

No. 23-

IN THE
Supreme Court of the United States

ROSHUA MARQUISTON WHITE,

Petitioner,
v.

UNITED STATES OF AMERICA,

Respondent.

**On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit**

APPENDIX VOLUME

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APPENDIX A

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

October 14, 2022

No. 21-10839
Summary Calendar

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ROSHUA MARQUISTON WHITE,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
No. 4:20-CR-339-8

Before SMITH, DENNIS, and SOUTHWICK, *Circuit Judges.*

PER CURIAM:*

Roshua White pleaded guilty of conspiracy to possess with intent to distribute methamphetamine in violation of 21 U.S.C. § 846, and he was sentenced below the advisory guidelines range to 168 months of imprisonment and three years of supervised release. He appeals his sentence, main-

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 21-10839

taining that the district court clearly erred by denying him a two- to four-level minor- or minimal-role reduction under U.S.S.G. § 3B1.2. White alleges that a two- to four-level reduction was warranted because his involvement in the overall conspiracy was minor or minimal. He points to the fact that he brokered only one transaction and that there was no evidence that he benefited financially or was essential or indispensable to the wider conspiracy.

Because White preserved his arguments by raising them in the district court, we review “the district court’s interpretation and application of the Sentencing Guidelines *de novo*” and its “findings of fact and its application of the Sentencing Guidelines to those findings of fact . . . for clear error.” *United States v. Cedillo-Narvaez*, 761 F.3d 397, 401 (5th Cir. 2014). Whether a defendant is a minor or minimal participant under § 3B1.2 is a factual question reviewed for clear error. *United States v. Gomez-Valle*, 828 F.3d 324, 327 (5th Cir. 2016).

Although White did not receive any financial benefit from the transaction, the district court could plausibly find that White’s conduct was not peripheral to the advancement of the illegal activity and did not warrant a reduction. *See id.* White knew he was brokering a methamphetamine transaction. Moreover, brokering the transaction was not a peripheral activity. Despite that White’s actions may have been peripheral to the overall drug conspiracy, they were not peripheral to this particular transaction, and he was sentenced only for participating in it. *See United States v. Bello-Sanchez*, 872 F.3d 260, 264 (5th Cir. 2017).

The district court did not clearly err by denying White a § 3B1.2(b) role reduction. *United States v. Anchundia-Espinoza*, 897 F.3d 629, 634 (5th Cir. 2018); *Bello-Sanchez*, 872 F.3d at 264-65; *Gomez-Valle*, 828 F.3d at 329.

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
Fort Worth Division

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

ROSHUA MARQUISTON WHITE

Case Number: 4:20-CR-339-Y(8)

Shawn Smith, assistant U.S. attorney

Douglas C. Greene Sr., attorney for the defendant

On December 14, 2020, the defendant, Roshua Marquiston White, entered a plea of guilty to count three of the four-count information. Accordingly, the defendant is adjudged guilty of such count, which involves the following offense:

<u>TITLE & SECTION</u>	<u>NATURE OF OFFENSE</u>	<u>OFFENSE CONCLUDED</u>	<u>COUNT</u>
21 U.S.C. § 846 (21 U.S.C. §§ 841(a)(1) & (b)(1)(C))	Conspiracy to Possess with Intent to Distribute a Controlled Substance	October 31, 2020	3

The defendant is sentenced as provided on page two of this judgment. The sentence is imposed under Title 18, United States Code § 3553(a), taking the guidelines issued by the United States Sentencing Commission under Title 28, United States Code § 994(a)(1), as advisory only.

The defendant shall pay immediately a special assessment of \$100.00 for count three of the four-count information.

The defendant shall notify the United States attorney for this district within thirty 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.

Sentence imposed June 1, 2021.


TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

Signed June 2, 2021.

IMPRISONMENT

The defendant, Roshua Marquiston White, is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of 168 months on count three of the four-count information. This sentence shall run consecutively to any future sentence that may be imposed in case no. 17051 in the 29th Judicial District Court, Palo Pinto County, Texas.

The Court recommends that the defendant be enrolled in the Institution Residential Drug Abuse Treatment Program, if eligible.

The defendant is remanded to the custody of the United States marshal.

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of 3 years on count three of the four-count information.

The defendant, while on supervised release, shall comply with the standard conditions recommended by the U. S. Sentencing Commission at §5D1.3(c) of the United States Sentencing Commission Guidelines Manual, and shall:

- not commit another federal, state, or local crime;
- not possess illegal controlled substances;
- not possess a firearm, destructive device, or other dangerous weapon;
- cooperate in the collection of DNA as directed by the Probation Officer, as authorized by the Justice for All Act of 2004;
- report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Federal Bureau of Prisons;
- refrain from any unlawful use of a controlled substance. The defendant 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; and
- participate in outpatient mental health treatment services as directed by the probation officer until successfully discharged, which services may include prescribed medications by a licensed physician, with the defendant contributing to the costs of services rendered (copayment) at a rate of at least \$25 per month.

FINE/RESTITUTION

The Court does not order a fine or costs of incarceration because the defendant does not have the financial resources or future earning capacity to pay a fine or costs of incarceration.

Restitution is not ordered because there is no victim other than society at large.

Defendant: Roshua Marquiston White
Case Number: 4:20-CR-339-Y(8)

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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 marshal