

No. \_\_\_\_\_

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IN THE  
SUPREME COURT OF THE UNITED STATES

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DAVID LYNN GRIFFITH,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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On Petition For A Writ Of Certiorari  
To The United States Court Of Appeals For The Third Circuit

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**PETITION FOR A WRIT OF CERTIORARI**

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**QUESTION PRESENTED**

WHETHER HISTORICAL DRUGS PURCHASED BY SOMEONE OTHER THAN THE DEFENDANT CONSTITUTES RELIABLE EVIDENCE AT SENTENCING TO SUPPORT THE PURITY OF METHAMPHETAMINE?

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

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IN THE SUPREME COURT OF THE UNITED STATES

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DAVID LYNN GRIFFITH,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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**PETITION FOR WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE THIRD CIRCUIT**

Petitioner, David Lynn Griffith, by and through his undersigned attorney, respectfully petitions for a writ of certiorari to review the judgment entered in this case by the United States Court of Appeals for the Third Circuit.

## OPINION BELOW

The opinion of the United States Court of Appeals for the Third Circuit appears in the Appendix.

## JURISDICTION

On December 10, 2024, in a non-precedential opinion, a three-judge panel of the Third Circuit Court of Appeals entered its judgment affirming Mr. Griffith's conviction and sentence. The jurisdiction of the Supreme Court is invoked under 28 U.S.C. § 1254(1). This petition is timely filed within 90 days of the decision below under Rule 13.1(3) of this Court.

## RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The pertinent statutory provisions include 18 U.S.C. § 3742 and 28 U.S.C. § 2106.

## STATEMENT OF THE FACTS

On August 22, 2019, Mr. Griffith was indicted with another individual (David Bennett) for purportedly conspiring to distribute and distributing controlled substances, pursuant to 21 U.S.C. §§ 841 & 846. Both Messrs. Griffith and Bennett were longstanding methamphetamine addicts. The federal indictment alleged that Mr. Griffith and co-defendant David Bennett conspired to distribute 500 grams and more of methamphetamine between November 2018 to April 2019 and possession with the intent to distribute 50 grams or more of methamphetamine, stemming from evidence seized from a vehicle that Mr. Griffith was a passenger on February 21, 2019.

A three-day jury trial commenced on January 10, 2023. During that trial, Mr. Griffith did not dispute that he was a prodigious methamphetamine addict and had purchased methamphetamine from Bennett and sometimes sold it to other addicts known to Mr. Griffith. However, Mr. Griffith vigorously disputed that he was a co-conspirator of Mr. Bennett, but rather was involved in nothing more than a buyer-seller relationship with him. Co-defendant Bennett testified on behalf of the Government. At the conclusion of trial, Mr. Griffith was convicted on both counts.

At sentencing, probation used the guidelines for “actual” methamphetamine based upon the purported purity of the methamphetamine. The drug weight was arrived at by using the historical drugs received by Bennett on his trips to Ohio in January 2019. However, those drug quantities were merely historical and never tested for its purity. Without any evidence, the district court simply made a conclusory finding that the purity of methamphetamine in January 2019 resulted in the same confirmation of the purity of the drugs actually tested and sentenced Mr. Griffith under the sentencing guidelines using the higher “actual” guidelines, as opposed to the “mixture” guidelines.

A timely notice of appeal to the Third Circuit was filed.<sup>1</sup> On December 10, 2024, a three-judge panel of the Third Circuit (the “Panel”), in a non-precedential opinion, affirmed.

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<sup>1</sup> Mr. Griffith raised several issues in his appeal, including a challenge to the sentencing guideline offense level using “actual” methamphetamine.

## REASONS FOR GRANTING THE WRIT

CERTIORARI SHOULD BE GRANTED TO RESOLVE THE IMPORTANT QUESTION OF WHETHER HISTORICAL DRUGS PURCHASED BY SOMEONE OTHER THAN THE DEFENDANT CONSTITUTES RELIABLE EVIDENCE AT SENTENCING TO SUPPORT THE PURITY OF METHAMPHETAMINE.

This Court has long held that A criminal defendant has a right to be sentenced on reliable information. *See United States v. Tucker*, 404 U.S. 443, 447 (1972). When calculating the sentencing guidelines range, a district court must base its determination on information that “ha[s] sufficient indicia of reliability to support its probable accuracy.” *United States v. Freeman*, 763 F.3d 322, 337 (3d Cir. 2014). Thus, conclusory or insupportable drug weight allegations in the PSR will not support a sentencing court’s determination of drug quantity. *See id.* at 337. At sentencing, the Government bears the burden of proof to support its drug weight by a preponderance of the evidence. *See United States v. Brothers*, 75 F.3d 845, 848 (3d Cir. 1996).

Here, for Mr. Griffith, he was sentenced upon unreliable drug quantities and purity. That proved fatal for Mr. Griffith as he was sentenced based on “actual” methamphetamine where there was no reliable evidence to support it. The only amount actually tested was the 62.5 grams that was seized from the vehicle in which he was a passenger. While the drugs obtained by Mr. Bennett were from the same source in Ohio, they were obtained by him on different occasions and involved different amounts over several months. Other than one encounter, Mr. Griffith was

never present during any of those subsequent purchases by Mr. Bennett. There was simply no evidence that the purity of the 62.5 grams of drugs seized from Mr. Griffith during the traffic stop were representative of the entire historical purity of all the drugs alleged as part of the overall conspiracy.<sup>2</sup>

This Court should weigh in on this important question on what constitutes reliable evidence when determining drug purity. *See United States v. Carnell*, 972 F.3d 932 (7th Cir. 2020) (rejecting circumstantial evidence of purity of methamphetamine noting that none of the “ice” had actually been tested by a lab); *United States v. Yates*, 98 F.4th 826 (7th Cir. 2024) (reversing and finding the tested samples of methamphetamine were insufficiently reliable to establish the purity of all the drugs attributable to the defendant in the conspiracy); *United States v. Reed*, 72 F.4th 174 (6th Cir. 2023) (officer’s testimony was insufficient to prove the defendant was responsible for the claimed quantity of actual methamphetamine as opposed to methamphetamine mixture).

Because the use of unreliable purity evidence impacted Mr. Griffith’s case so dramatically and will impact many other similarly-situated litigants prosecuted for methamphetamine, this Petition for Writ of Certiorari should be granted.

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<sup>2</sup> Notably, even the Government’s chief witness, cooperating co-conspirator David Bennett, testified in the Government’s case-in-chief that there was “no way” the methamphetamine was pure and described it as “garbage.”

## CONCLUSION

WHEREFORE, based on the foregoing arguments and authorities, this Court should grant the petition for writ of certiorari.

Dated: March 10, 2025

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IN THE SUPREME COURT OF THE UNITED STATES

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DAVID LYNN GRIFFITH,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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**CERTIFICATE OF SERVICE**

I, Edward J. Rymsza, hereby certify that on this 10th day of March 2025, I served copies of the Petition for a Writ of Certiorari in the above-captioned case were mailed, first class postage prepaid to the following:

Solicitor General  
United States Department of Justice  
950 Pennsylvania Avenue  
Washington, D.C. 20530

Carlo Marchioli, Esq.  
Office of the U.S. Attorney Middle District of Pennsylvania  
1501 N. 6<sup>th</sup> Street  
Harrisburg, PA 17102

Patricia S. Dodszuweit, Clerk  
United States Court of Appeals  
for the Third Circuit  
601 Market Street  
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Philadelphia, PA 19106-1790

David Griffith  
#76989-067  
FCI Loretto  
P.O. Box 1000  
Cresson, PA 16630

I certify that all parties required to be served have been served.

Dated: March 10, 2025

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## CERTIFICATIONS

I, Edward J. Rymsza, Esq., hereby certify that:

1. I am a member of the bar of the Supreme Court of the United States,
2. the text of the electronic brief e-mailed to the Court is identical to the text of the other paper copies mailed to the Court,
3. the attached brief has been automatically scanned during preparation and upon sending by Avast anti-virus detection program and no virus was detected,
4. on the date below, one copy of the foregoing Petition for Writ of Certiorari was placed in the United States mail, first class, postage pre-paid addressed to:

Carlo Marchioli, Esq.  
Office of the U.S. Attorney Middle District of Pennsylvania  
1501 N. 6<sup>th</sup> Street  
Harrisburg, PA 17102

5. on the date below, ten copies of the same were placed in the United States mail, first class, postage pre-paid, addressed to:

Supreme Court of the United States  
Office of Clerk  
One First Street NE  
Washington, D.C. 20543

Dated: March 10, 2025

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NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

---

No. 23-2713

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UNITED STATES OF AMERICA

v.

DAVID LYNN GRIFFITH,  
Appellant

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On Appeal from the United States District Court  
For the Middle District of Pennsylvania  
(District Court No. 4:19-cr-00246-002)  
District Judge: Honorable Matthew W. Brann

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Submitted Pursuant to Third Circuit L.A.R. 34.1(a)  
October 31, 2024

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Before: CHAGARES, Chief Judge, PORTER and CHUNG, Circuit Judges

(Filed December 10, 2024)

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OPINION<sup>1</sup>

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CHUNG, Circuit Judge.

David Griffith challenges his final judgment of conviction for conspiracy to

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<sup>1</sup> This disposition is not an opinion of the full Court and, pursuant to I.O.P. 5.7, does not constitute binding precedent.

distribute methamphetamine and possession with the intent to distribute methamphetamine, the District Court's denial of his motions to suppress, and the District Court's calculation of his sentence. For the reasons presented below, we will affirm.

I. BACKGROUND<sup>2</sup>

On February 21, 2019, David Lynn Griffith was the passenger in a car stopped by Pennsylvania State Police (PSP) Trooper Michael Tracy because the car displayed an expired inspection sticker. During the stop, Trooper Tracy searched Griffith for weapons and found methamphetamine on Griffith's person. Trooper Tracy also saw apparent methamphetamine in plain view through the open passenger side door of the car. PSP recovered additional items that were in plain view from the car; to wit, 37 needles, \$578 in cash, and the key to a room at the Crystal Springs Motel. A search warrant was obtained by PSP for the motel room, and drug paraphernalia and drug packaging materials were recovered pursuant to the resulting search. PSP then obtained a search warrant for the car and found, among other items, drug paraphernalia and more methamphetamine.

The motor vehicle recording device (MVR) from Trooper Tracy's police vehicle recorded the stop. The MVR video was not preserved, however, to maintain the confidential identity of an informant who could be seen on the footage.

Griffith and another individual, David Bennett, were indicted for conspiracy to distribute controlled substances and possession with intent to distribute controlled

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<sup>2</sup> Because we write for the parties, we recite only facts pertinent to our decision.

substances. After a jury trial on January 12, 2023, Griffith was found guilty on both counts.

## II. DISCUSSION<sup>3</sup>

Griffith brings seven issues on appeal. We address each in turn.

### A. Motion to Suppress Physical Evidence Found in the Car

First, Griffith argues that the District Court erred in denying Griffith's motion to suppress evidence found in the warrantless, on-scene search of the car. Specifically, Griffith contends that the plain view exception to the warrant requirement did not apply. However, Griffith does not contest the District Court's finding that the warrantless search was lawful under the automobile exception. We thus affirm the District Court's denial of Griffith's motion to suppress on the grounds that the automobile exception applies and we need not reach the issue of whether the search was lawful under the plain view exception.

### B. Motion to Suppress Physical Evidence found in the Motel Room

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<sup>3</sup> This district court had subject matter jurisdiction under 18 U.S.C. § 3231. We have jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742. We review findings of fact related to the Sentencing Guidelines for clear error and review the District Court's interpretation of the Guidelines de novo. United States v. Butch, 256 F.3d 171, 177 (3d Cir. 2001). When assessing the sufficiency of the evidence supporting the verdict, we will uphold the verdict "if any rational juror could have found the challenged elements beyond a reasonable doubt." United States v. Peppers, 302 F.3d 120, 125 (3d Cir. 2002). We apply the clear error standard to review factual findings related to a motion to suppress, and review legal conclusions related to a motion to suppress de novo. United States v. Tracey, 597 F.3d 140, 146 (3d Cir. 2010). "We find clear error if, when reviewing the entire record, we are left with the definite and firm conviction that a mistake has been committed." United States v. Caraballo, 88 F.4th 239, 244 (3d Cir. 2023) (internal quotations omitted).

Next, Griffith argues that the search warrant of the motel room was unsupported by probable cause and that, therefore, the District Court erred in denying his motion to suppress the drug-related evidence found therein. We have found adequate support to search an analogous location, a residence, when there is evidence: “(1) that the person suspected of drug dealing is actually a drug dealer; (2) that the place to be searched is possessed by, or the domicile of, the dealer; and (3) that the home contains contraband linking it to the dealer’s drug activities.” United States v. Burton, 288 F.3d 91, 104 (3d Cir. 2002). Whether supported by these three indicia, or other factors, the ultimate question is whether an affidavit in support of a search warrant application establishes probable cause to believe that the items sought will be found therein. Id. at 103.

The District Court found that all three factors were presented by the affidavit and we perceive no clear error in these findings. Griffith mainly challenges the District Court’s finding as to the third factor and argues that there was no evidence of contraband in the motel linking him to his drug-dealing activities. In support of its finding, the District Court cited evidence that was found in the motel room. Appx. 156a. Evidence found in the motel room after the search warrant was authorized cannot be used to support probable cause for that same warrant. However, we conclude that this error was harmless, see United States v. Lewis, 802 F.3d 449, 454 (3d Cir. 2015) (defining harmless error as “[a]ny error, defect, irregularity, or variance that does not affect substantial rights” and explaining a harmless error “must be disregarded”), as the affidavit contained sufficient support to find probable cause that the motel room contained evidence of the drug-related materials sought, see Dist. Ct. Dkt. No. 76-4, at 1,

4 (identifying the crime for which evidence would be found as “possession with the intent to deliver a controlled substance” and identifying the items to be found as, among other things, drug paraphernalia). We will thus affirm as to this issue.

C. Failure to Preserve the MVR Video

Griffith also argues that the District Court erred in denying suppression because his due process rights were violated when the PSP failed to preserve the MVR video. Griffith is somewhat unclear as to what particular evidence he seeks to suppress. We will assume that Griffith argues that evidence found in both the car and the motel room should have been suppressed. In order to establish that Griffith’s due process rights were violated, Griffith must prove (1) the video was potentially exculpatory and (2) the PSP acted in bad faith in failing to preserve the video. Arizona v. Youngblood, 488 U.S. 51, 58 (1988). The District Court did not err in finding PSP did not act in bad faith. Trooper Tracy testified that the video was destroyed because it depicted a confidential informant.<sup>4</sup> Appx. 191a. Griffith argues that because the destruction of the video violated the PSP policy of retaining MVRs, destroying the MVR constituted bad faith. However, PSP policy also states that “video recordings may be inappropriate” where, as here, PSP must protect “the anonymity of an informant or other confidential source of information.” Appx. 152a (citing Doc. 97-1 at 9). Furthermore, destroying evidence against policy is

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<sup>4</sup> Neither party disputes that the video was potentially exculpatory. Opening Br. at 18–22; Answering Br. at 35–38.

not dispositive on the question of bad faith. United States v. Deaner, 1 F.3d 192, 200 (3d Cir. 1993).

D. Sufficiency of the Evidence

Griffith next challenges the sufficiency of evidence supporting the verdict for both the conspiracy and possession with intent to distribute charges. We apply a “particularly deferential standard” when determining if a jury verdict rests on sufficient evidence, because “a reviewing court must be ever vigilant … not to usurp the role of the jury by weighing credibility and assigning weight to the evidence....” United States v. Boria, 592 F.3d 476, 480 (3d Cir. 2010) (internal citations and quotations omitted). “Therefore, we view the evidence in the light most favorable to the prosecution and sustain the verdict unless it is clear that no rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” United States v. Mercado, 610 F.3d 841, 845 (3d Cir. 2010). We conclude there was sufficient evidence for a rational jury to find Griffith guilty on both counts.

Griffith argues that he and Bennett only had a buyer-seller relationship, and that there was insufficient evidence to show they were co-conspirators. We conclude there was ample evidence from which a rational jury could find each of the elements of conspiracy: (1) “two or more persons agreed to distribute methamphetamine;” (2) Griffith “was a party to or a member of that agreement;” (3) and “Griffith joined the agreement or conspiracy knowing of its objective.” Appx. 725a–26a; see United States v. Williams, 974 F.3d 320, 371–72 (3d Cir. 2020). For instance, the government offered evidence from Griffith’s alleged co-conspirator, who testified that he and Griffith were partners

who shared profits and who pooled their money to purchase methamphetamine for future distribution to their respective buyers. Appx. 353a, 386a–88a. While Bennett also testified that Griffith and Bennett both used portions of the methamphetamine they jointly purchased, Appx. 388a, the jury was not required to credit this portion of Bennett’s testimony evidence and, at the same time, ignore Bennett’s other testimony that he and Griffith had a joint agreement to distribute.

With respect to the possession with intent to distribute charge, Griffith argues no rational jury could have found him guilty because he was addicted to methamphetamine. Specifically, Griffith contends he was charged with possession with intent to distribute based solely on the 62.5 grams of methamphetamine found in his car, and that quantity is consistent with his heavy use of the drug. There was sufficient evidence presented at trial such that a rational jury could have rejected this defense. First, as noted above, there was ample testimony from Griffith that he and Bennett had a joint venture to sell methamphetamine. Appx. 424a–26a, 448a, 464a–67a, 633a–34a. In addition, the jury heard evidence from two police officers that items recovered from the car and from Griffith’s motel room were typically used in distributing drugs. Appx. 206a–10a, 233a–38a. Based on this and other trial evidence, a rational jury could find that Griffith intended to distribute the methamphetamine in his possession.

#### E. Issues Related to Sentencing

Griffith next appeals the District Court’s finding that his base offense level was 34. We review findings of fact related to the Sentencing Guidelines for clear error and

review the District Court’s interpretation of the Guidelines *de novo*. United States v. Butch, 256 F.3d 171, 177 (3d Cir. 2001).

The District Court’s calculation of Griffith’s base offense level rested upon its factual finding that all of the methamphetamine attributable to the conspiracy was 99% pure. Appx. 784a–85a. The District Court reached this conclusion by reasoning that the quality of the 62.5 grams of methamphetamine found in Griffith’s possession on February 21, 2019, stipulated at 99% pure, was representative of the overall quality. Appx. 784a–85a. We discern no clear error in this finding. There was evidence at trial that all of the methamphetamine in the conspiracy was from the same source in Ohio, and that the methamphetamine found in Griffith’s car came from that source. Appx. 424a–26a, 448a, 464a–67a, 633a–34a. Griffith argues that Bennett’s testimony that the methamphetamine was “trash” and that there was “no way” it was 99% pure renders the District Court’s finding erroneous. Appx. 390a–91a. However, that brief excerpt from Bennett’s testimony does not establish a firm conviction that the District Court committed a mistake in its factual finding. Caraballo, 88 F.4th at 244 (“We find clear error if, when reviewing the entire record, we are left with the definite and firm conviction that a mistake has been committed.” (internal quotations omitted)).

Griffith further argues that the District Court wrongly denied him a two-level sentence reduction for acceptance of responsibility. “Whether a defendant has accepted responsibility is a factual matter and is reviewed under a clearly erroneous standard.” United States v. DeLeon-Rodriguez, 70 F.3d 764, 767 (3d Cir. 1995) (internal quotations omitted). Griffith contends that because he never disputed that he used and sold

methamphetamine, he is eligible for the two-level reduction. The District Court considered this argument and declined to apply the reduction because Griffith contested at trial that he was a party to an agreement to distribute methamphetamine, an essential element of Count I of the indictment. App. 786a. We have regularly affirmed District Courts who have denied such reductions when the defendant makes the government meet its burden of proof at trial and perceive no clear error. See, e.g., United States v. Boone, 279 F.3d 163, 194 (3d Cir. 2002); DeLeon-Rodriguez, 70 F.3d at 767.

We are not persuaded by Griffith's reliance on United States v. Rodriguez, 975 F.2d 999, 1009 (3d Cir. 1992). In that case, we noted that a defendant's decision to go to trial is not dispositive on the question of his acceptance of responsibility. There, the defendants did not want to plead guilty to certain counts to which they believed they had viable defenses. The jury and the District Court ultimately accepted these defenses, but the Court still concluded that the defendants, having gone to trial, were not entitled to the two-point reduction. We remanded for the District Court to consider the specific reasons the defendants did not plead guilty. Id. Here, neither the jury nor the District Court credited Griffith's defense, though both fully considered it.

Finally, Griffith argues that the District Court incorrectly added three criminal history points to Griffith's score due to his prior conviction for Corruption of Minors. Appx. 788a. To qualify as a three-point conviction under the sentencing guidelines, a defendant must have been sentenced on that conviction to a term of imprisonment exceeding one year. Appx. 788a. Griffith argues that because he served his sentence on house arrest and home confinement, his sentence does not qualify as a prior sentence of

imprisonment. We agree with the District Court that it did not need to decide here if house arrest counts as a sentence of imprisonment, because the sentencing order made clear that Griffith was sentenced to a term of imprisonment (despite immediately being paroled to house arrest). Appx. 788a.

In response, Griffith cites case law from the Sixth, Seventh, and Ninth Circuits to contend that time served in home detention is not a sentence of imprisonment. For various reasons, those cases are inapposite.<sup>5</sup> We therefore determine the District Court did not err when concluding that Griffith had a prior sentence of imprisonment warranting the addition of three criminal history points.

### III. CONCLUSION

For the reasons discussed above, we will affirm the District Court.

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<sup>5</sup> In some of the cases Griffith cites, the sentencing court never imposed a sentence of imprisonment, for example, because the defendant was sentenced to home detention from the outset. United States v. Jones, 107 F.3d 1147, 1161 (6th Cir. 1997); United States v. Phipps, 68 F.3d 159, 161 (7th Cir. 1995). The final case Griffith cites, an out-of-circuit non-precedential opinion, does not apply here because that case dealt with the meaning of “release” from, not a “sentence” of, imprisonment. United States v. Smith, 41 F. App’x 134, 136 (9th Cir. 2002).