FILED: September 17, 2024

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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No. 23-4090
(3:20-cr-00385-RJC-DCK-1)

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UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

STEVEN LAMAR CLOUD

Defendant - Appellant

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JUDGMENT

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In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ NWAMAKA ANOWI, CLERK

11.

APPENDIX "A"

FILED: September 17, 2024

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-4090, US v. Steven Cloud
3:20-cr-00385-RJC-DCK-1

NOTICE OF JUDGMENT

Judgment was entered on this date in accordance with Fed. R. App. P. 36. Please be advised of the following time periods:

**PETITION FOR WRIT OF CERTIORARI:** The time to file a petition for writ of certiorari runs from the date of entry of the judgment sought to be reviewed, and not from the date of issuance of the mandate. If a petition for rehearing is timely filed in the court of appeals, the time to file the petition for writ of certiorari for all parties runs from the date of the denial of the petition for rehearing or, if the petition for rehearing is granted, the subsequent entry of judgment. See Rule 13 of the Rules of the Supreme Court of the United States; www.supremecourt.gov.

**VOUCHERS FOR PAYMENT OF APPOINTED OR ASSIGNED COUNSEL:** Vouchers must be submitted within 60 days of entry of judgment or denial of rehearing, whichever is later. If counsel files a petition for certiorari, the 60-day period runs from filing the certiorari petition. (Loc. R. 46(d)). If payment is being made from CJA funds, counsel should submit the CJA 20 or CJA 30 Voucher through the CJA eVoucher system. In cases not covered by the Criminal Justice Act, counsel should submit the Assigned Counsel Voucher to the clerk's office for payment from the Attorney Admission Fund. An Assigned Counsel Voucher will be sent to counsel shortly after entry of judgment. Forms and instructions are also available on the court's web site, www.ca4.uscourts.gov, or from the clerk's office.

**BILL OF COSTS:** A party to whom costs are allowable, who desires taxation of costs, shall file a Bill of Costs within 14 calendar days of entry of judgment. (FRAP 39, Loc. R. 39(b)).



**PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC:** A petition for rehearing must be filed within 14 calendar days after entry of judgment, except that in civil cases in which the United States or its officer or agency is a party, the petition must be filed within 45 days after entry of judgment. A petition for rehearing en banc must be filed within the same time limits and in the same document as the petition for rehearing and must be clearly identified in the title. The only grounds for an extension of time to file a petition for rehearing are the death or serious illness of counsel or a family member (or of a party or family member in pro se cases) or an extraordinary circumstance wholly beyond the control of counsel or a party proceeding without counsel.

Each case number to which the petition applies must be listed on the petition and included in the docket entry to identify the cases to which the petition applies. A timely filed petition for rehearing or petition for rehearing en banc stays the mandate and tolls the running of time for filing a petition for writ of certiorari. In consolidated criminal appeals, the filing of a petition for rehearing does not stay the mandate as to co-defendants not joining in the petition for rehearing. In consolidated civil appeals arising from the same civil action, the court's mandate will issue at the same time in all appeals.

A petition for rehearing must contain an introduction stating that, in counsel's judgment, one or more of the following situations exist: (1) a material factual or legal matter was overlooked; (2) a change in the law occurred after submission of the case and was overlooked; (3) the opinion conflicts with a decision of the U.S. Supreme Court, this court, or another court of appeals, and the conflict was not addressed; or (4) the case involves one or more questions of exceptional importance. A petition for rehearing, with or without a petition for rehearing en banc, may not exceed 3900 words if prepared by computer and may not exceed 15 pages if handwritten or prepared on a typewriter. Copies are not required unless requested by the court. (FRAP 35 & 40, Loc. R. 40(c)).

**MANDATE**: In original proceedings before this court, there is no mandate. Unless the court shortens or extends the time, in all other cases, the mandate issues 7 days after the expiration of the time for filing a petition for rehearing. A timely petition for rehearing, petition for rehearing en banc, or motion to stay the mandate will stay issuance of the mandate. If the petition or motion is denied, the mandate will issue 7 days later. A motion to stay the mandate will ordinarily be denied, unless the motion presents a substantial question or otherwise sets forth good or probable cause for a stay. (FRAP 41, Loc. R. 41).

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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**No. 23-4090**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

STEVEN LAMAR CLOUD,

Defendant - Appellant.

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Appeal from the United States District Court for the Western District of North Carolina, at Charlotte. Robert J. Conrad, Jr., District Judge. (3:20-cr-00385-RJC-DCK-1)

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Submitted: May 31, 2024 Decided: September 17, 2024

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Before RICHARDSON and QUATTLEBAUM, Circuit Judges, and KEENAN, Senior Circuit Judge.

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Affirmed by unpublished per curiam opinion.

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**ON BRIEF:** Jeffrey W. Gillette, GILLETTE LAW FIRM, PLLC, Franklin, North Carolina, for Appellant. Amy Elizabeth Ray, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Asheville, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Steven Lamar Cloud pled guilty to one count of conspiracy to distribute and possess with intent to distribute cocaine base, methamphetamine, Eutylone, and at least 500 grams of cocaine in violation of 21 U.S.C. §§ 841(b)(1)(B), 846, and one count of possession of a firearm in furtherance of a drug trafficking crime in violation of 18 U.S.C. § 924(c). The district court sentenced him to a within-Guidelines term of 240 months' imprisonment, 180 months on the conspiracy count and 60 months consecutive on the firearm count, to be followed by four years of supervised release. On appeal, Cloud's counsel has filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), asserting that there are no meritorious grounds for appeal but questioning whether Cloud's sentence is procedurally reasonable. Cloud has filed a pro se supplemental brief. The Government has declined to file a brief. We affirm.

This court reviews a criminal "sentence[]—whether inside, just outside, or significantly outside the Guidelines range—under a deferential abuse-of-discretion standard." *Gall v. United States*, 552 U.S. 38, 41 (2007). This court "first ensure[s] that the district court committed no significant procedural error, such as . . . improperly calculating[] the Guidelines range, . . . failing to consider the § 3553(a) factors, selecting a sentence based on clearly erroneous facts, or failing to adequately explain the chosen sentence—including an explanation for any deviation from the Guidelines range." *Id.* at 51.

If there is no significant procedural error, then this Court considers the sentence's substantive reasonableness under "the totality of the circumstances." *Id.*; *see United*

*States v. Provance*, 944 F.3d 213, 218 (4th Cir. 2019). "Any sentence that is within or below a properly calculated Guidelines range is presumptively reasonable." *United States v. White*, 810 F.3d 212, 230 (4th Cir. 2016) (internal quotation marks omitted). Cloud bears the burden of rebutting that presumption "by demonstrating that the sentence is unreasonable when measured against the § 3553(a) factors." *United States v. Everett*, 91 F.4th, 698, 714 (4th Cir. 2024); *see White*, 810 F.3d at 230.

Both counsel and Cloud contend that the court erred in applying the three-level enhancement for Cloud's managerial role in the offense. They also challenge the court's reliance on extra-record evidence to find that Cloud qualified for that enhancement and its determination of drug quantity.

"Section 3B1.1(b) provides for a three-point enhancement '[i]f the defendant was a manager or supervisor (but not an organizer or leader) and the criminal activity involved five or more participants or was otherwise extensive.'" *United States v. Burnley*, 988 F.3d 184, 187-88 (4th Cir. 2021) (quoting U.S. Sentencing Guidelines Manual § 3B1.1(b)). In determining whether to apply an enhancement for a defendant's leadership role, a court should consider "the [defendant's] exercise of decision making authority, the nature of participation in the commission of the offense, the recruitment of accomplices, the claimed right to a larger share of the fruits of the crime, the degree of participation in planning or organizing the offense, the nature and scope of the illegal activity, and the degree of control and authority exercised over others." USSG § 3B1.1 cmt. n.4. Control over one other coconspirator is sufficient to justify the enhancement. *United States v. Rashwan*, 328 F.3d 160, 166 (4th Cir. 2003). However, merely "being a buyer or seller of illegal drugs, even

in league with five or more other persons, does not establish that a defendant has functioned as a manager or supervisor of criminal activity." *United States v. Slade*, 631 F.3d 185, 190 (4th Cir. 2011) (cleaned up).

The Government bears the burden of proving by a preponderance of the evidence that the enhancement should apply. *United States v. Steffen*, 741 F.3d 411, 414 (4th Cir. 2013). Because "a district court's determination that a defendant held a leadership role in criminal activity is essentially factual," this Court's review is for clear error. *Id.* (internal quotation marks omitted). Upon review, we find no clear error in the application of the enhancement. The evidence at Cloud's codefendant's trial, over which the trial judge presided, and the presentence report, showed that Cloud directed others in trips back and forth from Atlanta to obtain drugs. Further, we conclude that the district court's reliance on extra-record evidence in applying that enhancement was not improper.

Regarding drug quantity, Cloud claims that there was no lab report establishing that the 2000 grams of Eutylone attributed to him was, in fact, Eutylone, or reporting drug weight. "For sentencing purposes, the [G]overnment must prove the drug quantity attributable to a particular defendant by a preponderance of the evidence." *United States v. Bell*, 667 F.3d 431, 441 (4th Cir. 2011). "Under the Guidelines, '[w]here there is no drug seizure or the amount seized does not reflect the scale of the offense, the court shall approximate the quantity of the controlled substance.'" *United States v. Williamson*, 953 F.3d 264, 273 (4th Cir. 2020) (quoting USSG § 2D1.1 cmt. n.5). In making this approximation, a court may "give weight to any relevant information before it, including uncorroborated hearsay, provided that the information has sufficient indicia of reliability

to support its accuracy." *Id.* (internal quotation marks omitted). Uncorroborated hearsay alone can provide sufficiently reliable evidence of drug quantity. *United States v. Wilkinson*, 590 F.3d 259, 269 (4th Cir. 2010). "The defendant bears the burden of establishing that the information relied upon by the district court . . . is erroneous." *United States v. Slade*, 631 F.3d 185, 188 (4th Cir. 2011).

The record discloses that the court reviewed relevant text messages between the codefendants and concluded that they justified an inference that the 2,000 grams of Eutylone were attributable to Cloud and that the actual total converted drug weight was well above the amount needed to establish Cloud's base offense level. Finally, upon review, we find no impermissible double counting of drug quantities or firearms stemming from the home search incident to Cloud's arrest.

In accordance with *Anders*, we have reviewed the entire record in this case and have found no meritorious grounds for appeal. We therefore affirm the district court's judgment. This court requires that counsel inform Cloud, in writing, of the right to petition the Supreme Court of the United States for further review. If Cloud requests that a petition be filed, but counsel believes that such a petition would be frivolous, then counsel may move in this court for leave to withdraw from representation. Counsel's motion must state that a copy thereof was served on Cloud. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

*AFFIRMED*

FILED: November 5, 2024

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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No. 23-4090
(3:20-cr-00385-RJC-DCK-1)

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UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

STEVEN LAMAR CLOUD

Defendant - Appellant

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ORDER

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The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Richardson, Judge Quattlebaum, and Senior Judge Keenan.

For the Court

/s/ Nwamaka Anowi, Clerk

APPENDIX B.