

No. _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

JASON JAMES VEAL, PETITIONER

vs.

UNITED STATES OF AMERICA, RESPONDENT

**ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**APPENDIX TO
PETITION FOR WRIT OF CERTIORARI**

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Jason James Veal*

APPENDIX A

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

SEP 18 2023

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

No. 22-50107

Plaintiff-Appellee,

D.C. No.

v.

2:19-cr-00427-VAP-8

JASON JAMES VEAL, AKA J-Bone,

MEMORANDUM*

Defendant-Appellant.

Appeal from the United States District Court
for the Central District of California
Virginia A. Phillips, Chief District Judge, Presiding

Argued and Submitted July 13, 2023
Pasadena, California

Before: SANCHEZ and MENDOZA, Circuit Judges, and JACKSON,** District Judge.

Appellant Jason Veal appeals his mandatory minimum sentence of ten years' imprisonment, imposed after the district court accepted his plea to one count of conspiracy to distribute methamphetamine, in violation of 21 U.S.C. §§ 846,

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Brian A. Jackson, United States District Judge for the Middle District of Louisiana, sitting by designation.

841(a)(1) & (b)(1)(A)(viii). The only issue presented here is whether the district court correctly denied Veal’s request for a departure below the statutory-minimum prison term pursuant to 18 U.S.C. § 3553(f)—commonly known as the “Safety Valve”—because his 1998 California conviction for attempted murder is no longer a prior “violent offense” after the Supreme Court’s decision in *United States v. Taylor*, 142 S. Ct. 2015 (2022). We have jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742. We affirm.

1. We generally interpret statutes and the Sentencing Guidelines *de novo*. *United States v. Paulk*, 569 F.3d 1094, 1094-95 (9th Cir.), *as amended* (Aug. 6, 2009). The Government, however, urges us to apply plain-error review because Veal “forfeited” his claim by failing to raise it in the district court. There, Veal argued that he was Safety Valve eligible because even if attempted murder *is* a “violent offense,” it is nonetheless a prior 3-point violent offense, not a prior 2-point violent offense as required by 18 U.S.C. § 3553(f)(1)(C).¹ Ans’g Br. 20-21.

“The ordinary rule in criminal cases ... is that ‘plain error’ review applies to arguments raised for the first time on appeal.” *United States v. Lillard*, 935 F.3d 827, 833 (9th Cir. 2019) (quoting *United States v. Yijun Zhou*, 838 F.3d 1007, 1010

¹ The District Court rejected Veal’s points-based argument at sentencing citing our decision in *United States v. Lopez*, where we explained that a 3-point violent offense “simultaneously” serves as a 2-point violent offense. 998 F.3d 431, 440 & n.10 (9th Cir. 2021). Veal abandons that argument on appeal.

(9th Cir. 2016)). Veal’s *Taylor*-based challenge to the District Court’s Safety Valve determination is a new argument raised for the first time on appeal, based on Supreme Court precedent that did not exist at the time of his sentencing. However, because whether attempted murder is a crime of violence under 18 U.S.C. § 16(a) is a purely legal question, *see United State v. Studhorse*, 883 F.3d 1198, 1203 n.3 (9th Cir. 2018), and the Government “will suffer no prejudice as a result of the failure to raise the issue in the trial court,” we review *de novo*. *Lillard*, 935 F.3d at 833 (quoting *United States v. Saavedra-Velazquez*, 578 F.3d 1103, 1106 (9th Cir. 2009)).

2. Veal is not eligible for Safety Valve relief. For Safety Valve purposes, “the term ‘violent offense’ means a crime of violence, as defined in section 16, that is punishable by imprisonment.” 18 U.S.C. § 3553(g). Veal does not contest that his California attempted murder conviction satisfies § 3533(g)’s “imprisonment” prong. The only question is whether California’s definition of attempted murder is a “categorical match” with 18 U.S.C. § 16(a)—the “elements clause”—which provides the “generic” federal definition of “crime of violence.” *See Studhorse*, 883 F.3d at 1203.

As Veal conceded at sentencing, we held in *Studhorse* that attempted first-degree murder under Washington state law is a “crime of violence” under § 16(a) because it “ha[s] as an element the intentional use, threatened use, or attempted use

of physical force against a person.” *Id.* at 1206. We recently held that *Studhorse* remains good law following *Taylor*. See *Dorsey v. United States*, No. 22-35030, 2023 WL 5159582, at *4 (9th Cir. Aug. 11, 2023) (“We join our sister circuits in concluding that *Taylor* does not require us to reconsider our precedent holding that attempted killing is a crime of violence.”). In doing so, we re-affirmed *Studhorse*’s central tenet that attempted first-degree murder under Washington law is categorically a crime of violence because “[e]ven if [the defendant] took only a slight, nonviolent act with the intent to cause another’s death, that act would pose a threat of violent force sufficient to satisfy’ the definition of a crime of violence.” *Id.*, at *4 (second alteration in original) (quoting *Studhorse*, 883 F.3d at 1206)).² Further, we held that *Studhorse*’s categorical approach framework applies to all attempted murder convictions, even if the defendant “was convicted of attempted killing under a different law.” *Id.*

Studhorse and *Dorsey* dictate the outcome here. Veal concedes on appeal that the elements of attempted murder under California law are indistinguishable from the elements of attempted first-degree murder under Washington law: each requires the defendant’s specific intent to kill plus a substantial step toward

² Our holding in *Dorsey* is consistent with recent decisions of the Seventh and Eleventh Circuits, each affirming that attempted murder remains a “crime of violence” post-*Taylor*. See *United States v. States*, 72 F.4th 778, 790-91 (7th Cir. 2023); *Alvarado-Linares v. United States*, 44 F.4th 1334, 1347 (11th Cir. 2022).

achieving that objective. Reply Br. 2. *See People v. Decker ex rel. Superior Ct.*, 157 P.3d 1017, 1021 (Cal. 2007) (“Attempted murder [under California law] requires the specific intent to kill and the commission of a direct but ineffectual act toward accomplishing the intended killing.”). Because our recently re-affirmed decision in *Studhorse* held that these elements establish a “categorical match” with § 16(a)’s definition of a “crime of violence,” 883 F.3d at 1203-06, Veal’s *Taylor*-based appeal is squarely foreclosed.

In sum, our precedent establishes that a California conviction for attempted murder is a “crime of violence” under § 16(a) and, by extension, a “violent offense” under the Safety Valve, 18 U.S.C. § 3553(g). Veal’s 1998 California attempted murder conviction is therefore “simultaneously” a prior 3-point violent offense *and* a prior 2-point violent offense. *See United States v. Lopez*, 998 F.3d 431, 440 (9th Cir. 2021). Having also accumulated more than four criminal history points, Veal is not eligible for Safety Valve relief, and the District Court lacked authority to deviate below the ten-year mandatory minimum prison sentence.

AFFIRMED.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

NOV 9 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JASON JAMES VEAL, AKA J-Bone,

Defendant-Appellant.

No. 22-50107

D.C. No.

2:19-cr-00427-VAP-8

Central District of California,
Los Angeles

ORDER

Before: SANCHEZ and MENDOZA, Circuit Judges, and JACKSON,* District Judge.

Judges Sanchez, Mendoza, and Jackson have voted to deny the petition for panel rehearing. Fed. R. App. P. 40. Judges Sanchez and Mendoza have voted to deny the petition for rehearing en banc, and Judge Jackson recommended denying the same. The full court has been advised of the petition, and no judge has requested to vote on whether to rehear the matter en banc. Fed. R. App. 35. Accordingly, Appellant's petition for panel rehearing and rehearing en banc, filed October 2, 2023, (Dkt. No. 39) is **DENIED**.

* The Honorable Brian A. Jackson, United States District Judge for the Middle District of Louisiana, sitting by designation.

APPENDIX C

**United States District Court
Central District of California**

UNITED STATES OF AMERICA vs.

Docket No. LACR 19-00427-VAP-8Defendant [8] Jason James Veal

AKA: Jason Neal and Jayson Veals

akas: Monikers: KMite, D-Mike, C-CrazySocial Security No. 3 2 1 1

(Last 4 digits)

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government, the defendant appeared in person on this date.

MONTH	DAY	YEAR
05	09	2022

COUNSEL

Greg Nicolaysen, CJA

(Name of Counsel)

PLEA

**GUILTY**, and the court being satisfied that there is a factual basis for the plea.**NOLO
CONTENDERE****NOT
GUILTY**

FINDING

There being a finding/verdict of **GUILTY**, defendant has been convicted as charged of the offense(s) of:

Conspiracy to Possess with Intent to Distribute Methamphetamine, in violation of 21 U.S.C. § 846, 21 U.S.C. § 841(b)(1)(A)(viii) as charged in count 1 of the Indictment.

**JUDGMENT
AND PROB/
COMM
ORDER**

The Court asked whether there was any reason why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the Court, the Court adjudged the defendant guilty as charged and convicted and ordered that: Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that the defendant is hereby committed to the custody of the Bureau of Prisons to be imprisoned for a term of: **120 months on count one of the Indictment. This term shall run concurrently with the undischarged terms of imprisonment imposed in Crawford County Circuit Court, Docket Nos. 17CR-15-624, 17CR-17-264, 17CR-17-416, and 17CR-17-610 as well as Sebastian County District Court, Docket No. 66CFR-16-937.**

The Court recommends that the defendant be considered for participation in the Bureau of Prison's Residential Drug Abuse Program (RDAP).

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of five (5) years under the following terms and conditions:

1. The defendant shall comply with the rules and regulations of the United States Probation & Pretrial Services Office and Second Amended General Order 20-04.
2. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from custody and at least two periodic drug tests thereafter, not to exceed eight tests per month, as directed by the Probation Officer.
3. The defendant shall participate in an outpatient substance abuse treatment and counseling program that includes urinalysis, breath or sweat patch testing, as directed by the Probation Officer. The defendant shall abstain from using alcohol and illicit drugs, and from abusing prescription medications during the period of supervision.
4. During the course of supervision, the Probation Officer, with the agreement of the defendant and defense counsel, may place the defendant in a residential drug treatment program approved by the U.S. Probation and Pretrial Services Office for treatment of narcotic addiction or drug dependency, which may include counseling and testing, to determine if the defendant

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has reverted to the use of drugs. The defendant shall reside in the treatment program until discharged by the Program Director and Probation Officer.

5. As directed by the Probation Officer, the defendant shall pay all or part of the costs of the Court-ordered treatment to the aftercare contractors during the period of community supervision. The defendant shall provide payment and proof of payment as directed by the Probation Officer. If the defendant has no ability to pay, no payment shall be required.
6. During the period of community supervision, the defendant shall pay the special assessment in accordance with this judgment's orders pertaining to such payment.
7. The defendant shall cooperate in the collection of a DNA sample from the defendant.
8. The defendant shall submit the defendant's person, property, house, residence, vehicle, papers, or other areas under the defendant's control, to a search conducted by a United States Probation Officer or law enforcement officer. Failure to submit to a search may be grounds for revocation. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition. Any search pursuant to this condition will be conducted at a reasonable time and in a reasonable manner upon reasonable suspicion that the defendant has violated a condition of his supervision and that the areas to be searched contain evidence of this violation.

The Court authorizes the Probation & Pretrial Services Office to disclose the Presentence Report to the substance abuse treatment provider to facilitate the defendant's treatment for narcotic addiction or drug dependency. Further redisclosure of the Presentence Report by the treatment provider is prohibited without the consent of the sentencing judge

It is ordered that the defendant shall pay to the United States a special assessment of \$100, which is due immediately. Any unpaid balance shall be due during the period of imprisonment, at the rate of not less than \$25 per quarter, and pursuant to the Bureau of Prisons' Inmate Financial Responsibility Program.

Pursuant to Guideline § 5E1.2(a), all fines are waived as the Court finds that the defendant has established that he is unable to pay and is not likely to become able to pay any fine.

The Court recommends that the defendant remain in federal custody and serve the remainder of his term in federal custody.

The Court recommends that the defendant be placed in a facility where he can participate in the Bureau of Prison's Residential Drug Abuse Program.

Defendant is advised of his right to appeal.

In addition to the special conditions of supervision imposed above, it is hereby ordered that the Standard Conditions of Probation and Supervised Release within this judgment be imposed. The Court may change the conditions of supervision, reduce or extend the period of supervision, and at any time during the supervision period or within the maximum period permitted by law, may issue a warrant and revoke supervision for a violation occurring during the supervision period.

May 12, 2022

Date



Hon. André Birotte, Jr., U. S. District Judge

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Clerk, U.S. District Court

May 12, 2022

By /s/ Christine Chung

Filed Date

Deputy Clerk

The defendant must comply with the standard conditions that have been adopted by this court (set forth below).

STANDARD CONDITIONS OF PROBATION AND SUPERVISED RELEASE

While the defendant is on probation or supervised release pursuant to this judgment:

1. The defendant must not commit another federal, state, or local crime;
2. The defendant must report to the probation office in the federal judicial district of residence within 72 hours of imposition of a sentence of probation or release from imprisonment, unless otherwise directed by the probation officer;
3. The defendant must report to the probation office as instructed by the court or probation officer;
4. The defendant must not knowingly leave the judicial district without first receiving the permission of the court or probation officer;
5. The defendant must answer truthfully the inquiries of the probation officer, unless legitimately asserting his or her Fifth Amendment right against self-incrimination as to new criminal conduct;
6. The defendant must reside at a location approved by the probation officer and must notify the probation officer at least 10 days before any anticipated change or within 72 hours of an unanticipated change in residence or persons living in defendant's residence;
7. The defendant must permit the probation officer to contact him or her at any time at home or elsewhere and must permit confiscation of any contraband prohibited by law or the terms of supervision and observed in plain view by the probation officer;
8. The defendant must work at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons and must notify the probation officer at least ten days before any change in employment or within 72 hours of an unanticipated change;
9. The defendant must not knowingly associate with any persons engaged in criminal activity and must not knowingly associate with any person convicted of a felony unless granted permission to do so by the probation officer. This condition will not apply to intimate family members, unless the court has completed an individualized review and has determined that the restriction is necessary for protection of the community or rehabilitation;
10. The defendant must refrain from excessive use of alcohol and must not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
11. The defendant must notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer;
12. For felony cases, the defendant must not possess a firearm, ammunition, destructive device, or any other dangerous weapon;
13. The defendant must not act or enter into any agreement with a law enforcement agency to act as an informant or source without the permission of the court;
14. As directed by the probation officer, the defendant must notify specific persons and organizations of specific risks posed by the defendant to those persons and organizations and must permit the probation officer to confirm the defendant's compliance with such requirement and to make such notifications;
15. The defendant must follow the instructions of the probation officer to implement the orders of the court, afford adequate deterrence from criminal conduct, protect the public from further crimes of the defendant; and provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

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☐ The defendant must also comply with the following special conditions (set forth below).

STATUTORY PROVISIONS PERTAINING TO PAYMENT AND COLLECTION OF FINANCIAL SANCTIONS

The defendant must pay interest on a fine or restitution of more than \$2,500, unless the court waives interest or unless the fine or restitution is paid in full before the fifteenth (15th) day after the date of the judgment under 18 U.S.C. § 3612(f)(1). Payments may be subject to penalties for default and delinquency under 18 U.S.C. § 3612(g). Interest and penalties pertaining to restitution, however, are not applicable for offenses completed before April 24, 1996.

If all or any portion of a fine or restitution ordered remains unpaid after the termination of supervision, the defendant must pay the balance as directed by the United States Attorney's Office. 18 U.S.C. § 3613.

The defendant must notify the United States Attorney within thirty (30) days of any change in the defendant's mailing address or residence address until all fines, restitution, costs, and special assessments are paid in full. 18 U.S.C. § 3612(b)(1)(F).

The defendant must notify the Court (through the Probation Office) and the United States Attorney of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay a fine or restitution, as required by 18 U.S.C. § 3664(k). The Court may also accept such notification from the government or the victim, and may, on its own motion or that of a party or the victim, adjust the manner of payment of a fine or restitution under 18 U.S.C. § 3664(k). See also 18 U.S.C. § 3572(d)(3) and for probation 18 U.S.C. § 3563(a)(7).

Payments will be applied in the following order:

1. Special assessments under 18 U.S.C. § 3013;
2. Restitution, in this sequence (under 18 U.S.C. § 3664(i), all non-federal victims must be paid before the United States is paid):
 - Non-federal victims (individual and corporate),
 - Providers of compensation to non-federal victims,
 - The United States as victim;
3. Fine;
4. Community restitution, under 18 U.S.C. § 3663(c); and
5. Other penalties and costs.

CONDITIONS OF PROBATION AND SUPERVISED RELEASE PERTAINING TO FINANCIAL SANCTIONS

As directed by the Probation Officer, the defendant must provide to the Probation Officer: (1) a signed release authorizing credit report inquiries; (2) federal and state income tax returns or a signed release authorizing their disclosure and (3) an accurate financial statement, with supporting documentation as to all assets, income and expenses of the defendant. In addition, the defendant must not apply for any loan or open any line of credit without prior approval of the Probation Officer.

The defendant must maintain one personal checking account. All of defendant's income, "monetary gains," or other pecuniary proceeds must be deposited into this account, which must be used for payment of all personal expenses. Records of all other bank accounts, including any business accounts, must be disclosed to the Probation Officer upon request.

The defendant must not transfer, sell, give away, or otherwise convey any asset with a fair market value in excess of \$500 without approval of the Probation Officer until all financial obligations imposed by the Court have been satisfied in full.

These conditions are in addition to any other conditions imposed by this judgment.

USA vs. JASON JAMES VEALDocket No.: LACR 19-00427-VAP-8**RETURN**

I have executed the within Judgment and Commitment as follows:

Defendant delivered on _____ to _____

Defendant noted on appeal on _____

Defendant released on _____

Mandate issued on _____

Defendant's appeal determined on _____

Defendant delivered on _____ to _____

at _____

the institution designated by the Bureau of Prisons, with a certified copy of the within Judgment and Commitment.

United States Marshal

By _____

Date_____
Deputy Marshal**CERTIFICATE**

I hereby attest and certify this date that the foregoing document is a full, true and correct copy of the original on file in my office, and in my legal custody.

Clerk, U.S. District Court

By _____

Filed Date_____
Deputy Clerk**FOR U.S. PROBATION OFFICE USE ONLY**

Upon a finding of violation of probation or supervised release, I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

(Signed) _____
Defendant_____
Date_____
U. S. Probation Officer/Designated Witness_____
Date