jury instructions … both from the defendant, as well as the Government… and that's the law that the parties seem to agree applies and that's the law that I agree applies, and so that's the law that I've used to evaluate this case …. the standard of proof here is a very high one, beyond a reasonable doubt, and so all of [my] findings… are based on that standard.

The Court's Findings

The considered Lieba's testimony and found no reason to doubt his credibility. He cooperated and received a favorable sentence in exchange.

The court addressed entrapment: the law forbids convicting an entrapped defendant, but there is no entrapment when the defendant is willing to break the law and the government merely provides a favorable opportunity to commit a crime. The court found that this was not a case of entrapment because although Lieba cooperated, there were incriminating text messages and events even before the government became involved. The government set up controlled delivery after the parties had reached an agreement. For the conspiracy in Count One, the court found that Lieba and Jones agreed to accomplish an unlawful plan to distribute or possess with intent to distribute methamphetamine, that Jones knew the unlawful purpose of the plan, and joined it willfully. Lieba's testimony was "important." There were inconsistencies and confusion about Primos and Tios (cousins and uncles) but the essence of his testimony was consistent about the arrangement Lieba thought he had with Jones. That was in the text messages starting on August 25th where Lieba told Jones that "the produce" was ready to be moved, and the only thing to figure out was price; "the home boys want to know if it's all going to happen" and Jones responded with an "okay" symbol [emoji]." It may be ambigu-

ous whether this was acknowledgment or acquiescence. Lieba testified about other unrecorded calls in which they discussed produce (code for methamphetamine), pricing, and they agreed. Whether that occurred as Lieba said, was not critical to the court because days later in the same text chain, Lieba told Jones that "it's 7,000 for each car" and Jones responded "Okay, we ready." This was found to be an agreement to $7,000 for each car. The court found it suggested an understanding there was more than one pound of methamphetamine.

This was confirmed when Lieba brought two pounds into Jones' house and said there were ten pounds; Jones said "ten pounds, 7 grand apiece," and Lieba confirmed "7 grand apiece." The court held this to be an understanding for 10 pounds of methamphetamine at $7.000 per pound. Any ambiguity in Jones' use of the "okay" emoji and the message "okay, we ready," was not sufficient to create reasonable doubt about the transaction. The court further found that Jones was cooperative in his interview with the police. At first Jones said he did not know what it was, he "did not mess with that stuff"; he did not know anything about it; then "I thought he was bringing some weed to me;" and finally Jones said he was a middleman.

The court acknowledged that Jones was not going to distribute methamphetamine from his house, and that he was good, hard-working man.

Financial records showed no indication of a large influx of cash. It was understandable that someone caring for four children might want easy money, but it was an unfortunate choice. He was not a bad person, just a person who made a bad decision. Whether for his own gain or to help Lieba, Jones intended to facilitate the conspiracy through Bug-eye or Cory, and had intent to deliver meth.

Also Jones said that if it were cocaine he would have distributed it. This was a first transaction, leading up to cocaine, but never got that far. He was not charged or convicted of that. He tried to help Lieba get back on his feet, all of which the court found to be consistent with Lieba and Jones having entered into an agreement for Jones to acquire methamphetamine and provide $70,000.00. Lieba had to pay off $15,000. Then he and the California people would split the profits.

The court found Jones guilty beyond a reasonable doubt as to Count One because he entered into an agreement to distribute or possess with intent to distribute methamphetamine; he knew the unlawful purpose of the plan and willfully joined it. For Count Two the court found that Jones possessed methamphetamine with intent to distribute because he touched the two one-pound packages brought into his house and thus exercising dominion and control over it, which is possession; and he had intent to facilitate distribution.

The court found the call-logs to be persuasive. Lieba would not drive across the country without an understanding of what he would do when he got to Florida. His only communication with anyone in Florida was with Jones.

The court also was concerned that $15,000 in debt to a drug cartel, Leiba received a disturbing message asking if everything is okay, "…or do I need to check with your wife to find out how things are?" That was a threat to the safety of Lieba and his family. The court was concerned for the safety of Jones and his family who might be indirect targets of the cartel for a drug deal gone bad.

The court noted Jones' dismay that the government was so interested in such a small player in the scheme, rather than investigating up the chain of culpability to the suppliers whom Lieba obviously knew and was protecting. Finally, the court found that the case involved 500 grams or more of methamphetamine.

Sentencing

The court acknowledged receipt of letters submitted on behalf of Mr. Jones. It was apparent that Jones had a strong work ethic, was a family man, kind-hearted, reliable, dependable, and sincere. Those qualities the court said, were constant in letters from family, coworkers, and lifelong friends. The court had no doubt that this was a different side of Mr. Jones from the one suggested by the offenses.

The defense objected to a finding in the PSR that Jones was accountable for 10 pounds of methamphetamine actual and challenged the purity which was never discussed by Jones and Lieba nor did Jones ask about "the other eight pounds" when Lieba arrived with two one-pound packages. There was nothing about purity in their text messages. At trial the defense stipulated to the lab reports. Although not in texts, Lieba testified that he and Jones discussed $7,000 per pound for a total of $70,000.00. Defense counsel pointed out that during cross-examination Lieba was unable to provide details about any "agreement" with Jones. The objection to quantity and purity was overruled. The court found Jones accountable for 10 pounds of pure methamphetamine.

Finally the defense argued that Jones' prior conviction barely qualified as a prior because 14 years and five months had elapsed from the end of his prior sentence; barely within the 15 year time-limit. This was raised to preserve the issue should there be a change in the law as to Section 851 enhancements and their minimum mandatory terms.

The probation officer explained that the enhancement was properly scored; that had the prior sentence been concluded outside the 15-year window Jones would be safety-valve eligible, the 851 minimum mandatories would not apply, and the guidelines range was based on drug quantity and role in the offense.

Under the First Step Act, if the current offense occurred more than 15 years from release from the prior sentence there would be no 851 enhancement; but within 15 years, the enhancement was DOJ policy. Outside the 15-year window the minimum mandatory would not have applied under the safety valve. It was policy. Under Section 841(1)(b) the defendant shall be sentenced to a term of imprisonment not less than ten years. After a prior conviction for a serious drug felony or serious violent felony the sentence shall be not less than 15 years.

> You've preserved the argument to the extent it exists, but three points were properly added because he falls within the time frames. If the guideline were later amended and made retroactive to say that the prior offense has to be in closer proximity time, then he would be entitled potentially to the benefit of it, although with the statutory mandatory minimum I'm not sure it would make much of a difference. But that's an argument for down the road. (DE-137: 33).

Defense counsel said she hoped that the policy would change and that the DOJ would no longer automatically file the enhancement. She raised and preserved the argument so should the law change and retroactively help Mr. Jones he may receive the benefit of the change. At sentencing it was an academic discussion.

Jones' advisory guidelines range with offense level 32 and criminal history category II, was 135-168 months with a minimum mandatory sentence of 180

months. The arguments were preserved for appeal or should the law change.

Counsel read two additional letters from former co-workers. The first stated that Sam Jones was a person who helped others get jobs and if anyone had questions about company rules, he "knew the handbook better than anyone else." Another letter was written by Mr. Callaway, a friend and a Mason-brother with Sam Jones describing Sam as a good friend and hardworking guy who always helped everyone. They worked together for Waste Management. Sam was the first one to offer a helping hand and try to show friends how to keep their jobs and how to do their jobs. Jones was liked by everyone on the job. He came to work early every day. Everyone deserves a second chance, and "I promise that he will not disappoint you." Mr. Jones addressed the Court at DE-137: 38:

> I just want to apologize to my family from the beginning. Your Honor don't take me from my family, not for a long time. I made some poor decisions and it cost me. I'm in the Court's hands…. I got a family. Man, I just will miss them dearly. Fifteen years is a long time…And a man that got actually caught with the dope get 32 months, record bad as mine. Who he assist with the Government? He didn't get no money from me. …. Yes I was wrong for helping – indulging myself. I just don't see how that plays out…. But it's the way it is. It's how the cookie crumbles, so I have to deal with it. Most[ly] … I'm affected by my family. That's what I'm hurt about mostly.
>
> Because I left my – can't say anything with my grandkids here. So I don't need to get emotional nothing like that, it's just – it's just what it is. I just want to thank you for giving me a chance to speak and doing that. Leave it there.

The government argued that Jones attempted to cooperate from the outset. The Northern District of Florida has a policy of not considering vicarious (3rd party) cooperation, so it did not happen. The government met with Mr. Jones three or four times and always found him to be forthcoming. He was not sufficiently involved in drugs to a level that would concern the federal government, and as a result lacked "substantial cooperation" to offer. There were no drugs in his house, no paraphernalia, and no indications that he was using or selling. He gave his mobile phone to the agents He was cooperative, but he did not know any drug dealers. Jones knew people involved in drugs who would provide third-party cooperation, but office policy prevented crediting him for that. As the prosecutor explained, it was unfortunate that Jones helped Lieba.

The government did not have sufficient evidence to charge Lieba's relatives; even though Jones was willing to testify, there was no case in which he could cooperate. He played a minor role. He was never mentioned in any "wires" the government had going in Northwest Florida. The prosecutor recommended the minimum mandatory sentence:

> … and as unjust as it may seem, … I don't have the discretion. My bosses don't have the discretion. It's DOJ policy that if he's within that 15 years you must file this 851. And they do that so there's no inconsistencies through the districts.

The court "gathered" that but for the statutory minimum mandatory and DOJ policy, the government would not be arguing for a 15-year sentence for Mr. Jones. The prosecutor agreed. Lieba was more culpable than Jones, and he got credit for substantial assistance. Lieba faced ten years but was sentenced to **three.** Jones was less culpable. But for Lieba reaching out, Jones was not involved in drugs after his 2000 case. Jones did not know anyone against whom to provide cooperation. He did say that he did not know anything about methamphetamine, but had it been cocaine he could do something. The court was "concerned" about that.

Defense counsel noted that it was bad luck and bad timing (a mere 7 months early). Jones took pride in his family, his home, his work, and wanted to set an example for his children and grandchildren. Lieba on the other hand, could not keep a job. Dealing drugs was the only way for him to get along. Jones was willing to work hard. He barely qualified for the enhancement.

According to the judge, Jones' accomplishments were "impressive." "[I]t's just heartbreaking that we're here today over this incident."

The court had a problem with the statutory mandatory minimum, for which there was no discretion for a reduction. The only sentence to legally impose was the 15-year mandatory minimum, "...and **I do that with a great deal of reluctance**

but for the mandatory minimum … or the ten-year that would apply had they not pursued that enhancement, **your sentence would be nowhere near that**."

The court added that should Jones come back for a new sentencing all of those factors would be considered, but the sentence is 15 years, " …and I'm sorry that I have to do that. … I don't think you've earned that much punishment. And your family … they're going to lose their father, husband, grandfather for an extended period of time based upon a very poor decision that you made, that given the opportunity I have no doubt that you would take back."

This case is unusual for several reasons. Jones was allowed to voluntarily surrender. His surrender date was extended once due to emergency hospitalization for cardiac surgery, and then when a family member was shot and in ICU for some time. Jones timely self-surrendered and is incarcerated, away from his family. He worked hard and long hours providing well for the family financially and emotionally. Now the government will have its pound of flesh and warehouse this good man for fifteen years.

Jones tried to help a friend who was down on his luck, and in so doing was charged in a federal methamphetamine prosecution. The circumstances are that Lieba was stopped in Oklahoma for driving 73 in a 70 MPH zone. There was a search, finding methamphetamine, an arrest, and controlled delivery to Jones in

Northwest Florida. The agents gratuitously **doubled the quantity of methamphetamine from one to two packages, before sending Lieba into Jones' house.**

As set forth in the slip opinion p.2, Sam Jones Jr. argued (1) the evidence was insufficient to support the conviction; (2) the court erred in denying a new trial on grounds of entrapment with a larger-than-necessary quantity of drugs; and (3) the sentence was unreasonably long.

The Eleventh Circuit reviews sufficiency of the evidence and denial of a motion for judgment of acquittal *de novo* and will not reverse unless no reasonable trier of fact could find guilt beyond a reasonable doubt. Credibility issues are resolved in favor of the verdict. The fact-finder is free to choose among alternative reasonable interpretations of the evidence. The proof need not exclude every reasonable hypothesis of innocence. Opinion, pp 2-3.

The Eleventh Circuit found no error because evidence was sufficient. Lieba's text messages and statements would allow a rational jury to find guilt beyond a reasonable doubt. Evidence for Count I, conspiracy showed that Jones and Lieba agreed to distribute over 500 grams of methamphetamine. Text messages and recorded conversations indicated they planned to sell 10 pounds of

methamphetamine at $7,000 per pound. Ten 10 pounds were in Lieba's car; two pounds were brought into Jones' house. He was heading outside for the remaining 8 pounds when he was arrested. It was reasonable for the court to conclude that Jones knew about the plan. Lieba testified that Jones knew that Lieba needed help to sell the drugs. Jones said he contacted people who could help sell methamphetamine. He was a middleman. Opinion pp.4,5.

Count 2 charged possession with intent to distribute. The opinion stated that Jones knew that the packages Lieba brought into Jones' home contained methamphetamine because he removed some from the bag and examined it. Jones had control and constructive possession of the bags of methamphetamine on his bed. He contacted people to help sell the drugs, demonstrating intent to distribute. Opinion, p.5.

Jones was sentenced to 15 years concurrently on both counts, and concurrent terms of 10-years' supervised release. The reasonableness of the sentence was reviewed for abuse of discretion. The Eleventh Circuit wrote that the burden is on the party challenging the sentence to demonstrate that the sentence is unreasonable; and it is well-settled that the district court is not authorized to sentence a defendant below a statutory mandatory minimum, which takes prece-

precedence if the guidelines range falls entirely below the mandatory minimum term; finding no error. Jones was sentenced to the minimum mandated by Congress. The district court had no authority to deviate from the mandatory minimum term. Opinion pp.6,7.

REASONS FOR GRANTING THE WRIT

REASON ONE

This Court should correct the correctable injustice, and violation of essential requirements of law that occurred when the Eleventh Circuit affirmed the district court's clear error and abuse of discretion by denying the motion for judgment of acquittal made after the government closed its case on August 3, 2020; and in denying the written post-trial motion for new trial on grounds of sentencing entrapment when the agents put not one, but two one-pound packages into the suitcase that Lieba rolled into Jones' home.

The Eleventh Circuit affirmed the district court's denial of the motion for new trial on procedural grounds and on the merits, finding the interest of justice did not require a new trial. The court disagreed that law enforcement manipulated the sentence by having Lieba bring two pounds of methamphetamine rather than one. The court found that Lieba did not coerce Jones to participate in conduct greater than that for which he was predisposed; and found Jones agreed to facilitate

the purchase of 10 pounds of meth. The order of denial stated that other evidence confirmed Jones' knowledge that Lieba was bringing more than one pound. The controlled delivery did not improperly result in Jones committing a crime greater than he intended to commit before law enforcement became involved. Denial was an abuse of discretion and reversible error.

The court was improperly influenced by agents' sentencing manipulation or entrapment. Putting a second package into the suitcase to bring into Jones' home increased the quantity to over 500 grams. agents transported Lieba and the ten packages of meth from Oklahoma to North Florida. Lieba was wired to record the events. They gave Lieba a car; put a rolling suitcase with the original single package of meth. The DEA added an additional package which was not there when he was stopped.

At trial agents were asked about adding the second package of meth and had no explanation or legitimate reason to add a second package. The other eight were **not** brought into Jones' home due to concerns that they could be lost or stolen. Those eight packages were not in the undercover vehicle or in the suitcase.

Lieba rolled the suitcase inside and removed two packages of meth. They were photographed during Jones' arrest and the search of his home. G-EX 13, 14 showed two packages on Jones' bed. One was white; the other brown. The

original package in the suitcase was in a Ziploc bag and was opened. Adding the second package increased the weight of methamphetamine in Jones' home to over 884 grams. One package did not weigh over 500 grams.

Raising the quantity to over 500 grams increased the minimum mandatory sentence for Count two, possession of 500 grams or more of meth. Arguably, Jones was in actual or constructive possession of that contraband **for three minutes and 16 seconds**. The recording showed that those packages were in the house no more than 3:16 minutes.

That second package served no legitimate purpose, beyond subjecting Jones to a severe mandatory prison term. This is sentence manipulation, which could be grounds for a downward departure. See U.S.S.G. Guidelines Manual (2018), Sec. 2D1.1, Appl.Note 27(A). Of course with the sentencing enhance-ment and mandatory minimum. downward departure was not an option.

The defense of sentencing entrapment is defined as government action that coerces an individual to participate in criminal conduct beyond that to which he may be predisposed. The United States Code uses drug weight to set the mandatory minimum sentence. Sentencing guidelines rely on drug weight to determine an appropriate sentence. This emphasis on drug weight creates unfair penalties and permits the actions of law enforcement in stings or in setting up the

transfer of controlled substances to unfairly manipulate facts to trigger mandatory or more severe sentencing.

Normally law enforcement would catch someone such as Lieba and use him to set up "bigger fish;" more culpable perpetrators. Sadly here the focus was on Sam Jones who had minor or minimal involvement. Jones had no drugs in his home or his possession, no money to pay for drugs, and no prior interactions with Lieba concerning methamphetamine.

In *United States v. Ryan*, 289 F.3d 1339 (11th Cir. 2002) the Eleventh Circuit ruled the defense of sentencing entrapment inapplicable, but recognized that in light of *Apprendi, v. New Jersey*, 530 U.S. 466 (2000), each element of a charge must be proven beyond a reasonable doubt, including the weight of the substance. In *Ryan* that the defense did not meet its burden of proving a foundation for sentencing entrapment, and did not address the question. 289 F.3d at 1343.

The defense bears the initial burden as to government inducement. Once met, the burden shifts to the government to prove beyond a reasonable doubt that the defendant was predisposed to commit the crime, with evidence viewed in the light most favorable to the defense. 289 F.3d at 1344. The informant initially offered to sell Ryan 1000 pounds of marijuana at $1,000 per pound, but Ryan countered that he wanted only a small quantity and to pay later. The informant cut

the price in half and offered Ryan 500 pounds at $500 each, and then offered increasingly favorable terms. The Eleventh Circuit found that this made the drugs more accessible but was not excessive pressure.

Here, in comparison, Leibia sent Jones a text message stating "7,000 per car." They had no agreement about quantity to be delivered. They made no plan.

Lieba transported the drugs from California, one pound in a suitcase on the seat, and 9 one-pound packages under the back seat. Law enforcement instructed Lieba to deliver two one-pound packages into Jones' home.

Even after law enforcement got involved there were no texts or phone conversations about the details. There was no legitimate reason to add a second package to the suitcase. The delivery, location, and other details were orchestrated by law enforcement, not by Lieba or Jones. Lieba said Jones told him "I don't want to know when you are coming or anything else," so don't call me, arguably an attempt to withdraw.

This all is a foundation for sentence entrapment. There was no evidence to show that Jones was predisposed to distribute 500 or more grams of meth. Evidence showed that he never used or sold meth and knew nothing about it.

The latitude afforded federal authorities in charging drug offenses was described by the Eighth Circuit: a "terrifying capacity for escalation of a …

sentence." *United States v. Barth,* 990 F.2d 422, 424 (8th Cir. 1993). It is unconscionable for the government to gratuitously inflate a defendant's culpability by increasing a quantity of drugs to trigger a high mandatory minimum sentence. Any relationship between drug quantity and defendant's culpability is disrupted when the government rather than the defendant controls the quantity. A person may be willing to engage in unlawful activity proposed by an informant, and therefore is not "entrapped" in the traditional sense, but he might never have had either the inclination or the capacity to deal narcotics in the minimum-triggering quantity selected by the government. Robert S. Johnson, *The Ills of the Federal Sentencing Guidelines, and the Search for a Cure: Using Sentencing Entrapment to Combat Governmental Manipulation of Sentencing*. 49 Vand. L.Rev. 197, 206-209 (1996).

Harm occurs when law enforcement manipulates drug quantity for sentencing entrapment. It circumvents congressional intent to punish those less culpable more severely, demeaning the image of law enforcement, and punishing the wrong people. Under Rule 33(a) of the Federal Rules of Criminal Procedure, the court may vacate any judgment and grant a new trial if the interest of justice so requires.

Jones was unfairly prejudiced in the eyes of the trier of fact. The interest of

justice required that the Eleventh Circuit vacate Jones' convictions and sentence, reverse and remand for a new trial. The Eleventh Circuit violated essential requirements of law. This Court should exercise its supervisory jurisdiction to ensure that justice will be served.

"***Common sense must not be a stranger in the House of the Law;***" and "***[I]t would be positively inhumane…"*** to rule against the person seeking relief in this case. *Cantrell v. Kentucky Unemployment Insurance Commission*, 450 SW2d 235 (KY 1970) (Palmore, Justice). Petitioner understands that *Cantrell* was decided more than 50 years ago, the facts are inapplicable, it is neither binding nor persuasive, nor recent, nor even federal. Nonetheless, Justice Palmore's words about "common sense" apply to every case in every court.

The district court reversibly erred in denying Jones' motion for judgment of acquittal. After the first day of trial, the defense moved for a judgment of acquittal, arguing that the government showed no more than a couple of ambiguous texts, 36 or 37 minutes of telephone calls, and Jones' presence at home for the controlled delivery. Lieba agreed that not all 36 or 37 minutes were discussing drugs. There was no mention of how or if Jones would benefit. He was not promised money or drugs. He did not use methamphetamine. There was no reason to believe that Jones was predisposed to use meth or to engage in this type of transaction.

To convict a person of conspiracy the evidence must prove (1) that a conspiracy existed, (2) that the defendant knew of it, and (3) that the defendant with knowledge, voluntarily joined it; but direct evidence of the elements of a conspiracy is not required. Knowing participation in the conspiracy may be established through proof of surrounding circumstances such as acts committed by others that furthered the purpose of the conspiracy. *United Sates v. Alvarez* ,755 F.2d 830, 853 (11th Cir. 1985).

To convict a person of possession with intent to distribute a controlled substance, the government must prove (1) knowledge; (2) possession and (3) intent to distribute. Lieba was afraid to identify his California connections. They were dangerous and posed a threat to his and his family's personal safety. When he was stopped Lieba realized that he had to cooperate, but chose to implicate Sam Jones, an easy target at the lowest echelon of culpability. Lieba did not divulge information about the more culpable participants, the California suppliers with connections to the Mexican Cartel. Lieba failed to provide details about the identity of those "big fish" in California, protecting them (DE-138: 304).

This is cooperation-gone-wrong, turning the goal of sentence reduction for substantial assistance on its head; like the captain of a large drug-smuggling vessel cooperating against the galley cook and crewmen so low in culpability that they

have no cooperation to offer; sparing the wealthy, dangerous kingpins, organizers, and leaders who supply contraband, profit handsomely, and pose great personal risk to those who cooperate. Lower-level participants receive long sentences. The captain receives a reduced sentence, and the leaders of the cartels are free to run their enterprises. They have enforcers to "deal with" those who cooperate.

Petitioner Jones submits that the evidence was not sufficient to establish that Jones knew there was an unlawful conspiracy to possess with intent to distribute methamphetamine. Sufficiency of evidence will be reviewed *de novo* taking the evidence in the light most favorable to the government and drawing all reasonable inferences in favor of the verdict (or the court's findings). *United States v. Feliciano,* 761 F.3d 1202, 1206 (11th Cir. 2014).

The question is whether in viewing the evidence in that light a reasonable finder of fact could find the essential element of knowledge beyond a reasonable doubt. *United States v. Spoerke*, 568 F.3d 1246, 1244 (11th Cir. 2009). It is not necessary that the evidence exclude every reasonable hypothesis of innocence or be wholly inconsistent with every conclusion except that of guilt, provided a reasonable trier of fact could find that the evidence established guilt beyond a reasonable doubt. *United States v. Martinez,* 763 F.2d 1297, 1302 (11th Cir. 1985).

To convict Jones of criminal conspiracy to possess methamphetamine with

intent to distribute, the government had to prove three elements and that the unlawful agreement may be established by direct or circumstantial proof including reasonable inferences drawn from the statements made. A conviction may be supported by reasonable inferences, but not by mere speculation. *United States v. Knowles*, 66 F.3d 1146, 1155 (11th Cir. 1995). Neither association with a coconspirator nor mere presence at the scene will support a finding of specific knowledge. *United States v. Louis*, 861 F.3d 1330, 1333 (11th Cir. 2017).

The government's response to the motion for judgment of acquittal was text messages from Lieba to Jones about $7,000 per car (or per pound of meth), and Jones said "we ready." In a statement to authorities Jones said that he reached out to two people asking the price of methamphetamine.

By not identifying the "big fist, Lieba protected his family and was rewarded with a three-year sentence. The court viewed the evidence in the light most favorable to the prosecution and accepted Lieba 's testimony "as truthful and honest." The motion for new trial was denied. The court said it found Lieba's testimony and Jones' statements sufficient to create a jury question as to the elements of the offenses.

Reviewing the evidence *de novo*, and even in the light most favorable to the government, Lieba was not entirely truthful and honest. He hid information to

protect those higher in culpability, and laid the blame at the feet of Sam Jones, who was tangentially involved. There was confusion and ambiguity in their communications. There was no firm plan. Jones knew nothing about methamphetamine, and at most was going to help Lieba find someone who might know what to do with it. The wrong person was sentenced to fifteen years. Lieba who knowingly drove across the country with ten pounds of contraband in the car was sentenced to three years. This is unjust, unfair, and unreasonable. The motion for judgment of acquittal should have been granted and Sam Jones, Jr. should be discharged.

REASON TWO

In the exercise of its supervisory jurisdiction over the United States Courts, this Court should correct the correctable injustice, and violation of essential requirements of law that occurred when the Eleventh Circuit The Eleventh Circuit affirmed the district court's clear error and abuse of discretion by imposing a sentence of fifteen mandatory years on this less-culpable defendant.

The sentence is unreasonably excessive for this defendant in this case. Counsel and the court agreed, should there be a change in sentencing law, statutes, policies, or guidelines, this is preserved in the district court and on appeal for eligibility for sentencing relief at such time as it may become available and applicable to Jones.

In the sentencing transcript the parties and the court discussed that but for the prosecution's lack of discretion to file the 851 enhancement, and but for the minimum mandatory term provided by that enhancement, the sentence imposed would and should have been lower. And should there be a change in the sentencing laws applicable to Jones, the issue is raised and preserved (Docket Vol. 137: 1-68 and specifically pp 20-36). See also, pages 24-26 *supra*, discussing the sentencing proceedings.

People make mistakes. No one is perfect. Ordinary people do bad, illegal, and foolish things. Sadly, we live in a climate where sentencing has become more punitive than rehabilitative, and often is unreasonably excessive, extraordinarily lengthy and harsh. It defies common sense when lower, more reasonable sentences are imposed on those with greater culpability, who because of their deeper involvement know more and have "substantial assistance" to provide.

Those in lower levels of culpability lack information to cooperate their way to a reasonable sentence. Here we find Sam Jones. Nice guy, friendly, always offering a helping hand to a friend in need. Helping a friend who was flailing in life, fired, unemployed, and reduced to living with his family in a car, landed Sam Jones in prison for fifteen mandatory years. In contrast, Lieba intended to drive from California to Florida with ten one-pound packages of methamphetamine and

received a three-year sentence. He cooperated against his "good guy" friend Jones and received a more reasonable sentence of one fifth, a fraction, of Jones' fifteen years.

Jones should have known better. He had a prior federal drug conviction and served a term of incarceration for it. The record and the facts are undeniable. The timing was unfortunate. Jones **successfully completed his previous sentence well over fourteen years before becoming involved in the present offense**. Nonetheless, it was within fifteen-years so it triggered an 851 enhancement, elevating the minimum mandatory term from ten years to fifteen. Bad timing, bad luck.

The government lacked discretion in filing an 851 enhancement that would ensure Sam Jones' separation from his family, his job where he was well-liked, worked hard, and did everything expected of him and more. There was no discretion as to the 851 enhancement.

Sam Jones and his wife Mary petitioned for custody of her four young grandchildren, including a special-needs child. Those children were removed from drug-addicted parents incapable of caring for children, and placed in custody of Sam and Mary, two responsible adults. The little family of four was spared from foster care, and likely from being separated from one another.

And separation of Jones from family, work, and income, is for fifteen mandatory years. The prosecutor stated that DOJ policy required that if a defendant was released from a previous sentence within fifteen years of the present offense, he had no discretion, even if it was **very close to, but not quite yet fifteen years.** The 851 enhancement notice was required. His hands were tied.

The district court had no discretion to impose a reasonable sentence in this case. Leiba did not cooperate against his "sources," in California. They provided the methamphetamine, rented the car, hid the packages in the car, and sent Lieba to Florida. He claimed he did not know their names. They remained unidentified. Cooperation was against the less-culpable nice guy Sam Jones. It was the real drug dealers who were intended to be brought to justice within the spirit and intent of Section 5K1.1. But Lieba feared them and chose to not his well-being or that of his family. Instead, the government got nice-guy Sam Jones, turning 5K1.1 substantial assistance on its head, lightly punishing the real criminal, severely punishing Jones, and completely omitting real drug dealers. They were appropriate targets of this investigation. It is they who should have been investigated, prosecuted, convicted, and sentenced to long terms.

Apparently they are free to continue dealing drugs Sam Jones, with a job on a trash truck, picking up tons of trash for 12 hours every day, sits in FCI Jesup,

unemployed, separated from his family, unable to provide financial support.

Sam Jones did not deserve fifteen years. There was no possibility for the court to exercise sound discretion at sentencing, which is what judges in an ideal world should do, because sentencing laws over several decades have become overly-punitive. Punishment and retribution are the goals of sentencing, regardless of what guidelines or policies purport to say. Prisons are big business and warehousing millions across our great land for years, decades, and life has becomet he norm.

Prisons are big business. It benefits a few to keep them overly-populated for as long as possible. In the past efforts were made toward rehabilitating inmates, education, vocational training, and counseling to allow inmates to improve and grow while incarcerated with some hope of finding a job and living a successful life after release. But with draconian punitive long-term mandatory sentences, there is less emphasis on, and lack of budgeting for self-improvement and educational programs, and more warehousing, just to keep prisons populated and staff employed.

Sam Jones is in his mid-50's, overweight, has a heart condition and had emergency cardiac surgery. He has diabetes, high blood pressure, high cholesterol, edema, and other health issues. For more than a week after he self-sur-

rendered to FCI Jesup, Georgia, he was held in lockdown and quarantine. He was not given medications that his doctors prescribed when he lived at home. He experienced severe swelling in both feet and legs, to the extent that he was in so much pain that he was unable to walk. Someone in the "medical department" gave him Tylenol.

Sam Jones, Jr., respectfully prays that this Honorable Court will GRANT the writ, VACATE the judgment, and REMAND with instructions.

Respectfully submitted,
/s/ Sheryl J. Lowenthal
Sheryl J. Lowenthal, CJA Appellate
Counsel for Sam Jones, Jr.

Dated: June 27, 2022
Word Count: 8,970

APPENDIX TO THE PETITION
FOR WRIT OF CERTIORARI

Sam Jones, Jr. v. The United States of America

JUDGMENT AND SENTENCE
U.S. v. Sam Jones, Jr.
Northern District of Florida
Case No. 3:19cr1167-TKW
Entered on March 2, 2021

OPINION AFFIRMING CONVICTION AND SENTENCE
U.S. v. Sam Jones, Jr.
United States Eleventh Circuit Court of Appeals
Appeal No. 21-10776
Entered on April 19, 2022

UNITED STATES DISTRICT COURT

Northern District of Florida

UNITED STATES OF AMERICA

v.

SAM JONES, JR

JUDGMENT IN A CRIMINAL CASE

Case Number: 3:19cr117-002-TKW

USM Number: 04793-017

Shelley Reynolds, CJA
Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s)

☐ pleaded nolo contendere to count(s) which was accepted by the court.

☒ was found guilty on count(s) 1 and 2 of the Indictment after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21 U.S.C. §§ 841(a)(1), 841(b)(1)(A)(viii) and 846	Conspiracy to Distribute and Possess with the Intent to Distribute 500 Grams or More of a Mixture or Substance Containing a Detectable Amount of Methamphetamine.	9/10/2019	1
21 U.S.C. §§ 841(a)(1), 841(b)(1)(A)(viii)	Possession with the Intent to Distribute 500 Grams or More of a Mixture or Substance Containing a Detectable Amount of Methamphetamine.	9/10/2019	2

The defendant is sentenced as provided in pages 2 through _____ of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)

☒ Count(s) 3 ☒ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

2/26/2021
Date of Imposition of Judgment

Signature of Judge

T. Kent Wetherell II., United States District Judge
Name and Title of Judge

3/3/21
Date

DEFENDANT: SAM JONES, JR.
CASE NUMBER: 3:19cr117-002-TKW

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: 180 months as to Count 1 and Count 2, with concurrent terms.

☒ The court makes the following recommendations to the Bureau of Prisons:
The court recommends that the defendant be designated to either FCI Coleman in Sumter County, Florida, or FCI Jesup in Jesup, Georgia, unless the Bureau of Prisons finds that the defendant is better suited for a medical facility.

☐

☒ The defendant shall surrender to the United States Marshal for this district or the designated institution by :

☒ 12:00 noon ☐ a.m. ☐ p.m. on 5/10/2021 .

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____ , with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: SAM JONES, JR.
CASE NUMBER: 3:19cr117-002-TKW

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of: 10 years as to Count 1 and Count 2, with concurrent terms.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

   ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. (check if applicable)

4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: SAM JONES, JR.
CASE NUMBER: 3:19cr117-002-TKW

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____ Date _____

DEFENDANT: SAM JONES, JR.
CASE NUMBER: 3:19cr117-002-TKW

SPECIAL CONDITIONS OF SUPERVISION

You will be evaluated for substance abuse and referred to treatment as determined necessary through an evaluation process. Treatment is not limited to, but may include, participation in a Cognitive Behavior Therapy program. You will be tested for the presence of illegal controlled substances or alcohol at any time during the term of supervision.

You must submit your person, property, house, residence, vehicle, or papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), other electronic communications or data storage devices or media, or office, to a search conducted by a United States Probation Officer. Failure to submit to a search may be grounds for revocation of release. You must warn any other occupants that the premises may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that the defendant has violated a condition of his supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.

DEFENDANT: SAM JONES, JR.
CASE NUMBER: 3:19cr117-002-TKW

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	$ 200.00	$	$ Waived	$	$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss***	Restitution Ordered	Priority or Percentage

TOTALS $ _____ $ _____

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for ☐ fin ☐ restitution.

☐ the interest requirement for ☐ fine ☐ restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.
** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: SAM JONES, JR.
CASE NUMBER: 3:19cr117-002-TKW

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☒ Lump sum payment of $ 200.00 due immediately, balance due

☐ not later than _____, or
☐ in accordance with ☐ C ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after the date of this judgment; or

D ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Case Number Defendant and Co-Defendant Names *(including defendant number)*	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

[DO NOT PUBLISH]

In the

United States Court of Appeals

For the Eleventh Circuit

No. 21-10776

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SAM JONES, JR.,
a.k.a. SAMUEL JONES,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Florida
D.C. Docket No. 3:19-cr-00117-TKW-2

Before GRANT, BRASHER, and ANDERSON, Circuit Judges.

PER CURIAM:

Sam Jones, Jr. appeals his convictions and 180-month sentences for conspiracy to distribute and possession with intent to distribute methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A)(viii), 846. First, he argues that there was insufficient evidence to support his conviction. Second, he asserts that the district court erred in denying him a new trial on the ground that the government entrapped him with a larger-than-necessary amount of drugs. Third, he argues that his sentence is substantively unreasonable.

I.

We review *de novo* a challenge to the sufficiency of the evidence supporting a conviction and the denial of a motion for judgment of acquittal. *United States v. Pirela Pirela*, 809 F.3d 1195, 1198-99 (11th Cir. 2015). "We will not reverse a conviction for insufficient evidence in a non-jury trial unless, upon reviewing the evidence in the light most favorable to the government, no reasonable trier of fact could find guilt beyond a reasonable doubt." *Id.* (quotation marks omitted). All credibility issues are resolved in favor of the guilty verdict. *United States v. Chafin*, 808 F.3d 1263, 1268 (11th Cir. 2015). Moreover, the factfinder "is free to choose among alternative reasonable interpretations of the evidence, and

the government's proof need not exclude every reasonable hypothesis of innocence." *United States v. Tampas*, 493 F.3d 1291, 1298 (11th Cir. 2007) (quotation marks and citations omitted).

No individual may knowingly or intentionally possess with intent to distribute a controlled substance. 21 U.S.C. § 841(a)(1). In relevant part, an offense under § 841(a) involving 500 grams or more of methamphetamine is punishable by a minimum of 15 years' imprisonment and a maximum of life imprisonment "if any person commits such a violation after a prior conviction for a serious drug felony or serious violent felony has become final." *Id.* § 841(b)(1)(A)(viii). A person who conspires to commit an offense under 21 U.S.C. § 841 is subject to the penalties proscribed by that section. *Id.* § 846.

To sustain a conviction under 21 U.S.C. § 846, the government must prove that: (1) an agreement existed between two or more people to distribute drugs; (2) the defendant knew of the conspiratorial goal; and (3) the defendant knowingly joined or participated in the illegal scheme. *United States v. Brown*, 587 F.3d 1082, 1089 (11th Cir. 2009). While the government need not prove that the defendant knew every detail or participated in every aspect of the conspiracy, the government must show that the defendant "knew the essential nature of the conspiracy." *United States v. Garcia*, 405 F.3d 1260, 1269-70 (11th Cir. 2005) (quotation marks omitted). Participation in a conspiracy may be established by "direct or circumstantial evidence, including inferences from the conduct of

the alleged participants or from circumstantial evidence of a scheme." *Id.* at 1270 (quotation marks omitted).

To sustain a conviction for possession with intent to distribute methamphetamine under 21 U.S.C. § 841(a)(1), the government must establish "(1) knowledge; (2) possession; and (3) intent to distribute." *United States v. Mercer*, 541 F.3d 1070, 1076 (11th Cir. 2008). A defendant has actual possession of a substance when he has direct physical control over it, and constructive possession can be shown by proving "ownership or dominion and control over the drugs or over the premises on which the drugs are concealed." *United States v. Woodard*, 531 F.3d 1352, 1360 (11th Cir. 2008) (quotation marks omitted). A defendant's intent to distribute "may be inferred from the large quantity of narcotics that were seized." *United States v. Tinoco*, 304 F.3d 1088, 1123 (11th Cir. 2002).

Here, the district court did not err in finding that the evidence was sufficient to sustain Jones's convictions because his text messages, his statements, and Leiba's statements allowed a rational trier of fact to find him guilty beyond a reasonable doubt. As to the conspiracy charge in Count 1, the evidence showed that Jones and Leiba had an agreement to distribute over 500 grams of methamphetamine because their text messages and recorded conversations indicated that they planned to sell 10 pounds of methamphetamine at $7,000 per pound, law enforcement discovered 10 pounds of the drug in Leiba's car, there was approximately 2 pounds of methamphetamine on Jones's bed, and he was heading to get the other 8

pounds when he was arrested. Next, it was reasonable for the district court to conclude that Jones knew about the plan because Leiba testified that Jones knew that Leiba needed his help selling the drugs and Jones stated that he contacted people who could help sell the methamphetamine. He also participated in the conspiracy by acting as a middleman.

As to the possession with intent to distribute conviction in Count 2, Jones knew that the packages that Leiba brought contained methamphetamine because he removed some of the drug from the bag and examined it. Next, Jones had control and constructive possession of the bags of methamphetamine because they were on his bed and inside his house. Further, Jones contacted people who could help him sell the drugs, which shows an intent to distribute, as does the large amount of drugs involved.

II.

We review the denial for a new trial for abuse of discretion. *United States v. Perez-Oliveros*, 479 F.3d 779, 782 (11th Cir. 2007). "A district court abuses its discretion if it applies an incorrect legal standard, follows improper procedures in making the determination, or makes findings of fact that are clearly erroneous." *United States v. Khan*, 794 F.3d 1288, 1293 (11th Cir. 2015) (quotation marks omitted). We deem abandoned issues and contentions not raised by a defendant in his initial brief. *United States v. Wright*, 607 F.3d 708, 713 (11th Cir. 2010). "To obtain reversal of a district court judgment that is based on multiple, independent

grounds, [the defendant] must convince us that every stated ground for the judgment against him is incorrect." *United States v. Maher*, 955 F.3d 880, 885 (11th Cir. 2020) (quotation marks omitted).

Rule 33 provides that, "[u]pon the defendant's motion, the court may vacate any judgment and grant a new trial if the interest of justice so requires." Fed. R. Crim. P. 33(a). Rule 33(b) authorizes a district court to grant a new trial based on grounds other than new evidence if the motion was filed within 14 days of the verdict. Fed. R. Crim. P. 33(b)(2). Motions for a new trial based on the weight of the evidence are "not favored" and are reserved only for "really exceptional cases." *United States v. Gallardo*, 977 F.3d 1126, 1140 (11th Cir. 2020) (quotation marks omitted).

Here, it is unnecessary to reach the merits of Jones's motion because he abandoned any challenge to the district court's determination that his motion was filed outside of the Rule 33 14-day window and, thus, he has not challenged every ground for the district court's denial of his motion.

III.

We review the reasonableness of a district court's sentence for an abuse of discretion. *United States v. Trailer*, 827 F.3d 933, 935 (11th Cir. 2016). The party challenging the sentence bears the burden of demonstrating that the sentence is unreasonable in light

of the record, the factors listed in 18 U.S.C. § 3553(a), and the substantial deference afforded sentencing courts. *United States v. Rosales-Bruno*, 789 F.3d 1249, 1256 (11th Cir. 2015).

It is well-settled that a district court is not authorized to sentence a defendant below the statutory mandatory minimum. *United States v. Castaing-Sosa*, 530 F.3d 1358, 1360 (11th Cir. 2008). Even if the guidelines range falls entirely below the mandatory minimum sentence, the court must follow the mandatory statutory minimum sentence. *United States v. Clark*, 274 F.3d 1325, 1328 (11th Cir. 2001). This is because the mandatory minimum sentence "plainly [takes] precedence." *Id.*

Here, the district court did not err because Jones was sentenced to the mandatory minimum sentence, which was mandated by Congress, and thus the district court lacked the authority to deviate downward from the mandatory minimum sentence.

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

April 19, 2022

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 21-10776-BB
Case Style: USA v. Sam Jones, Jr.
District Court Docket No: 3:19-cr-00117-TKW-2

Electronic Filing
All counsel must file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Although not required, non-incarcerated pro se parties are permitted to use the ECF system by registering for an account at www.pacer.gov. Information and training materials related to electronic filing are available on the Court's website. Enclosed is a copy of the court's decision filed today in this appeal. Judgment has this day been entered pursuant to FRAP 36. The court's mandate will issue at a later date in accordance with FRAP 41(b).

The time for filing a petition for rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing or for rehearing en banc is timely only if received in the clerk's office within the time specified in the rules. Costs are governed by FRAP 39 and 11th Cir.R. 39-1. The timing, format, and content of a motion for attorney's fees and an objection thereto is governed by 11th Cir. R. 39-2 and 39-3.

Please note that a petition for rehearing en banc must include in the Certificate of Interested Persons a complete list of all persons and entities listed on all certificates previously filed by any party in the appeal. See 11th Cir. R. 26.1-1. In addition, a copy of the opinion sought to be reheard must be included in any petition for rehearing or petition for rehearing en banc. See 11th Cir. R. 35-5(k) and 40-1 .

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation for time spent on the appeal no later than 60 days after either issuance of mandate or filing with the U.S. Supreme Court of a petition for writ of certiorari (whichever is later) via the eVoucher system. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

For questions concerning the issuance of the decision of this court, please call the number referenced in the signature block below. For all other questions, please call Tonya L. Richardson, BB at (404) 335-6174.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Jenifer L. Tubbs
Phone #: 404-335-6151

OPIN-1 Ntc of Issuance of Opinion