

No.

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 2022

JOEL ARMANDO RODRIGUEZ, Petitioner,

v.

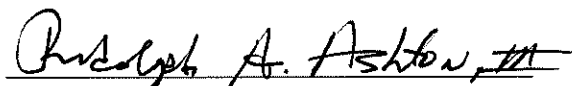
UNITED STATES OF AMERICA, Respondent

MOTION TO PROCEED IN FORMA PAUPERIS

Petitioner, Joel Armando Rodriguez, by his undersigned counsel, requests leave to file a Petition for Writ of Certiorari without prepayment of costs and to proceed in forma pauperis pursuant to Rule 39 of the Supreme Court Rules. Counsel was appointed in the lower court pursuant to 18 U.S.C. § 3006 and Rule 44, Fed. R. CR. P.

This the 5th day of May, 2023.

Respectfully submitted,



RUDOLPH A. ASHTON, III

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No.

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 2022

JOEL ARMANDO RODRIGUEZ, Petitioner,

v.

UNITED STATES OF AMERICA, Respondent

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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QUESTION PRESENTED

- I. WHETHER THE DISTRICT COURT IMPROPERLY EXPANDED GUIDELINE § 1B1.3 BY INCLUDING AS RELEVANT DRUG WEIGHT UNCORROBORATED STATEMENTS OF TWO COOPERATING DEFENDANTS WHO ATTRIBUTED A SIGNIFICANT AMOUNT OF METHAMPHETAMINE TO THE PETITIONER, THUS ELEVATING HIS OFFENSE LEVEL, AND THE FOURTH CIRCUIT ERRED IN HOLDING THIS WAS RELEVANT CONDUCT, EVEN THOUGH THE PETITIONER WAS ONLY CHARGED WITH AND PLED GUILTY TO POSSESSION WITH INTENT TO DISTRIBUTE COCAINE.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Joel Armando Rodriguez, respectfully prays this Court that a writ of certiorari issue to review the opinion of the United States Court of Appeals for the Fourth Circuit, issued on February 7, 2023, affirming his judgment and sentence.

OPINION BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit for which review is sought is United States v. Joel Armando Rodriguez, No. 21-4317 (4th Cir., February 7, 2023). The opinion is unpublished. The opinion of the United States Court of Appeals for the Fourth Circuit is reproduced in the Appendix to this petition as Appendix A. The judgment is reproduced as Appendix B. The mandate is reproduced as Appendix C. A copy of the district court judgment for the Eastern District of North Carolina wherein Mr. Rodriguez was sentenced to 150 months imprisonment is reproduced as Appendix D.

JURISDICTION

The opinion and judgment of the United States Court of Appeals for the Fourth Circuit was issued on February 7, 2023. The jurisdiction of this court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

On April 7, 2020, the Petitioner was charged in a one count indictment with possession with intent to distribute cocaine in violation of Title 21, U.S.C. § 841(a)(1), said offense alleging to have occurred on or about October 7, 2019. (App. E, F). On November 12, 2020, the Petitioner pled guilty without a plea agreement to the one count indictment. This appeal concerns the alleged relevant conduct under Guideline § 1B1.3 (App. G.), which dramatically raised the guideline base offense level.

STATEMENT OF THE CASE

Procedural History

On April 7, 2020, Joel Armando Rodriguez was named in a one count indictment filed in the Eastern District of North Carolina, charging him with possession with intent to distribute five hundred (500) grams or more of a mixture and substance containing a detectable amount of cocaine, in violation of Title 21, U.S.C. § 841(a)(1) and 18 U.S.C. § 2. Said offense was alleged to have occurred on or about October 7, 2019. (App. E, F). On November 12, 2020, Joel Rodriguez pled guilty without a plea agreement to the one count indictment.

A final revised Presentence Report was filed on June 7, 2021. The Petitioner objected to the drug weight contending that statements provided by two cooperating defendants (CD-1 and CD-2), should not have been considered when determining the base offense level. Said statements included methamphetamine. (App. H).

The case came on for sentencing at the June 9, 2021 term of court before the Honorable James C. Dever, III, District Court Judge. The Court denied the Petitioner's objection to the drug weight, and the Government agreed to the base offense level of 34. The Court then accepted the calculations of the final revised Presentence Report, which resulted in a total offense level of 31, criminal history category III, and a guideline range of 135 to 168 months.

Judge Dever sentenced Joel Rodriguez to 150 months imprisonment, with a supervised release term of 5 years. Counsel filed a notice of appeal on behalf of Mr.

Rodriguez on June 18, 2021. In an opinion filed on February 7, 2023, the Fourth Circuit Court of Appeals affirmed. (App. A).

Statement of Facts

This case arose out of a narcotics investigation in Robeson County, North Carolina during 2019. Agents had received confidential information that Mr. Rodriguez and his girlfriend Reba Scott (unindicted), were traveling to Texas and returning to Ms. Scott's residence in Maxton, North Carolina, where they sold narcotics.

On October 4, 2019, agents received information from a confidential source that a vehicle operated by Mr. Rodriguez was traveling on Interstate 85 in Georgia. On October 7, 2019, agents conducted a traffic stop of Rodriguez's vehicle in Robeson County. There were five other occupants in the vehicle, including Reba Scott. A search of the vehicle revealed 996.42 grams of cocaine hidden inside Mr. Rodriguez's luggage, for which he accepted responsibility.

In calculating the drug weight, the probation officer used information from two cooperating defendants, hereafter referred to as CD-1 and CD-2. They each put approximately 2 kilograms of cocaine on Mr. Rodriguez. The probation officer also used 93.11 grams of methamphetamine and 473.89 grams of crystal methamphetamine based upon statements of CD-2 alleging that his supplier was the Petitioner. (App. H).

Defense counsel contended at sentencing that the information of the unnamed cooperating defendants lacked sufficient corroboration, was not reliable,

and should not be included in the Petitioner's relevant conduct. He further contended that on the date of his arrest Mr. Rodriguez admitted he was a cocaine dealer. Counsel further argued that Mr. Rodriguez had no history of methamphetamine.

The Government called Agent Joshua Bass, a narcotics detective with the Fayetteville Police Department, who was also a task force officer with the FBI. Agent Bass testified about CD-1 being reliable and providing a history of cocaine dealing by Mr. Rodriguez. Agent Bass also testified about the arrest of the Petitioner in October of 2019. Agent Bass further testified that agents made 11 controlled purchases of narcotics from CD-2 which included cocaine, crack cocaine, heroin, and the majority being methamphetamine. He also testified that it appeared that CD-2 was getting his drugs from the Petitioner. The Government then introduced lab reports showing the methamphetamine purchased from CD-2. When approached by agents, CD-2 provided an unprotected statement that Petitioner Rodriguez was his supplier.

After hearing from counsel, the District Court decided that there was sufficient corroboration, independent of the statements themselves. The Court further found that the statements of CD-1 and CD-2 were relevant, and that the probation office properly scored the drug weight, including the methamphetamine.

Further facts will be developed in the argument portion of this petition.

REASONS FOR GRANTING THE PETITION

- I. THE DISTRICT COURT IMPROPERLY EXPANDED GUIDELINE § 1B1.3 BY INCLUDING AS RELEVANT DRUG WEIGHT UNCORROBORATED STATEMENTS OF TWO COOPERATING DEFENDANTS WHO ATTRIBUTED A SIGNIFICANT AMOUNT OF METHAMPHETAMINE TO THE PETITIONER, THUS ELEVATING HIS OFFENSE LEVEL, AND THE FOURTH CIRCUIT ERRED IN HOLDING THIS WAS RELEVANT CONDUCT, EVEN THOUGH THE PETITIONER WAS ONLY CHARGED WITH AND PLED GUILTY TO POSSESSION WITH INTENT TO DISTRIBUTE COCAINE.

The basis of this petition is the dramatic increase in drug weight attributed to the Petitioner based upon uncharged conduct. More particularly, the Petitioner contends that the base offense level was erroneously inflated because it relied almost completely on hearsay statements made by two confidential cooperating defendants and the addition of methamphetamine to the equation. Defense counsel objected to the drug weight. He contended that the information from the cooperating defendants lacked sufficient corroboration, was not reliable, and should not have been included in the Petitioner's relevant conduct. Counsel further argued that although Mr. Rodriguez admitted he was a cocaine dealer and pled guilty to the cocaine charges, there was no corroborating evidence of or history of methamphetamine.

Relevant conduct is referenced in Guideline § 1B1.3. It is generally defined as all acts and omissions that were part of the same course of conduct or common scheme or plan as the offense of conviction. Mr. Rodriguez understands that for relevant conduct purposes, it makes no difference whether the specific drugs, money,

or other criminal conduct is charged in a count of conviction. See United States v. Pineda, 770 F.3d 313, 319 (4th Cir. 2014), which affirmed the inclusion of an uncharged sale of drugs and firearm which led to the defendant's subsequent investigation and conviction. However, in Pineda there was direct evidence of his uncharged conduct occurring shortly before the charged conduct and directly leading to the charged conduct. Additionally, in Pineda all three drug transactions involved cocaine and a firearm.

The indictment in the instant case only charged Joel Rodriguez with cocaine. The stop and arrest on October 7, 2019 resulting in the indictment revealed 996.42 grams of cocaine. Also, through hearsay testimony of the agent, both cooperating defendants put additional cocaine on the Petitioner. Furthermore, the testifying agent offered testimony that cooperating defendant 2 put methamphetamine and crystal methamphetamine (ICE) on the Petitioner.

The uncorroborated methamphetamine is problematic because the same amount of methamphetamine has a significantly higher converted drug weight than cocaine, and actual methamphetamine or "ice" has a potency of ten times methamphetamine when calculating converted drug weight.

In the final PSR calculation of the base offense level, the total drug quantity for cocaine was 5.0374 kg. with a converted drug weight of 1007.48 kg. This would result in a base offense level of 30. However, when adding the "ice" and the methamphetamine and their converted drug weights, the total converted drug weight rose to 10671.50 kg., with a base offense level of 34. (App. H). Had the

methamphetamine attributed to Mr. Rodriguez been excluded, the base offense level would have been 30, less 3 levels for acceptance of responsibility, resulting in a total offense level of 27. A total offense level of 27 with a criminal history III has a guideline range of 87 months to 108 months.

Joel Rodriguez respectfully contends that using the uncorroborated hearsay testimony of two cooperating defendants resulted in an artificially high base offense level much to his detriment. This is especially apparent where his cocaine case, to which he readily admitted and accepted responsibility, was dramatically controlled by methamphetamine allegations resulting in a 4 level increase in his base offense level and a 4 to 5 year increase in his guideline range.

Joel Rodriguez also contends that the 150 month sentence imposed in his case was unreasonable based upon the totality of the facts and circumstances. Not only was the base offense level artificially high because of uncorroborated hearsay testimony, said testimony also assigned a significant amount of methamphetamine to the Petitioner. This resulted in a substantially increased sentencing level.

The Fourth Circuit opinion recognized that it reviewed the Petitioner's sentence for reasonableness, applying "a deferential abuse-of-discretion standard" as required in Gall v. United States, 552 U.S. 38, 41, 128 S. Ct. 586, 591, 169 L. Ed. 2d 445 (2007). This Court in Gall went on to hold that the appellate court must first ensure that the district court committed no significant procedural error, such as improperly calculating the Guidelines range, failing to consider the § 3553(a) factors, or failing to adequately explain the chosen sentence. After determining that a

district court's sentencing decision is procedurally sound, the appellate court should then consider the substantive reasonableness of the sentence imposed under the abuse-of-discretion standard, taking into account the totality of the circumstances. Gall went on to note that if the sentence is within the Guidelines range, the appellate court may, but is not required to, apply a presumption of reasonableness. 552 U.S. at 50-51, 128 S. Ct. at 597.

Petitioner Rodriguez contends that the guideline range was improperly calculated because it relied upon a substantial amount of methamphetamine that significantly raised the base offense level, and ultimately the total offense level. This was a procedural error, and the Fourth Circuit Court of Appeals erred in finding that the guideline was correctly calculated and that there was no procedural error.

The Fourth Circuit went on to hold that Petitioner's sentence was substantively reasonable and sufficient, but not greater than necessary, to meet the statutory goals of sentencing. The opinion repeated the colloquy of the district court judge in support of his mid-range 150 month sentence. And while the Fourth Circuit may have been correct based upon a guideline range that included the significant methamphetamine increase, it is respectfully urged that had the guideline range been calculated without the methamphetamine it would have been substantially lower.

As previously noted, without the methamphetamine, the guideline range would have been 87 months to 108 months. A 150 month sentence under those


circumstances would be a major upward departure. This Court in Gall noted that it was “uncontroversial that a major departure should be supported by a more significant justification than a minor one.” 552 U.S. at 50, 128 S. Ct. at 597. Therefore, it is urged that the Fourth Circuit opinion’s finding of substantive reasonableness is erroneous should this Court agree that the methamphetamine should not have been included in the offense conduct.

CONCLUSION

For the foregoing reasons, Petitioner Joel Armando Rodriguez, respectfully requests that a Writ of Certiorari issue to review the decision of the United States Court of Appeals for the Fourth Circuit affirming his judgment and sentence.

This the 5th day of May, 2023.

DUNN, PITTMAN, SKINNER & ASHTON, PLLC
Counsel for Petitioner Joel Armando Rodriguez

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No.
IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 2022

JOEL ARMANDO RODRIGUEZ, Petitioner,
v.
UNITED STATES OF AMERICA, Respondent

ENTRY OF APPEARANCE
and
CERTIFICATE OF SERVICE

I, Rudolph A. Ashton, III, a member of the North Carolina State Bar, having been appointed to represent the Petitioner in the United States Court of Appeals for the Fourth Circuit, pursuant to the provisions of the Criminal Justice Act, 18 U.S.C. § 3006A, hereby enter my appearance in this Court in respect to this Petition for a Writ of Certiorari.

I, Rudolph A. Ashton, III, do swear or declare that on this date, the 5th day of May, 2023, pursuant to Supreme Court Rules 29.3 and 29.4, I have served the attached motion for leave to proceed *in forma pauperis* and petition for a writ of certiorari on each party to the above proceeding, or that party's counsel, and on every other person required to be served by depositing in an envelope containing the

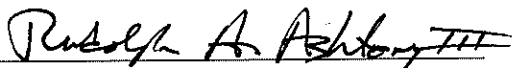
above documents in the United States mail properly addressed to each of them and with first-class postage prepaid. The names and addresses of those served are as follows:

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This the 5th day of May, 2023.

Respectfully submitted,

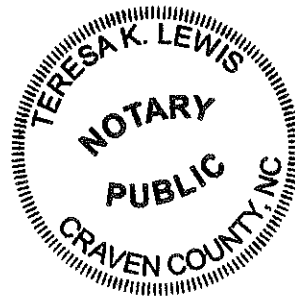

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Subscribed and Sworn to Before Me

This the 5th day of May, 2023.


Notary Public

My Commission Expires: 03/19/2024



APPENDIX A

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-4317

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOEL ARMANDO RODRIGUEZ,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at
Wilmington. James C. Dever III, District Judge. (7:20-cr-00057-D-1)

Submitted: January 30, 2023

Decided: February 7, 2023

Before KING and HARRIS, Circuit Judges, and FLOYD, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

ON BRIEF: Rudolph A. Ashton, III, DUNN PITTMAN SKINNER & CUSHMAN, PLLC, New Bern, North Carolina, for Appellant. Michael F. Easley, Jr., United States Attorney, David A. Bragdon, Nicholas Hartigan, Assistant United States Attorneys, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

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PER CURIAM:

Joel Armando Rodriguez pled guilty, without the benefit of a plea agreement, to possession with intent to distribute 500 grams or more of cocaine, and aiding and abetting the same, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(B), 18 U.S.C. § 2. The district court sentenced Rodriguez to 150 months' imprisonment, a term in the middle of the advisory Sentencing Guidelines range determined at sentencing. Rodriguez timely appeals, raising two sentencing challenges. First, Rodriguez asserts that the district court erred in calculating the relevant drug weight because it relied on the insufficiently corroborated statements of two cooperating defendants. Second, he argues that the court imposed a sentence that is greater than necessary to meet the sentencing goals of 18 U.S.C. § 3553(a). We affirm.

We review Rodriguez's sentence for reasonableness, applying "a deferential abuse-of-discretion standard." *Gall v. United States*, 552 U.S. 38, 41 (2007). We first "ensure that the district court committed no significant procedural error," such as improperly calculating the Guidelines range, inadequately considering the § 3553(a) factors, or basing the sentence on clearly erroneous facts. *United States v. Fowler*, 948 F.3d 663, 668 (4th Cir. 2020) (internal quotation marks omitted). If we find no significant procedural error, we then consider the substantive reasonableness of the sentence, "tak[ing] into account the totality of the circumstances to determine whether the sentencing court abused its discretion in concluding that the sentence it chose satisfied the standards set forth in § 3553(a)." *United States v. Nance*, 957 F.3d 204, 212 (4th Cir. 2020) (internal quotation marks omitted).

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Rodriguez argues that the district court erroneously relied on insufficiently corroborated hearsay statements from two cooperating defendants in determining the drug quantities attributable to him. He specifically challenges the inclusion of quantities of methamphetamine and crystal methamphetamine (“ice”) as relevant conduct. “We review the district court’s calculation of the quantity of drugs attributable to a defendant for sentencing purposes for clear error . . . [and] . . . will reverse the district court’s finding only if we are left with the definite and firm conviction that a mistake has been committed.” *United States v. Crawford*, 734 F.3d 339, 342 (4th Cir. 2013) (internal quotation marks omitted).

The district court found Rodriguez responsible for 10,671.5 kilograms of converted drug weight. This included 996.42 grams of cocaine recovered from Rodriguez’s vehicle during a traffic stop and for which he admitted ownership. The court derived the remaining drug weight from quantities of cocaine, methamphetamine, and ice that Cooperating Defendant 1 (“CD-1”) and Cooperating Defendant 2 (“CD-2”) stated they purchased from Rodriguez. The methamphetamine and ice significantly increased Rodriguez’s Guidelines range. Rodriguez contends that the district court erred in attributing the methamphetamine and ice to him because the court based its findings on hearsay testimony, neither of these controlled substances was charged in the indictment, and Rodriguez admitted only to an offense involving cocaine.

“For sentencing purposes, the government must prove the drug quantity attributable to a particular defendant by a preponderance of the evidence.” *United States v. Bell*, 667 F.3d 431, 441 (4th Cir. 2011). “Under the Guidelines, ‘[w]here there is no drug seizure or

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the amount seized does not reflect the scale of the offense, the court shall approximate the quantity of the controlled substance.” *United States v. Williamson*, 953 F.3d 264, 273 (4th Cir. 2020) (quoting U.S. Sentencing Guidelines Manual § 2D1.1 cmt. n.5 (2018)). In making this approximation, a court may “give weight to any relevant information before it, including uncorroborated hearsay, provided that the information has sufficient indicia of reliability to support its accuracy.” *Id.* (internal quotation marks omitted); *see* USSG § 6A1.3(a) cmt. n., p.s. (stating that, in determining relevant facts, “[a]ny information may be considered, so long as it has sufficient indicia of reliability to support its probable accuracy”). Uncorroborated hearsay alone can provide sufficiently reliable evidence of drug quantity. *United States v. Wilkinson*, 590 F.3d 259, 269 (4th Cir. 2010). “The defendant bears the burden of establishing that the information relied upon by the district court . . . is erroneous.” *United States v. Slade*, 631 F.3d 185, 188 (4th Cir. 2011).

A task force officer involved with the investigation testified at the sentencing hearing that he considered the information from both cooperating defendants reliable. Furthermore, the statements of both cooperating defendants were consistent with other information collected during the investigation.

CD-1 told investigators that he purchased kilograms of cocaine from a Hispanic man who lived with his girlfriend, Reba Scott, at 970 McGirt Gin Road in Robeson County, North Carolina. Additionally, CD-1 said that the Hispanic man traveled from North Carolina to his cocaine supply in Texas. Investigators independently confirmed that Scott lived at 970 McGirt Gin Road and they identified Rodriguez—who they discovered had a history of cocaine trafficking—as the Hispanic man. Through license plate readers,

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investigators also were able to verify that Rodriguez had traveled between North Carolina and Texas. And officers seized nearly one kilogram of cocaine from Rodriguez during a North Carolina traffic stop while he was accompanied by Scott on a suspected return trip from Texas.

As part of an investigation of CD-2, law enforcement followed his movements through a GPS tracker affixed to his vehicle. Agents made 11 controlled purchases from CD-2—primarily methamphetamine and ice, but also cocaine. CD-2 made an unprotected statement that Rodriguez was his drug supplier and that he purchased cocaine and methamphetamine from Rodriguez at 970 McGirt Gin Road. CD-2 also said that when he received a call for the controlled buys, he would obtain the drugs from Rodriguez and then immediately complete the deals. This was consistent with agents' observation of CD-2's movements when they were monitoring him with the GPS tracker.

We conclude that the information provided by the cooperating defendants was sufficiently corroborated by other information discovered through the investigation and hence had sufficient indicia of reliability to support its accuracy. Accordingly, the district court did not clearly err in relying on the information to calculate the drug weight attributable to Rodriguez.

Rodriguez also argues that methamphetamine and ice were improperly included as relevant conduct, because he was only charged with, and pled guilty to, a cocaine offense. "Under the Guidelines, the drug quantities that may be attributed to a defendant include the quantities associated with the defendant's offense of conviction and any relevant conduct." *United States v. Flores-Alvarado*, 779 F.3d 250, 255 (4th Cir. 2015). Relevant

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conduct includes “all acts and omissions committed, aided, [or] abetted . . . by the defendant . . . that occurred during the commission of the offense of conviction.” USSG § 1B1.3(a)(1)(A). “[I]n a drug distribution case, quantities and types of drugs not specified in the count of conviction are to be included in determining the offense level if they were part of the same course of conduct . . . as the count of conviction.” USSG § 1B1.3, cmt. background. Thus, a sentencing court may take into account quantities and types of drugs that were not charged or otherwise specified in the indictment, as long as it finds, by a preponderance of the evidence, that the conduct occurred and that it was part of the same course of conduct as the count of conviction. *United States v. Williams*, 977 F.2d 866, 870 (4th Cir. 1992).

Here, CD-2’s information corroborated CD-1’s statement that Rodriguez dealt drugs from the McGirt Gin Road address. Furthermore, officers seized cocaine from Rodriguez during a traffic stop when he was returning from a suspected trip to Texas where CD-1 stated Rodriguez had a drug source. We conclude that the district court did not clearly err in finding that a preponderance of the evidence established that the sales of methamphetamine and ice were part of the same course of conduct as the offense of conviction because they were part of the same “ongoing series of offenses,” USSG § 1B1.3, cmt. n.5(B)(ii), and that the sentence is procedurally reasonable.

Turning to Rodriguez’s challenge to the substantive reasonableness of his sentence, a sentence is substantively reasonable only if it is “sufficient, but not greater than necessary,” to meet the statutory goals of sentencing. *See* 18 U.S.C. § 3553(a). In reviewing a sentence for substantive reasonableness, we consider “the totality of the

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circumstances to determine whether the sentencing court abused its discretion in concluding that the sentence it chose satisfied the standards set forth in § 3553(a).” *Nance*, 957 F.3d at 212 (internal quotation marks omitted). “A sentence that is within or below a properly calculated Guidelines range is presumptively [substantively] reasonable.” *United States v. Bennett*, 986 F.3d 389, 401 (4th Cir. 2021) (internal quotation marks omitted). “On appeal, such a presumption can only be rebutted by showing that the sentence is unreasonable when measured against the 18 U.S.C. § 3553(a) factors.” *Id.* (cleaned up).

Citing *Bell*, Rodriguez argues that the district court abused its discretion by sentencing him in the middle of the advisory Guidelines range rather than below or at the low end because his Guidelines range was based upon uncertain witness estimates. In *Bell*, we held that “when the approximation [of the drug weight] is based only upon uncertain witness estimates, district courts should sentence at the low end of the range to which the witness testified.” 667 F.3d at 441 (internal quotation marks omitted). Thus, in attributing drug weight, *Bell* instructs the district court to conservatively determine drug quantity by using the smaller amount of the witness’ estimates. This is precisely what the district court did in this case when calculating Rodriguez’s base offense level. We decline Rodriguez’s invitation to extend the holding in *Bell* to require the district court to sentence the defendant at the low end of the final calculated Guidelines range.

In announcing Rodriguez’s within-Guidelines sentence, the district court provided a detailed explanation that was both rooted in the relevant § 3553(a) factors and responsive to Rodriguez’s sentencing arguments. Addressing the nature and circumstances of the offense, § 3553(a)(1), the court found that Rodriguez’s crime involved controlled

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substances that were highly addictive and harmful to the community. The court also discussed Rodriguez's history and characteristics, § 3553(a)(1), opining that Rodriguez was an intelligent able-bodied man who chose to traffic in drugs notwithstanding growing up in a stable environment. The court recounted Rodriguez's prior convictions and observed that he committed the instant offense despite having previously served a lengthy sentence for cocaine trafficking. Therefore, the court concluded that a sentence that incapacitated Rodriguez was warranted, reflecting consideration of the need to deter Rodriguez and protect the public from his further crimes, § 3553(a)(2)(B), (C).

Finally, the district court explicitly rejected Rodriguez's argument for a downward variance based on the disparity in the Guidelines between ice and methamphetamine, noting that ice justified stiffer penalties because it was more dangerous. In imposing the sentence, the district court expressly recognized its duty "to impose a sentence sufficient, but not greater than necessary," to meet the § 3553(a) sentencing goals. 18 U.S.C. § 3553(a). Rodriguez fails to rebut the presumption of reasonableness accorded his within-Guidelines sentence.

Accordingly, we affirm Rodriguez's sentence. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

APPENDIX B

FILED: February 7, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-4317
(7:20-cr-00057-D-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

JOEL ARMANDO RODRIGUEZ

Defendant - Appellant

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

APPENDIX C

FILED: March 1, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-4317
(7:20-cr-00057-D-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

JOEL ARMANDO RODRIGUEZ

Defendant - Appellant

M A N D A T E

The judgment of this court, entered February 7, 2023, takes effect today.

This constitutes the formal mandate of this court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

/s/Patricia S. Connor, Clerk

APPENDIX D

UNITED STATES DISTRICT COURT

Eastern District of North Carolina

UNITED STATES OF AMERICA

v.

JOEL ARMANDO RODRIGUEZ

JUDGMENT IN A CRIMINAL CASE

Case Number: 7:20-CR-57-1-D

USM Number: 04277-509

Geoffrey W. Hosford

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of Indictment

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

☐ was found guilty on count(s)
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

| <u>Title & Section</u> | <u>Nature of Offense</u> | <u>Offense Ended</u> | <u>Count</u> |
|----------------------------|---|----------------------|--------------|
| 21 U.S.C. § 841(a)(1), | Possession With Intent to Distribute 500 Grams or More of | 10/7/2019 | 1 |
| 21 U.S.C. § 841(b)(1)(B) | Cocaine an Aiding and Abetting | | |
| and 18 U.S.C. § 2 | | | |

The defendant is sentenced as provided in pages 2 through 7 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) 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.

6/9/2021

Date of Imposition of Judgment


Signature of Judge

James C. Dever III, United States District Judge

Name and Title of Judge

6/9/2021

Date

DEFENDANT: JOEL ARMANDO RODRIGUEZ
CASE NUMBER: 7:20-CR-57-1-D

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:
Count 1: 150 months

- ☒ The court makes the following recommendations to the Bureau of Prisons:
The court recommends the defendant participate in the most intensive substance abuse treatment and medical assessment/treatment. The court also recommends placement at FCI Butner.
- ☒ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district:
- ☐ at _____ ☐ a.m. ☐ p.m. on _____.
- ☐ 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: JOEL ARMANDO RODRIGUEZ

CASE NUMBER: 7:20-CR-57-1-D

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:

Count 1: 5 years

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: JOEL ARMANDO RODRIGUEZ

CASE NUMBER: 7:20-CR-57-1-D

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: JOEL ARMANDO RODRIGUEZ
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SPECIAL CONDITIONS OF SUPERVISION

The defendant shall participate as directed in a program approved by the probation office for the treatment of narcotic addiction, drug dependency, or alcohol dependency which will include urinalysis testing or other drug detection measures and may require residence or participation in a residential treatment facility.

The defendant shall consent to a warrantless search by a United States Probation Officer or, at the request of the probation officer, any other law enforcement officer, of the defendant's person and premises, including any vehicle, to determine compliance with the conditions of this judgment.

The defendant shall participate in such vocational training program as may be directed by the probation office.

The defendant shall cooperate in the collection of DNA as directed by the probation officer.

DEFENDANT: JOEL ARMANDO RODRIGUEZ
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CRIMINAL MONETARY PENALTIES

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

| | <u>Assessment</u> | <u>Restitution</u> | <u>Fine</u> | <u>AVAA Assessment*</u> | <u>JVTA Assessment**</u> |
|--------|-------------------|--------------------|-------------|-------------------------|--------------------------|
| TOTALS | \$ 100.00 | \$ | \$ | \$ | \$ |

☐ 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.

| <u>Name of Payee</u> | <u>Total Loss***</u> | <u>Restitution Ordered</u> | <u>Priority or Percentage</u> |
|----------------------|----------------------|----------------------------|-------------------------------|
|----------------------|----------------------|----------------------------|-------------------------------|

| | | |
|--------|---------------|---------------|
| TOTALS | \$ _____ 0.00 | \$ _____ 0.00 |
|--------|---------------|---------------|

☐ 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 the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ 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.

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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 \$ _____ 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:
The special assessment in the amount of \$100.00 shall be due in full immediately.

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) JVA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

APPENDIX E

FILED IN OPEN COURT

ON 4-7-20 BRH

Peter A. Moore, Jr., Clerk

US District Court

Eastern District of NC

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

NO. 7:20-CR-57-1D(2)

UNITED STATES OF AMERICA)

v.)

JOEL ARMANDO RODRIGUEZ)

INDICTMENT

The Grand Jury charges that:

On or about October 7, 2019, in the Eastern District of North Carolina, the defendant, JOEL ARMANDO RODRIGUEZ, aiding and abetting another, did knowingly and intentionally possess with the intent to distribute five hundred (500) grams or more of a mixture and substance containing a detectable amount of cocaine, a Schedule II controlled substance, in violation of Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

ALLEGATION OF PRIOR CONVICTION

For purposes of Title 21, United States Code, Sections 841(b) and 851, the defendant, JOEL ARMANDO RODRIGUEZ, committed the violation alleged in Count One after one prior conviction for a serious drug felony, as defined in Title 21, United States Code, Section 802(57), had become final.

FORFEITURE NOTICE

The defendant is given notice that pursuant to the provisions of Title 21, United States Code, Section 853 all of the defendant's interest in all property specified herein is subject to forfeiture.

Upon conviction of the offense(s) set forth in Count(s) One, the defendant shall forfeit to the United States any property constituting, or derived from, any proceeds the defendant obtained, directly or indirectly, as a result of the said offense(s) and any property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, the said offense(s).

If any of the above-described forfeitable property, as a result of any act or omission of a defendant --

- (1) cannot be located upon the exercise of due diligence;
- (2) has been transferred or sold to, or deposited with, a third party;
- (3) has been placed beyond the jurisdiction of the court;
- (4) has been substantially diminished in value; or
- (5) has been commingled with other property which cannot be divided without

difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of said defendant up to the value of the forfeitable property described above.

A TRUE BILL:

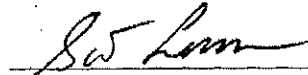
REDACTED VERSION

Pursuant to the E-Government Act and the federal rules, the unredacted version of this document has been filed under seal.

FOR PERSON

DATE: 4-7-2020

ROBERT J. HIGDON, JR.
United States Attorney


BY: SCOTT A. LEMMON
Assistant United States Attorney

§ 832. Suspicious orders**(a) Reporting**

Each registrant shall—

(1) design and operate a system to identify suspicious orders for the registrant;

(2) ensure that the system designed and operated under paragraph (1) by the registrant complies with applicable Federal and State privacy laws; and

(3) upon discovering a suspicious order or series of orders, notify the Administrator of the Drug Enforcement Administration and the Special Agent in Charge of the Division Office of the Drug Enforcement Administration for the area in which the registrant is located or conducts business.

(b) Suspicious order database**(1) In general**

Not later than 1 year after October 24, 2018, the Attorney General shall establish a centralized database for collecting reports of suspicious orders.

(2) Satisfaction of reporting requirements

If a registrant reports a suspicious order to the centralized database established under paragraph (1), the registrant shall be considered to have complied with the requirement under subsection (a)(3) to notify the Administrator of the Drug Enforcement Administration and the Special Agent in Charge of the Division Office of the Drug Enforcement Administration for the area in which the registrant is located or conducts business.

(c) Sharing information with the States**(1) In general**

The Attorney General shall prepare and make available information regarding suspicious orders in a State, including information in the database established under subsection (b)(1), to the point of contact for purposes of administrative, civil, and criminal oversight relating to the diversion of controlled substances for the State, as designated by the Governor or chief executive officer of the State.

(2) Timing

The Attorney General shall provide information in accordance with paragraph (1) within a reasonable period of time after obtaining the information.

(3) Coordination

In establishing the process for the provision of information under this subsection, the Attorney General shall coordinate with States to ensure that the Attorney General has access to information, as permitted under State law, possessed by the States relating to prescriptions for controlled substances that will assist in enforcing Federal law.

(Pub.L. 91-513, Title II, § 312, as added Pub.L. 115-271, Title III, § 3292(b), Oct. 24, 2018, 132 Stat. 3956.)

PART D—OFFENSES AND PENALTIES**§ 841. Prohibited acts A****(a) Unlawful acts**

Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally—

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or

(2) to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance.

(b) Penalties

Except as otherwise provided in section 849, 859, 860, or 861 of this title, any person who violates subsection (a) of this section shall be sentenced as follows:

(1)(A) In the case of a violation of subsection (a) of this section involving—

(i) 1 kilogram or more of a mixture or substance containing a detectable amount of heroin;

(ii) 5 kilograms or more of a mixture or substance containing a detectable amount of—

(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;

(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(IV) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subclauses (I) through (III);

(iii) 280 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

(iv) 100 grams or more of phencyclidine (PCP) or 1 kilogram or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(v) 10 grams or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(vi) 400 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 100 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide;

(vii) 1000 kilograms or more of a mixture or substance containing a detectable amount of marihuana, or 1,000 or more marihuana plants regardless of weight; or

(viii) 50 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers;

such person shall be sentenced to a term of imprisonment which may not be less than 10 years or more than life and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18 or \$10,000,000 if the defendant is an individual or \$50,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a serious drug felony or serious violent felony has become final, such person

shall be sentenced to a term of imprisonment of not less than 15 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of Title 18 or \$20,000,000 if the defendant is an individual or \$75,000,000 if the defendant is other than an individual, or both. If any person commits a violation of this subparagraph or of section 849, 859, 860, or 861 of this title after 2 or more prior convictions for a serious drug felony or serious violent felony have become final, such person shall be sentenced to a term of imprisonment of not less than 25 years and fined in accordance with the preceding sentence. Notwithstanding section 3583 of Title 18, any sentence under this subparagraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 5 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 10 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein.

(B) In the case of a violation of subsection (a) of this section involving—

(i) 100 grams or more of a mixture or substance containing a detectable amount of heroin;

(ii) 500 grams or more of a mixture or substance containing a detectable amount of—

(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;

(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(IV) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subclauses (I) through (III);

(iii) 28 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

(iv) 10 grams or more of phencyclidine (PCP) or 100 grams or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(v) 1 gram or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(vi) 40 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 10 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide;

(vii) 100 kilograms or more of a mixture or substance containing a detectable amount of marihuana, or 100 or more marihuana plants regardless of weight; or

(viii) 5 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 50 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers;

such person shall be sentenced to a term of imprisonment which may not be less than 5 years and not more than 40 years and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18 or \$5,000,000 if the defendant is an individual or \$25,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a serious drug felony or serious violent felony has become final, such person shall be sentenced to a term of imprisonment which may not be less than 10 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of Title 18 or \$8,000,000 if the defendant is an individual or \$50,000,000 if the defendant is other than an individual, or both. Notwithstanding section 3583 of Title 18, any sentence imposed under this subparagraph shall, in the absence of such a prior conviction, include a term of supervised release of at least 4 years in addition to such term of imprisonment and shall, if there was such a prior conviction, include a term of supervised release of at least 8 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein.

(C) In the case of a controlled substance in schedule I or II, gamma hydroxybutyric acid (including when scheduled as an approved drug product for purposes of section 3(a)(1)(B) of the Hillory J. Farias and Samantha Reid Date-Rape Drug Prohibition Act of 2000), or 1 gram of flunitrazepam, except as provided in subparagraphs (A), (B), and (D), such person shall be sentenced to a term of imprisonment of not more than 20 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18 or \$1,000,000 if the defendant is an individual or \$5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 30 years and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of Title 18 or \$2,000,000 if the defendant is an individual or \$10,000,000 if the defendant is other than an individual, or both. Notwithstanding section 3583 of Title 18, any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 6 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the provisions of this subparagraph which

be applied as if the defendant had been convicted on one count of conspiracy to commit the first robbery, one count of conspiracy to commit the second robbery, and one count of conspiracy to commit the third robbery.

4. Particular care must be taken in applying subsection (d) because there are cases in which the verdict or plea does not establish which offense(s) was the object of the conspiracy. In such cases, subsection (d) should only be applied with respect to an object offense alleged in the conspiracy count if the court, were it sitting as a trier of fact, would convict the defendant of conspiring to commit that object offense. Note, however, if the object offenses specified in the conspiracy count would be grouped together under §3D1.2(d) (e.g., a conspiracy to steal three government checks) it is not necessary to engage in the foregoing analysis, because §1B1.3(a)(2) governs consideration of the defendant's conduct.

| | |
|------------------------|---|
| <i>Historical Note</i> | Effective November 1, 1987. Amended effective January 15, 1988 (amendment 2); November 1, 1989 (amendments 73-76 and 303); November 1, 1991 (amendment 434); November 1, 1992 (amendment 438); November 1, 2000 (amendment 591); November 1, 2001 (amendments 613 and 617). |
|------------------------|---|

§1B1.3. Relevant Conduct (Factors that Determine the Guideline Range)

- (a) CHAPTERS TWO (OFFENSE CONDUCT) AND THREE (ADJUSTMENTS). Unless otherwise specified, (i) the base offense level where the guideline specifies more than one base offense level, (ii) specific offense characteristics and (iii) cross references in Chapter Two, and (iv) adjustments in Chapter Three, shall be determined on the basis of the following:

- (1) (A) all acts and omissions committed, aided, abetted, counseled, commanded, induced, procured, or willfully caused by the defendant; and

- (B) in the case of a jointly undertaken criminal activity (a criminal plan, scheme, endeavor, or enterprise undertaken by the defendant in concert with others, whether or not charged as a conspiracy), all acts and omissions of others that were—

- (i) within the scope of the jointly undertaken criminal activity,
- (ii) in furtherance of that criminal activity, and
- (iii) reasonably foreseeable in connection with that criminal activity;

that occurred during the commission of the offense of conviction, in preparation for that offense, or in the course of attempting to avoid detection or responsibility for that offense;

§1B1.3

- (2) solely with respect to offenses of a character for which §3D1.2(d) would require grouping of multiple counts, all acts and omissions described in subdivisions (1)(A) and (1)(B) above that were part of the same course of conduct or common scheme or plan as the offense of conviction;
 - (3) all harm that resulted from the acts and omissions specified in subsections (a)(1) and (a)(2) above, and all harm that was the object of such acts and omissions; and
 - (4) any other information specified in the applicable guideline.
- (b) CHAPTERS FOUR (CRIMINAL HISTORY AND CRIMINAL LIVELIHOOD) AND FIVE (DETERMINING THE SENTENCE). Factors in Chapters Four and Five that establish the guideline range shall be determined on the basis of the conduct and information specified in the respective guidelines.

Commentary

Application Notes:

1. **Sentencing Accountability and Criminal Liability.**—The principles and limits of sentencing accountability under this guideline are not always the same as the principles and limits of criminal liability. Under subsections (a)(1) and (a)(2), the focus is on the specific acts and omissions for which the defendant is to be held accountable in determining the applicable guideline range, rather than on whether the defendant is criminally liable for an offense as a principal, accomplice, or conspirator.
2. **Accountability Under More Than One Provision.**—In certain cases, a defendant may be accountable for particular conduct under more than one subsection of this guideline. If a defendant's accountability for particular conduct is established under one provision of this guideline, it is not necessary to review alternative provisions under which such accountability might be established.
3. **Jointly Undertaken Criminal Activity (Subsection (a)(1)(B)).**—

- (A) **In General.**—A "*jointly undertaken criminal activity*" is a criminal plan, scheme, endeavor, or enterprise undertaken by the defendant in concert with others, whether or not charged as a conspiracy.

In the case of a jointly undertaken criminal activity, subsection (a)(1)(B) provides that a defendant is accountable for the conduct (acts and omissions) of others that was:

- (i) within the scope of the jointly undertaken criminal activity;
- (ii) in furtherance of that criminal activity; and
- (iii) reasonably foreseeable in connection with that criminal activity.

The conduct of others that meets all three criteria set forth in subdivisions (i) through (iii) (*i.e.*, "within the scope," "in furtherance," and "reasonably foreseeable") is relevant conduct under this provision. However, when the conduct of others does not meet any one of the

APPENDIX H

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vehicle. **RODRIGUEZ** admitted to officers he had been smoking marijuana. A search of the vehicle revealed: **996.42 grams of cocaine** hidden inside **RODRIGUEZ's** luggage; 2 bags of marijuana (amount not reported); 2 cell phones; and drug paraphernalia. Scott claimed ownership of the marijuana.

10. On the same day, **RODRIGUEZ** provided an unprotected statement wherein he confessed to possessing the cocaine. **RODRIGUEZ** stated, "I did this stupid shit on my own." He explained he was planning to sell the cocaine himself, which was fronted to him by his source of supply. **RODRIGUEZ** stated he owed \$25,000 for the kilogram and he anticipated making \$2,000 in profit from the sale of the kilogram.
11. During the investigation, agents received historical information from other sources of information regarding **RODRIGUEZ's** drug trafficking activities, which is summarized below:

| Time Frame | Source of Information | Details |
|--------------|-------------------------------|--|
| March 2018 | Cooperating Defendant-1 (CD1) | CD-1 stated he/she purchased kilogram quantities of cocaine from RODRIGUEZ at his residence 970 McGirt Gin Road; however, CD-1 did not provide further details regarding frequency of the purchases. Therefore, the defendant is conservatively held accountable for 2 kilograms of cocaine . |
| 10/17/2019 | Reba Scott (unindicted) | Reba Scott observed RODRIGUEZ sell approximately two ounces of cocaine per month for the past year (2 ounces x 12 months = 24 ounces or 680.4 grams of cocaine). However, in an attempt to prevent potential double-counting, this amount is not included in the defendant's total drug accountability. |
| 2017 to 2020 | CD-2 | CD-2 identified RODRIGUEZ as his drug supplier and advised RODRIGUEZ lived at 970 McGirt Gin Road in Maxton. Between 2017 and 2020, RODRIGUEZ sold CD-2 72 ounces or 2.041 kilograms of cocaine and 20 to 25 ounces of methamphetamine (20 ounces or 567 grams of methamphetamine). Notably, between November 26, 2018, and July 3, 2019, agents used a confidential informant to purchase methamphetamine from CD-2. During six controlled purchases between November 26, 2018, and July 3, 2019, CD-2, who was supplied by RODRIGUEZ , provided what laboratory reports confirmed was a total 473.89 grams of crystal methamphetamine. Therefore, during this period, RODRIGUEZ provided CD-2 with 93.11 grams of methamphetamine and 473.89 grams of crystal methamphetamine . Moreover, CD-2 observed a lever action rifle in RODRIGUEZ's home during the transactions; however, the investigation did not determine if the gun was used in connection with RODRIGUEZ's drug trafficking activities. |

12. In summation, from mid-2017 until January 2020, **RODRIGUEZ** is held accountable for 5.0374 kilograms of cocaine, 93.11 grams of methamphetamine, and 473.89 grams of crystal methamphetamine, which have converted drug weight of 10,671.49 kilograms. Although **RODRIGUEZ** sold drugs from his residence, there is insufficient information to support that he maintained a premise for the purpose of manufacturing or distributing a controlled substance. Lastly, on December 16, 2020,

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47. **Base Offense Level:** The guideline for a violation of 21 U.S.C. § 841(a)(1) is USSG §2D1.1. The base offense level is 34. USSG §2D1.1(a)(5). **34**

| <u>Drug Name</u> | <u>Drug Quantity</u> | <u>Converted Drug Weight</u> |
|------------------|----------------------|----------------------------------|
| Cocaine | 5.0374 kg | 1007.48 kg |
| "Ice" | 473.89 gm | 9477.80 kg |
| Methamphetamine | 93.11 gm | 186.22 kg |
| Total | | 10671.50 kg |

48. **Specific Offense Characteristics:** None. **0**
49. **Victim Related Adjustment:** None. **0**
50. **Adjustment for Role in the Offense:** None. **0**
51. **Adjustment for Obstruction of Justice:** None. **0**
52. **Adjusted Offense Level (Subtotal):** **34**
53. **Chapter Four Enhancement:** None. **0**
54. **Acceptance of Responsibility:** The defendant has clearly demonstrated acceptance of responsibility for the offense. Accordingly, the offense level is decreased by two levels. USSG §3E1.1(a). **-2**
55. **Acceptance of Responsibility:** The defendant has assisted authorities in the investigation or prosecution of the defendant's own misconduct by timely notifying authorities of the intention to enter a plea of guilty. Accordingly, the offense level is decreased by one additional level. USSG §3E1.1(b). **-1**
56. **Total Offense Level:** **31**

PART E. SENTENCING OPTIONS**Custody**

57. **Statutory Provisions:** The minimum term of imprisonment is 5 years and the maximum term is 40 years. 21 U.S.C. § 841(a)(1) and 21 U.S.C. § 841(b)(1)(B).
58. **Guideline Provisions:** Based upon a total offense level of 31 and a criminal history category of III, the guideline imprisonment range is 135 months to 168 months.