

# **APPENDIX A**

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

UNITED STATES OF AMERICA

vs

DANNY LEE HAMPTON aka "Smoke"

Case Number: 6:16-cr-234-Orl-22KRS

USM Number: 67831-018

Karla Mariel Reyes, Esq.  
201 S Orange Ave., Ste 300  
Orlando, FL 32801-3417

JUDGMENT IN A CRIMINAL CASE

The defendant pleaded guilty to Counts One and Two of the Information. Accordingly, the Court has adjudicated the defendant guilty of the following offenses:

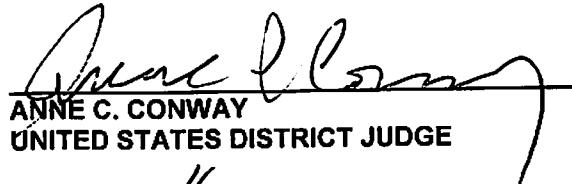
<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number</u>
21 U.S.C. § 846	Conspiracy to distribute and to possess with intent to distribute heroin	October 26, 2016	One
18 U.S.C. §§ 922(g)(1) and 924(e)	Possession of a firearm by a convicted felon	October 27, 2016	Two

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

IT IS ORDERED that the defendant shall 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 shall notify the court and United States attorney of any material change in the defendant's economic circumstances.

Date of Imposition of Sentence:

November 14, 2017

  
ANNE C. CONWAY  
UNITED STATES DISTRICT JUDGE

November 16, 2017

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### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **90 Months**. This term consists of 90 months on each of Counts One and Two, all such terms to run concurrently.

The Court recommends to the Bureau of Prisons that the defendant be placed at Coleman F.C.I. to be near family, if available and appropriate.

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

### RETURN

I have executed this judgment as follows:

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Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

at \_\_\_\_\_, with a certified copy of this judgment.

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UNITED STATES MARSHAL

By: \_\_\_\_\_  
Deputy U.S. Marshal

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## SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **Four Years**.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not illegally possess a controlled substance.

*For offenses committed on or after September 13, 1994:*

The mandatory drug testing requirements of the Violent Crime Control Act are imposed. The Court orders the defendant to submit to random drug testing not to exceed 104 tests per year.

The defendant shall not possess a firearm, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervision that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervision in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

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

The defendant shall also comply with the additional conditions on the attached page.

## STANDARD CONDITIONS OF SUPERVISION

1. The defendant shall not leave the judicial district without the permission of the court or probation officer;
2. The defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
3. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. The defendant shall support his or her dependents and meet other family responsibilities;
5. The defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6. The defendant shall notify the probation officer at least ten (10) days prior to any change in residence or employment;
7. The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9. The defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;

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10. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
11. The defendant shall notify the probation officer within **seventy-two (72) hours** of being arrested or questioned by a law enforcement officer;
12. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
13. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

### ADDITIONAL CONDITIONS OF SUPERVISED RELEASE

1. The defendant shall participate in a substance abuse program (outpatient and/or inpatient) and follow the probation officer's instructions regarding the implementation of this court directive. Further, the defendant shall contribute to the costs of these services not to exceed an amount determined reasonable by the Probation Office's Sliding Scale for Substance Abuse Treatment Services. During and upon completion of this program, the defendant is directed to submit to random drug testing.
2. The defendant shall participate in a mental health treatment program (outpatient and/or inpatient) and follow the probation officer's instructions regarding the implementation of this court directive. Further, the defendant shall contribute to the costs of these services not to exceed an amount determined reasonable by the Probation Office's Sliding Scale for Mental Health Treatment Services.
3. The defendant shall submit to a search of his or her person, residence, place of business, any storage units under the defendant's control, computer, or vehicle, conducted by the United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall inform any other residents that the premises may be subject to a search pursuant to this condition.
4. The defendant shall cooperate in the collection of DNA, as directed by the probation officer.

### CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth in the Schedule of Payments.

<u>Total Assessment</u>	<u>Total Fine</u>	<u>Total Restitution</u>
\$200.00	Waived	None so ordered

### SCHEDULE OF PAYMENTS

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

The Special Assessment in the amount of **\$200.00** is due in full and immediately.

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary

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penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court, unless otherwise directed by the court, the probation officer, or the United States attorney.

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

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

## FORFEITURE

Defendant shall forfeit to the United States those assets previously identified in the Order of Forfeiture at docket entry 61, that are subject to forfeiture. The items forfeited include:

1. Cellular telephone bearing call number XXX-XXX-3142 and International Mobile Subscriber Identity Number 310260791822533;
2. Ten cellular phones seized on October 27, 2016;
3. Approximately \$21,775 in U.S. Currency;
4. Taurus .410 caliber revolver;
5. Beretta .25 caliber handgun; and
6. SAR Arms 9mm handgun.

The defendant shall pay interest on any fine or restitution of more than \$2,500, unless the fine or restitution 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 the Schedule of Payments may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

\*Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18, United States Code, for offenses committed on or after September 13, 1994 but before April 23, 1996.

## **APPENDIX B**

[DO NOT PUBLISH]

In the

United States Court of Appeals  
For the Eleventh Circuit

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No. 17-15276

Non-Argument Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

*versus*

DANNY LEE HAMPTON,  
a.k.a. "Smoke",

Defendant-Appellant.

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Appeal from the United States District Court  
for the Middle District of Florida  
D.C. Docket No. 6:16-cr-00234-ACC-KRS-1

Before LAGOA, BRASHER, and ABUDU, Circuit Judges.

PER CURIAM:

Danny Lee Hampton pleaded guilty to conspiracy to distribute and possess with intent to distribute a controlled substance, *see* 21 U.S.C. § 846, and possession of a firearm by a convicted felon, *see* 18 U.S.C. § 922(g). The district court sentenced him to ninety months' imprisonment to be followed by four years of supervised release. En route to imposing that sentence, the district court concluded that Hampton was an armed career criminal under 18 U.S.C. § 924(e) based on three prior state law convictions for "serious drug offense[s]": one for possession with intent to sell or deliver cocaine; one for delivery of cocaine; and one for conspiracy to traffic cocaine.

On appeal, Hampton says his state law conspiracy conviction is not a "serious drug offense" for purposes of Section 924(e) and he, therefore, did not deserve to be sentenced as an armed career criminal. He advances three arguments in support of that proposition: (1) conspiracy to traffic is not a serious drug offense because it does not require intent to distribute as an element of the crime; (2) his conspiracy conviction is not a serious drug offense because it did not involve a substance that was federally controlled at the time he committed the federal offense for which

he was federally sentenced;<sup>1</sup> and (3) a mere conspiracy to sell or deliver cocaine can never be considered a serious drug offense. Hampton concedes that our decisions in *United States v. James*, 430 F.3d 1150 (11th Cir. 2005), *overruled on other grounds by Johnson v. United States*, 576 U.S. 591 (2015), and *United States v. Jackson*, 55 F.4th 846 (11th Cir. 2022), require us to reject his first and second arguments, respectively.

Hampton’s third argument is not foreclosed by Circuit precedent, but it is foreclosed by his own forfeiture. He posits two reasons in this Court that a conspiracy conviction cannot be a serious drug offense: because a mere agreement to traffic a controlled substance does not “involv[e] . . . manufacturing, distributing, or possessing with intent to manufacture or distribute,” nor does it “involv[e]” the existence of an actual controlled substance. 18 U.S.C. § 924(e)(2)(A)(ii). In sum, Hampton’s point is that until an actual controlled substance is in fact “manufacture[d], distribut[ed], or possess[ed] with intent to manufacture or distribute,” no “serious drug offense” has occurred under Section 924(e). But Hampton never made those arguments to the district court. Instead, those arguments were debuted in his opening brief in this Court. We have made clear that a defendant who wants to preserve a specific argument for appeal must make that argument to the district court at sentencing. *E.g., United States v. Ramirez-Flores*,

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<sup>1</sup> Hampton contends that his state law conviction was “based on a derivative of cocaine—ioflupane—that was not federally controlled” when he committed the federal crimes underlying the sentence at issue in this appeal.

743 F.3d 816, 821 (11th Cir. 2014). Because Hampton failed to do so, we review only for plain error the district court’s conclusion that Hampton’s state law conspiracy conviction is a serious drug offense.

Plain error review requires Hampton to persuade us that: “(1) an error occurred; (2) the error was plain; (3) it affected his substantial rights; and (4) it seriously affected the fairness of the judicial proceedings.” *Id.* Even if the district court did err below, the error was certainly not plain. “An error is plain if it is clear or obvious—that is, if the explicit language of a statute or rule or precedent from the Supreme Court or this Court directly resolves the issue.” *United States v. Innocent*, 977 F.3d 1077, 1081 (11th Cir. 2020) (cleaned up). There was no binding precedent from this Court or the Supreme Court instructing the district court that conspiracies are never serious drug offenses for purposes of Section 924(e). Indeed, we recently declined to decide “whether and to what extent inchoate crimes”—including conspiracies, specifically—“are ‘serious drug offense[s].’” *United States v. Penn*, 63 F.4th 1305, 1316 (11th Cir. 2023) (brackets in original) (quoting 18 U.S.C. § 924(e)(2)(A)).

Hampton contends that a more recent decision, *United States v. Miles*, 75 F.4th 1213 (11th Cir. 2023), settled the matter. *See Henderson v. United States*, 568 U.S. 266, 268–29 (2013) (an error can be “plain” even if the precedent resolving the issue came after the district court’s decision). Hampton is wrong. In *Miles*, we held that a possession conviction under a certain Florida statute was

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not a serious drug offense because it did not “involve[e] manufacturing . . .” 75 F.4th at 1215–16. The question that *Penn* dodged—“whether and to what extent” a conspiracy conviction can ever be a “serious drug offense[]” under Section 924(e)—remains open. 63 F.4th 1316–17. Absent precedent conclusively answering that question, any error by the district court was not “plain.”

Accordingly, the district court is **AFFIRMED**.