

NO. \_\_\_\_\_

IN THE SUPREME COURT OF THE UNITED STATES

TODD NORMAN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent

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PETITION FOR A WRIT OF CERTIORARI

APPENDIX

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| <i>United States v. Norman</i> , No. 23-3372,<br>2024 WL 3220335 (8th Cir. June 28, 2024) ..... | 1a |
| Order Denying Petition for Rehearing.....                                                       | 3a |

2024 WL 3220335

Only the Westlaw citation is currently available.

United States Court of Appeals, Eighth Circuit.

UNITED STATES of America, Plaintiff - Appellee

v.

Todd NORMAN, Defendant - Appellant

No. 23-3372

|

Submitted: June 10, 2024

|

Filed: June 28, 2024

Appeal from United States District Court for the Western  
District of Arkansas - Fayetteville

#### Attorneys and Law Firms

Kevin Charles Eaton, U.S. Attorney's Office, Fort Smith, AR,  
for Plaintiff - Appellee.

Jose Alfaro, Assistant, Christopher Aaron Holt, Federal  
Public Defender's Office, Fayetteville, AR, for Defendant -  
Appellant.

Todd Norman, Yazoo City, MS, Pro Se.

Before LOKEN, ERICKSON, and GRASZ, Circuit Judges.

[Unpublished]

PER CURIAM.

\*1 Todd Norman pled guilty to possession of fentanyl with intent to deliver, in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(c). The district court<sup>1</sup> sentenced Norman as a career offender under § 4B1.1 of the United States Sentencing Guidelines (“Guidelines”). Norman appeals both his designation as a career offender and the substantive reasonableness of his sentence. We affirm.

Norman's Presentence Investigation Report concluded that he satisfied the career offender criteria under § 4B1.1 of the Guidelines based on his two prior controlled substance offenses. Norman objected, arguing that his prior Arkansas convictions for delivery of methamphetamine and possession with the purpose to deliver cocaine were not qualifying

offenses because Arkansas law included certain isomers in the definitions of cocaine and methamphetamine that rendered them overbroad as compared to federal law. Norman conceded, however, that this Court's decision in United States v. Henderson, 11 F.4th 713 (8th Cir. 2021), foreclosed his argument. The district court overruled Norman's objection and imposed a below-Guidelines sentence of 120 months' imprisonment after considering the factors set forth in 18 U.S.C. § 3553(a).

“We review the career offender designation *de novo*.” United States v. Jefferson, 975 F.3d 700, 706 (8th Cir. 2020). A defendant qualifies as a career offender under the Guidelines if he “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). In Henderson, the Court noted that § 4B1.2(b) includes “an offense under federal or state law” and it contains “no requirement that the particular substance underlying the state offense is also controlled under a distinct federal law.” 11 F.4th at 718. Because Norman has two qualifying convictions, the district court did not err by classifying Norman as a career offender under the Guidelines. See id. at 718-19.

We review a defendant's challenge to the substantive reasonableness of his sentence for an abuse of discretion. United States v. Jones, 71 F.4th 1083, 1086 (8th Cir. 2023). “When a district court varies downward and sentences below a presumptively reasonable Guidelines range, it is nearly inconceivable that the court abused its discretion in not varying downward still further.” United States v. Canamore, 916 F.3d 718, 721 (8th Cir. 2019) (per curiam) (quotation omitted). Norman acknowledges that the district court considered the § 3553(a) sentencing factors but challenges the court's weighing of those factors. Because it is within a sentencing court's wide discretion to decide the appropriate weight to give the sentencing factors, a defendant's objection to the weight given by the district court is insufficient to justify reversal. See United States v. Moua, 895 F.3d 556, 560 (8th Cir. 2018) (per curiam). We find no abuse of the district court's sentencing discretion. The below-Guidelines sentence is not substantively unreasonable.

\*2 The district court's judgment is affirmed.

#### All Citations

Not Reported in Fed. Rptr., 2024 WL 3220335

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## Footnotes

- 1 The Honorable Timothy L. Brooks, United States District Judge for the Western District of Arkansas.

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**UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT**

No: 23-3372

United States of America

Appellee

v.

Todd Norman

Appellant

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Appeal from U.S. District Court for the Western District of Arkansas - Fayetteville  
(5:23-cr-50020-TLB-1)

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**ORDER**

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

August 20, 2024

Order Entered at the Direction of the Court:  
Acting Clerk, U.S. Court of Appeals, Eighth Circuit.

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/s/ Maureen W. Gornik