

APPENDIX A

[United States v. Long](#)

United States Court of Appeals for the Sixth Circuit

July 28, 2023, Filed

No. 22-6041

Reporter

2023 U.S. App. LEXIS 19594 *

UNITED STATES OF AMERICA,
Plaintiff-Appellee, v. DEVIN JERROD
LONG, Defendant-Appellant.

Notice: CONSULT 6TH CIR. R. 32.1 FOR
CITATION OF UNPUBLISHED
OPINIONS AND DECISIONS.

Prior History: [*1] ON APPEAL FROM
THE UNITED STATES DISTRICT
COURT FOR THE WESTERN DISTRICT
OF TENNESSEE.

Counsel: For UNITED STATES OF
AMERICA, Plaintiff - Appellee: Hillary
Parham, Assistant United States Attorney,
Office of the U.S. Attorney, Jackson, TN.

For DEVIN JERROD LONG, Defendant -
Appellant: Greg Gookin, Federal Public
Defender's Office, Memphis, TN.

Judges: Before: CLAY, LARSEN, and
NALBANDIAN, Circuit Judges.

Opinion

ORDER

Devin Jerrod Long, a federal prisoner,
appeals the sentence imposed upon his

conviction for possessing a firearm in
furtherance of a drug-trafficking crime, in
violation of [18 U.S.C. § 924\(c\)](#). The parties
have waived oral argument, and this panel
unanimously agrees that oral argument is
not needed. *See Fed. R. App. P. 34(a)*.

Long pleaded guilty to the above offense.
The presentence report classified him as a
sentencing guidelines career offender based
on his prior Tennessee felony convictions in
2013 and 2015 for controlled substance
offenses. *See U.S.S.G. § 4B1.1(a)*. The
applicable guidelines range was 262 months
to 327 months of imprisonment.

Long filed an objection to the career-
offender classification, arguing that his
2013 state conviction for possession of
marijuana with intent to sell or deliver did
not qualify as a controlled-substance offense
under [*2] sentencing guideline [§ 4B1.2\(b\)](#)
because the offense could have involved
hemp. Although the state statute previously
defined marijuana to include hemp, both the
statute and the federal schedules of
controlled substances were later amended to
expressly exclude hemp. *Compare Tenn.*
Code Ann. § 39-17-402(16) (2012), *with*
Pub. L. No. 115-334, 132 Stat. 4490, §
12619 (2018) (codified at [21 U.S.C. §](#)

[802\(16\)](#)); 2019 Tenn. Pub. Acts ch. 87, sec. 1 (codified at [Tenn. Code Ann. § 39-17-402\(16\)](#)). Long therefore contended that qualifying controlled-substance offenses under [§ 4B1.2\(b\)](#) do not include possible hemp offenses. The government responded that the court should apply the law in effect at the time of the prior conviction, rather than at the time of sentencing for the current offense.

At sentencing, Long conceded that we had recently held in [United States v. Clark, 46 F.4th 404, 415 \(6th Cir. 2022\)](#), petition for cert. filed, (U.S. Feb. 28, 2023) (No. 22-6881), that a time-of-prior-conviction rule should apply. Nonetheless, he preserved his objection in the event of a future change in the law and requested a downward variance. The district court applied a time-of-prior-conviction rule in accordance with [Clark](#), granted Long's request for a variance, and sentenced him to 240 months in prison and five years of supervised release.

On appeal, Long renews his argument that his 2013 state marijuana conviction does not qualify as a controlled-substance [*3] offense for purposes of the career-offender guideline because of the change in law regarding hemp.

The career-offender guideline applies when, among other things, "the defendant has at least two prior felony convictions of either a crime of violence or a controlled substance offense." [U.S.S.G. § 4B1.1\(a\)](#). We review de novo whether a prior conviction qualifies as a predicate offense under the career-offender guideline. [Clark, 46 F.4th at 407](#). For controlled-substance offenses, courts

must consult the drug schedules in place at the time of the prior conviction. [Id. at 415](#); see also [United States v. Baker, No. 22-5110, 2022 U.S. App. LEXIS 34150, 2022 WL 17581659, at *2 \(6th Cir. Dec. 12, 2022\)](#), petition for cert. filed, (U.S. Apr. 18, 2023) (No. 22-7359). Under the time-of-conviction rule, Long's 2013 Tennessee marijuana conviction qualifies as a controlled-substance offense under [§ 4B1.1\(a\)](#), even if we assume he possessed hemp. See [Clark, 46 F.4th at 415](#); see also [Baker, 2022 U.S. App. LEXIS 34150, 2022 WL 17581659, at *2](#).

For these reasons, we **AFFIRM** the district court's judgment.

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