

APPENDIX

EXHIBIT “A”

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JUL 31 2024

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

KARLA PATRICIA RODRIGUEZ,

Defendant-Appellant.

No. 23-50003

D.C. No.
3:19-cr-04615-AJB-2

MEMORANDUM*

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

DAVID ELIAS MARTINS,

Defendant-Appellant.

No. 23-50004

D.C. No.
3:19-cr-04615-AJB-1

Appeal from the United States District Court
for the Southern District of California
Anthony J. Battaglia, District Judge, Presiding

Argued and Submitted May 10, 2024
Pasadena, California

Before: WARDLAW, CHRISTEN, and BENNETT, Circuit Judges.
Partial Concurrence and Partial Dissent by Judge BENNETT.

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

In this consolidated appeal, Defendants Karla Rodriguez and David Martins appeal their sentences for knowingly distributing a controlled substance in violation of 21 U.S.C. § 841(a)(1), which resulted in the death of an individual referred to as N.A.R. We remand Rodriguez’s case for resentencing, and we affirm Martins’s sentence.

1. Rodriguez’s Sentence

Rodriguez argues the district court erred by applying a 2-point enhancement for obstruction of justice, applying a 25-level “resulting in death” departure, and imposing a substantively unreasonable sentence.

The district court failed to make a sufficient materiality finding explaining its application of the U.S.S.G. § 3C1.1 obstruction enhancement to Rodriguez. “In reviewing a sentence, we first consider whether the district court committed significant procedural error.” *United States v. Brooks*, 610 F.3d 1186, 1198 (9th Cir. 2010) (citing *United States v. Carty*, 520 F.3d 984, 993 (9th Cir. 2008) (en banc)). “It would be procedural error for a district court to fail to calculate—or to calculate incorrectly—the Guidelines range” *Carty*, 520 F.3d at 993; *see also United States v. Tankersley*, 537 F.3d 1100, 1109–10 (9th Cir. 2008). When a district court incorrectly applies an enhancement, it miscalculates the guidelines range, and commits significant procedural error. *See, e.g., United States v. Johnson*, 812 F.3d 757, 761–65 (9th Cir. 2016); *United States v. Rising Sun*, 522 F.3d 989, 997 (9th

Cir. 2008).

The district court erred by applying the obstruction enhancement because it did not make a finding on materiality, and therefore did not make a finding that “encompasse[d] all of the factual predicates” for obstruction of justice. *United States v. Flores*, 802 F.3d 1028, 1048 (9th Cir. 2015) (citation omitted); *see also* U.S.S.G. § 3C1.1 cmt. 4(F). The district court stated during the departure motion hearing that Rodriguez was “totally incredible” and that her “whole story [did not] jive.” The court found that the counterfeit oxycontin pills “were acquired in Mexico.” However, it went on to state that “[w]hether they were acquired from Mexico or Mr. Mason, I agree it makes no difference. The point is there is a lack of candor.” Later, at sentencing, the court stated that Rodriguez’s lack of credibility “boded in [its] finding . . . of the foreseeability of the misconduct leading to death.” But the district court never explained how any of Rodriguez’s false testimony bore on the foreseeability of N.A.R.’s death or any other relevant matters potentially encompassed by the obstruction enhancement.¹ Accordingly, no factual

¹ The dissent argues that “Rodriguez’s lie about where she obtained the drugs is material to the likelihood of N.A.R.’s death, because she bought the pills from her brother in Tijuana and because of that she knew their potency.” Dissent at 2. But the district court did not make this materiality finding, and we are not free to make it in the first instance. *See United States v. Jimenez-Ortega*, 472 F.3d 1102, 1103–04 (9th Cir. 2007) (noting that “the materiality of a false statement is one of the factual predicates of an obstruction enhancement” and that “we must remand where the district court failed to make a finding on this point”).

findings demonstrate the materiality of Rodriguez's false statements. Because the district court's procedural error warrants remand for resentencing, we do not reach any of the remaining issues. *Johnson*, 812 F.3d at 765–66; *Rising Sun*, 522 F.3d at 997. On remand, the district court is free to reconsider whether to apply the obstruction enhancement, but if it chooses to apply that enhancement, it must make the required materiality findings.

2. Martins's Sentence

Martins argues the district court imposed an unreasonable sentence based on an upward departure of 25 levels due to N.A.R.'s death and erred in omitting the drug type and quantity as an element of the offense.

A. Martins's sentence is not substantively unreasonable. Our "review of upward departures from the advisory Guidelines merges with [our] review of the ultimate sentence for reasonableness, and is not reviewed as a separate issue." *United States v. Lichtenberg*, 631 F.3d 1021, 1027 n.8 (9th Cir. 2011) (citing *United States v. Mohamed*, 459 F.3d 979, 986 (9th Cir. 2006)). We do "not review the procedural correctness of a district court's discretionary decision to depart from the Guidelines range." *United States v. Vasquez-Cruz*, 692 F.3d 1001, 1005 (9th Cir. 2012). The reasonableness of a sentence is reviewed for abuse of discretion. *United States v. Autery*, 555 F.3d 864, 871 (9th Cir. 2009). The district court included a 25-level adjustment to Martins's guidelines range "by way of departure or [§]

3553(a) upward variance,” because Martins “knowingly risked danger, injury, [and] death to N.A.R.,” because he “knew the [victim] was in treatment” and that N.A.R. “was intoxicated,” but Martins nevertheless “brought [N.A.R.] these pills that were expressly stated to be pretty strong.” The district court found that those facts made N.A.R.’s death foreseeable to Martins, because it is “very foreseeable that when addicts take additional drugs . . . adverse consequences come about.” Martins’s sentence, including the district court’s departure under § 5K2.1, is not substantively unreasonable, as it is foreseeable that by providing strong narcotics to individuals like N.A.R. who are battling addiction in the way he was, there is an increased risk of serious injury or death.

B. The district court did not err in interpreting the elements of the offense. As Martins recognizes in his reply brief, our decision in *United States v. Collazo*, 984 F.3d 1308 (9th Cir. 2021) (en banc) forecloses Martins’s argument that the government was required to prove he knew both the type of drug and the quantity.

No. 23-50003: VACATED and REMANDED.

No. 23-50004: AFFIRMED.

United States v. Karla Rodriguez, No. 23-50003
United States v. David Martins, No. 23-50004

FILED

JUL 31 2024

BENNETT, Circuit Judge, concurring in part and dissenting in part: MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

I agree with the majority's reasons for affirming Martins's sentence. But because I believe the district court properly applied the U.S.S.G. § 3C1.1 obstruction enhancement to Rodriguez's sentence, I respectfully dissent from the majority's decision to vacate and remand in that case. I would affirm the district court's imposition of a 75-month sentence.

As the majority notes, the district court stated Rodriguez's lie about where she obtained the drugs "boded in [its] finding . . . of the foreseeability of the misconduct leading to death." The district court went further, however:

Given the measure of the conduct and the resultant death here, that would mean -- and I also think the -- the credibility finding with regard to Ms. Rodriguez underscores why the obstruction enhancement -- or specific offense characteristic is also prudent.

At an earlier hearing, the district court further explained:

I thought Ms. Rodriguez was totally incredible with -- and this has now been supported by the GPS readings. The whole story doesn't jive. And it was clear from the record the blue pills weren't the sex pills. The blue pills were the oxy. It's clear from the record that they -- to me, they were acquired in Mexico.

But, as I said, I have a hard time buying your story. The GPS shows indeed you didn't go home to get the drugs that were there. There's a lot of talk about buying the ten pills, yet there's 38 more sitting in the tray of your car. None of this shows you're being honest with the Court, in my view.

Rodriguez's lie about where she obtained the drugs is material to the likelihood of N.A.R.'s death, because she bought the pills from her brother in Tijuana and because of that she knew their potency. Rodriguez's brother informed her of how strong these particular pills were, which she then relayed to Martins.

Because Rodriguez lied about where she obtained the drugs, including lying about obtaining them from a dealer in San Diego rather than her brother, her lie directly related to her knowledge of the strength and quality of the drugs which ultimately led to N.A.R.'s death. Consistent with the district court's finding, Rodriguez's lie did relate to the resulting in death enhancement.

In determining whether N.A.R.'s death was foreseeable, the district court had to evaluate whether Rodriguez knew or should have known that death or serious injury could occur. A fact material to that evaluation was what Rodriguez knew regarding the strength of those drugs. Rodriguez knew the strength of those drugs because she bought them from her brother in Tijuana (whom she had purchased from before) rather than an unknown dealer in San Diego. But Rodriguez lied about the source of the drugs. Because Rodriguez's knowledge of the strength of the drugs was due to where she bought the drugs, and from whom, and she then lied about that purchase, her lie is material to the resulting in death enhancement, as the strength of the drug directly relates to how foreseeable N.A.R.'s death was to Rodriguez. The

district court sufficiently explained that point by noting that Rodriguez's falsehoods "boded in [its] finding . . . of the foreseeability of the misconduct leading to death."

Moreover, not only were Rodriguez's falsehoods obstructive in that they were material to the application of the foreseeability of death enhancement, but they were also obstructive to law enforcement's investigation into N.A.R.'s death. Section 3C1.1 of the Sentencing Guidelines provides that:

If (1) the defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice with respect to the investigation, prosecution, or sentencing of the instant offense of conviction, and (2) the obstructive conduct related to (A) the defendant's offense of conviction and any relevant conduct; or (B) a closely related offense, increase the offense level by 2 levels.

Rodriguez admits that right after her arrest, she lied to law enforcement about where she got the pills. As the Probation Officer discussed in the Addendum to Rodriguez's Pre-Sentence Report:

1. PSR paragraph 64: The defendant objects to the two-level increase for Obstruction of Justice per USSG § 3C1.1. The defendant admits that she lied about where she got the pills immediately after her arrest, she then admitted that he illegally obtained them and gave them to MARTINS. She also states that she later met with the AUSA and case agent and gave an admission about where she obtained the pills. On behalf of the defendant, defense counsel states that that aspect of the defendant's statement did not materially affect the prosecution of the case and she and MARTINS both admitted to the essential element of distribution to another person.

Probation Officer's Response: The guideline definition for Obstructing or Impeding the Administration of Justice i[s] outlined in the PSR. It clearly states that if the defendant willfully obstructed or

impeded, or attempted to obstruct or impede, the administration of justice with respect to the investigation, prosecution, or sentencing of the instant offense, a two-level increase is justified. The undersigned is aware that at some point of the proceedings, the defendant provided an admission about where the drugs were obtained. However, her initial post arrest statements were false and misled law enforcement. Although, the defendant does not believe her false account did not materially impact the prosecution, it nonetheless, matches and rises to the level of the definition for the guideline increase. ^[1]

The district court found Rodriguez to be “totally incredible” and that “[n]one of this [evidence] shows [she was] being honest with the Court.” Because Rodriguez admits she lied, because her lies were material in that they obstructed the investigation and the district court’s ability to administer justice here, and because

¹ The original discussion in the PSR:

64. Adjustment for Obstruction of Justice: Pursuant to USSG §3C1.1, if (1) the defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice with respect to the investigation, prosecution, or sentencing of the instant offense of conviction, and (2) the obstructive conduct related to (A) the defendant’s offense of conviction and any relevant conduct; or (B) a closely related offense, increase the offense level by two levels. Post arrest and during court proceedings, RODRIGUEZ advised that she obtained the drugs from a man with facial tattoos in Barrio Logan for \$100. When confronted by agents about the below market value, she further stated that she allowed him to touch her inappropriately as additional compensation. However, the investigation reveals that RODRIGUEZ traveled to Tijuana to get the drugs. Thereafter, she still maintained during the bench trial that she did not obtain the fentanyl in Mexico and bring it across the border. Accordingly, it appears she obstructed and impeded the administration of justice and the corresponding two-level increase is justified.

the district court sufficiently explained that materiality, I would reject Rodriguez's argument as to the application of the obstruction enhancement.

Because I would reject Rodriguez's obstruction enhancement challenge, I would reach the issue of the substantive reasonableness of her sentence. Like Martins, Rodriguez contests the foreseeability of N.A.R.'s death and argues her sentence of 75 months' imprisonment is substantively unreasonable. Rodriguez's resulting sentence of 75 months—135 months less than the low end of her calculated guideline range—is not so “shockingly high” to constitute an abuse of discretion. *United States v. Ressay*, 679 F.3d 1069, 1088 (9th Cir. 2012) (en banc) (citation omitted). Rodriguez knowingly transported narcotics, which she knew to be strong, to her boyfriend Martins, a drug addict with no “stop sign” on his addiction. She admitted she lied to police officers about the drugs when she was initially arrested, and the search of her car and residence after that arrest yielded sixty-eight pills of various substances, including narcotics like oxycodone, hydrocodone, and hydromorphone, as well as prescription medication such as Adderall. And Rodriguez's supplying the fentanyl to Martins was a cause-in-fact of N.A.R.'s death. Considering these facts, as well as mitigating factors such as Rodriguez's status as a caregiver, the district court imposed a reasonable sentence. Accordingly, I would affirm in her case as well as Martins.

EXHIBIT “B”

21 USCS § 841, Part 1 of 7

Current through Public Law 118-78, approved July 30, 2024.

United States Code Service > TITLE 21. FOOD AND DRUGS (§§ 1 — 2404) > CHAPTER 13. DRUG ABUSE PREVENTION AND CONTROL (§§ 801 — 971) > CONTROL AND ENFORCEMENT (§§ 801 — 904) > OFFENSES AND PENALTIES (§§ 841 — 865)

§ 841. Prohibited acts A

(a) Unlawful acts. Except as authorized by this title, 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 409, 418, 419, or 420 [*21 USCS § 849, 859, 860, or 861*], 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-piperidiny] 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-piperidiny] 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

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(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, United States Code, 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, United States Code, 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 409, 418, 419, or 420 [21 USCS § 849, 859, 860, or 861] 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

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(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, United States Code, 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, United States Code, 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 Hillary J. Farias and Samantha Reid Date-Rape Drug Prohibition Act of 1999 [21 USCS § 812 note]), 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, United States Code, 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, United States Code, 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 provide for a mandatory term of imprisonment if death or serious bodily injury results, nor shall a person so sentenced be eligible for parole during the term of such a sentence.

(D) In the case of less than 50 kilograms of marihuana, except in the case of 50 or more marihuana plants regardless of weight, 10 kilograms of hashish, or one kilogram of hashish oil, such person shall, except as provided in paragraphs (4) and (5) of this subsection, be sentenced to a term of imprisonment of not more than 5 years, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$250,000 if the defendant is an individual or \$1,000,000 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

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shall be sentenced to a term of imprisonment of not more than 10 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or \$500,000 if the defendant is an individual or \$2,000,000 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 2 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 4 years in addition to such term of imprisonment.

(E)

(i) Except as provided in subparagraphs (C) and (D), in the case of any controlled substance in schedule III, such person shall be sentenced to a term of imprisonment of not more than 10 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 more than 15 years, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$500,000 if the defendant is an individual or \$2,500,000 if the defendant is other than an individual, or both.

(ii) 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 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 more than 30 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or \$1,000,000 if the defendant is an individual or \$5,000,000 if the defendant is other than an individual, or both.

(iii) Any sentence imposing a term of imprisonment under this subparagraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 2 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 4 years in addition to such term of imprisonment.

(2) In the case of a controlled substance in schedule IV, such person shall be sentenced to a term of imprisonment of not more than 5 years, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$250,000 if the defendant is an individual or \$1,000,000 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 10 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or \$500,000 if the defendant is an individual or \$2,000,000 if the defendant is other than an individual, or both. 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 one year in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 2 years in addition to such term of imprisonment.

(3) In the case of a controlled substance in schedule V, such person shall be sentenced to a term of imprisonment of not more than one year, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$100,000 if the defendant is an individual or \$250,000 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 4 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or \$200,000 if the defendant is an individual or \$500,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph may, if there was a prior conviction, impose a term of supervised release of not more than 1 year, in addition to such term of imprisonment.

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(4) Notwithstanding paragraph (1)(D) of this subsection, any person who violates subsection (a) of this section by distributing a small amount of marihuana for no remuneration shall be treated as provided in section 404 [21 USCS § 844] and section 3607 of title 18, United States Code.

(5) Any person who violates subsection (a) of this section by cultivating or manufacturing a controlled substance on Federal property shall be imprisoned as provided in this subsection and shall be fined any amount not to exceed—

- (A) the amount authorized in accordance with this section;
- (B) the amount authorized in accordance with the provisions of title 18, United States Code;
- (C) \$500,000 if the defendant is an individual; or
- (D) \$1,000,000 if the defendant is other than an individual; or both.

(6) Any person who violates subsection (a), or attempts to do so, and knowingly or intentionally uses a poison, chemical, or other hazardous substance on Federal land, and, by such use—

- (A) creates a serious hazard to humans, wildlife, or domestic animals,
- (B) degrades or harms the environment or natural resources, or
- (C) pollutes an aquifer, spring, stream, river, or body of water,

shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both.

(7) Penalties for distribution.

(A) In general. Whoever, with intent to commit a crime of violence, as defined in section 16 of title 18, United States Code (including rape), against an individual, violates subsection (a) by distributing a controlled substance or controlled substance analogue to that individual without that individual's knowledge, shall be imprisoned not more than 20 years and fined in accordance with title 18, United States Code.

(B) Definition. For purposes of this paragraph, the term "without that individual's knowledge" means that the individual is unaware that a substance with the ability to alter that individual's ability to appraise conduct or to decline participation in or communicate unwillingness to participate in conduct is administered to the individual.

(c) Offenses involving listed chemicals. Any person who knowingly or intentionally—

- (1) possesses a listed chemical with intent to manufacture a controlled substance except as authorized by this title;
- (2) possesses or distributes a listed chemical knowing, or having reasonable cause to believe, that the listed chemical will be used to manufacture a controlled substance except as authorized by this title; or
- (3) with the intent of causing the evasion of the recordkeeping or reporting requirements of section 310 [21 USCS § 830], or the regulations issued under that section, receives or distributes a reportable amount of any listed chemical in units small enough so that the making of records or filing of reports under that section is not required;

shall be fined in accordance with title 18, United States Code, or imprisoned not more than 20 years in the case of a violation of paragraph (1) or (2) involving a list I chemical or not more than 10 years in the case of a violation of this subsection other than a violation of paragraph (1) or (2) involving a list I chemical, or both.

(d) Boobytraps on Federal property; penalties; "boobytrap" defined.

- (1) Any person who assembles, maintains, places, or causes to be placed a boobytrap on Federal property where a controlled substance is being manufactured, distributed, or dispensed shall be sentenced to a term of imprisonment for not more than 10 years or fined under title 18, United States Code, or both.

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(2) If any person commits such a violation after 1 or more prior convictions for an offense punishable under this subsection, such person shall be sentenced to a term of imprisonment of not more than 20 years or fined under title 18, United States Code, or both.

(3) For the purposes of this subsection, the term “boobytrap” means any concealed or camouflaged device designed to cause bodily injury when triggered by any action of any unsuspecting person making contact with the device. Such term includes guns, ammunition, or explosive devices attached to trip wires or other triggering mechanisms, sharpened stakes, and lines or wires with hooks attached.

(e) Ten-year injunction as additional penalty. In addition to any other applicable penalty, any person convicted of a felony violation of this section relating to the receipt, distribution, manufacture, exportation, or importation of a listed chemical may be enjoined from engaging in any transaction involving a listed chemical for not more than ten years.

(f) Wrongful distribution or possession of listed chemicals.

(1) Whoever knowingly distributes a listed chemical in violation of this title (other than in violation of a recordkeeping or reporting requirement of section 310 [21 USCS § 830]) shall, except to the extent that paragraph (12), (13), or (14) of section 402(a) [21 USCS § 842(a)] applies, be fined under title 18, United States Code, or imprisoned not more than 5 years, or both.

(2) Whoever possesses any listed chemical, with knowledge that the recordkeeping or reporting requirements of section 310 [21 USCS § 830] have not been adhered to, if, after such knowledge is acquired, such person does not take immediate steps to remedy the violation shall be fined under title 18, United States Code, or imprisoned not more than one year, or both.

(g) Internet sales of date rape drugs.

(1) Whoever knowingly uses the Internet to distribute a date rape drug to any person, knowing or with reasonable cause to believe that—

(A) the drug would be used in the commission of criminal sexual conduct; or

(B) the person is not an authorized purchaser;

shall be fined under this title or imprisoned not more than 20 years, or both.

(2) As used in this subsection:

(A) The term “date rape drug” means—

(i) gamma hydroxybutyric acid (GHB) or any controlled substance analogue of GHB, including gamma butyrolactone (GBL) or 1,4-butanediol;

(ii) ketamine;

(iii) flunitrazepam; or

(iv) any substance which the Attorney General designates, pursuant to the rulemaking procedures prescribed by *section 553 of title 5, United States Code* [5 USCS § 553], to be used in committing rape or sexual assault.

The Attorney General is authorized to remove any substance from the list of date rape drugs pursuant to the same rulemaking authority.

(B) The term “authorized purchaser” means any of the following persons, provided such person has acquired the controlled substance in accordance with this Act:

(i) A person with a valid prescription that is issued for a legitimate medical purpose in the usual course of professional practice that is based upon a qualifying medical relationship by a practitioner registered by the Attorney General. A “qualifying medical relationship” means a medical relationship that exists when the practitioner has conducted at least 1 medical evaluation with the authorized purchaser in the physical presence of the practitioner, without

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regard to whether portions of the evaluation are conducted by other health [health] professionals. The preceding sentence shall not be construed to imply that 1 medical evaluation demonstrates that a prescription has been issued for a legitimate medical purpose within the usual course of professional practice.

(ii) Any practitioner or other registrant who is otherwise authorized by their registration to dispense, procure, purchase, manufacture, transfer, distribute, import, or export the substance under this Act.

(iii) A person or entity providing documentation that establishes the name, address, and business of the person or entity and which provides a legitimate purpose for using any "date rape drug" for which a prescription is not required.

(3) The Attorney General is authorized to promulgate regulations for record-keeping and reporting by persons handling 1,4-butanediol in order to implement and enforce the provisions of this section. Any record or report required by such regulations shall be considered a record or report required under this Act.

(h) Offenses involving dispensing of controlled substances by means of the Internet.

(1) In general. It shall be unlawful for any person to knowingly or intentionally—

(A) deliver, distribute, or dispense a controlled substance by means of the Internet, except as authorized by this title; or

(B) aid or abet (as such terms are used in section 2 of title 18, United States Code) any activity described in subparagraph (A) that is not authorized by this title.

(2) Examples. Examples of activities that violate paragraph (1) include, but are not limited to, knowingly or intentionally—

(A) delivering, distributing, or dispensing a controlled substance by means of the Internet by an online pharmacy that is not validly registered with a modification authorizing such activity as required by section 303(g) [21 USCS § 823(g)] (unless exempt from such registration);

(B) writing a prescription for a controlled substance for the purpose of delivery, distribution, or dispensation by means of the Internet in violation of section 309(e) [21 USCS § 829(e)];

(C) serving as an agent, intermediary, or other entity that causes the Internet to be used to bring together a buyer and seller to engage in the dispensing of a controlled substance in a manner not authorized by sections [section] 303(g) or 309(e) [21 USCS § 823(g) or 829(e)];

(D) offering to fill a prescription for a controlled substance based solely on a consumer's completion of an online medical questionnaire; and

(E) making a material false, fictitious, or fraudulent statement or representation in a notification or declaration under subsection (d) or (e), respectively, of section 311 [21 USCS § 831].

(3) Inapplicability.

(A) This subsection does not apply to—

(i) the delivery, distribution, or dispensation of controlled substances by nonpractitioners to the extent authorized by their registration under this title;

(ii) the placement on the Internet of material that merely advocates the use of a controlled substance or includes pricing information without attempting to propose or facilitate an actual transaction involving a controlled substance; or

(iii) except as provided in subparagraph (B), any activity that is limited to—

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(I) the provision of a telecommunications service, or of an Internet access service or Internet information location tool (as those terms are defined in section 231 of the Communications Act of 1934 [47 USCS § 231]); or

(II) the transmission, storage, retrieval, hosting, formatting, or translation (or any combination thereof) of a communication, without selection or alteration of the content of the communication, except that deletion of a particular communication or material made by another person in a manner consistent with section 230(c) of the Communications Act of 1934 [47 USCS § 230(c)] shall not constitute such selection or alteration of the content of the communication.

(B) The exceptions under subclauses (I) and (II) of subparagraph (A)(iii) shall not apply to a person acting in concert with a person who violates paragraph (1).

(4) Knowing or intentional violation. Any person who knowingly or intentionally violates this subsection shall be sentenced in accordance with subsection (b).

History

HISTORY:

Oct. 27, 1970, *P. L. 91-513*, Title II, Part D, § 401, *84 Stat. 1260*; Nov. 10, 1978, *P. L. 95-633*, Title II, § 201, *92 Stat. 3774*; Sept. 26, 1980, *P. L. 96-359*, § 8(c), *94 Stat. 1194*; Oct. 12, 1984, *P. L. 98-473*, Title II, Ch II, § 224(a)(2), Ch V, Subch, Part A, Subpart, §§ 502, 503(b)(1)(2), *98 Stat. 2030*, 2068, 2070; Oct. 27, 1986, *P. L. 99-570*, Title I, Subtitle A, §§ 1002, 1003(a), 1004(a) Subtitle C, § 1103, Title XV, § 15005, *100 Stat. 3207-2*, 3207-5, 3207-6, 3207-11, 3207-192; Nov. 18, 1988, *P. L. 100-690*, Title VI, Subtitle A, § 6055, Subtitle H, §§ 6254(h), 6265(h), Subtitle N, §§ 6452(a), 6470(g), (h), 6479, *102 Stat. 4318*, 4366, 4367, 4371, 4378, 4379, 4381; Nov. 29, 1990, *P. L. 101-647*, Title X, § 1002(e), Title XII, § 1202, Title XXXV, § 3599K, *104 Stat. 4828*, 4830, 4932; Sept. 13, 1994, *P. L. 103-322*, Title IX, Subtitle A, § 90105(a), (c), Title XVIII, Subtitle B, 180201(b)(2)(A), *108 Stat. 1987*, 1988, 2047; Oct. 3, 1996, *P. L. 104-237*, Title II, § 206(a), Title III, § 302(a), *110 Stat. 3103*, 3105; Oct. 13, 1996, *P. L. 104-305*, § 2(a), (b)(1), *110 Stat. 3807*; Oct. 21, 1998, *P. L. 105-277*, Div E, § 2(a), *112 Stat. 2681-759*; Feb. 18, 2000, *P. L. 106-172*, §§ 3(b)(1), 5(b), 9, *114 Stat. 9*, 10, 13; Nov. 2, 2002, *P. L. 107-273*, Div B, Title III, § 3005(a), Title IV, § 4002(d)(2)(A), *116 Stat. 1805*, 1809; March 9, 2006, *P. L. 109-177*, Title VII, Subtitle A, § 711(f)(1)(B), Subtitle C, § 732, *120 Stat. 262*, 270; July 27, 2006, *P. L. 109-248*, Title II, § 201, *120 Stat. 611*; Oct. 15, 2008, *P. L. 110-425*, § 3(e), (f), *122 Stat. 4828*; Aug. 3, 2010, *P. L. 111-220*, §§ 2(a), 4(a), *124 Stat. 2372*; Dec. 21, 2018, *P. L. 115-391*, Title IV, § 401(a)(2), *132 Stat. 5220*; Dec. 2, 2022, *P. L. 117-215*, Title I, § 103(b)(1)(G), *136 Stat. 2263*.

Annotations

Notes

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

Explanatory notes:

Effective date of section:

Amendment Notes

1978.