

APPENDIX

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA

v.

CHRISTOPHER JEROME ELLIS

JUDGMENT IN A CRIMINAL CASE

Case Number: 3:23-cr-00003-002

USM Number: 36401-510

Charles David Paul

Defendant's Attorney

THE DEFENDANT:☒ pleaded guilty to count(s) One of the Indictment filed on January 11, 2023.☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section ?	Nature of Offense	Offense Ended	Count
21 U.S.C. §§ 841(a)(1),	Conspiracy to Distribute 50 Grams or More of Actual Methamphetamine	12/15/2022	1
841(b)(1)(A),	and 100 Grams or More of a Mixture and Substance Containing Heroin		
841(b)(1)(C), 846			

☐ See additional count(s) on page 2

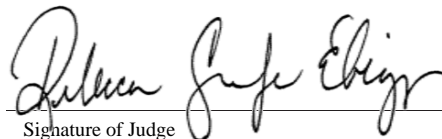
The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____☒ Count(s) Two ☒ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must 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 must notify the court and United States attorney of material changes in economic circumstances.

October 10, 2023

Date of Imposition of Judgment



Signature of Judge

Rebecca Goodgame Ebinger, U.S. District Judge

Name of Judge

Title of Judge

October 10, 2023

Date

DEFENDANT: CHRISTOPHER JEROME ELLIS

CASE NUMBER: 3:23-cr-00003-002

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

200 months as to Count One of the Indictment filed on January 11, 2023.

☒ The court makes the following recommendations to the Bureau of Prisons:

The defendant be placed at a facility as close as possible to Burlington, Iowa, and be eligible to participate in the 500-hour residential drug abuse treatment program (RDAP) and any other substance abuse treatment programs.

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

☐ The defendant is remanded to the custody of the United States Marshal for surrender to the ICE detainer.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before _____ on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

a _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: CHRISTOPHER JEROME ELLIS
CASE NUMBER: 3:23-cr-00003-002

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of :
5 years as to Count One of the Indictment filed on January 11, 2023.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: CHRISTOPHER JEROME ELLIS
CASE NUMBER: 3:23-cr-00003-002

Judgment Page: 4 of 7

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: CHRISTOPHER JEROME ELLIS
CASE NUMBER: 3:23-cr-00003-002

Judgment Page: 5 of 7

SPECIAL CONDITIONS OF SUPERVISION

You must submit to a mental health evaluation. If treatment is recommended, you must participate in an approved treatment program and abide by all supplemental conditions of treatment. Participation may include inpatient/outpatient treatment and/or compliance with a medication regimen. You will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

You must participate in a program of testing and/or treatment for substance abuse, as directed by the Probation Officer, until such time as the defendant is released from the program by the Probation Office. At the direction of the probation office, you must receive a substance abuse evaluation and participate in inpatient and/or outpatient treatment, as recommended. Participation may also include compliance with a medication regimen. You will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment. You must not use alcohol and/or other intoxicants during the course of supervision.

You will submit to a search of your person, property, residence, adjacent structures, office, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), and other electronic communications or data storage devices or media, conducted by a U.S. Probation Officer. Failure to submit to a search may be grounds for revocation. You must warn any other residents or occupants that the premises and/or vehicle may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that you have violated a condition of your release and/or that the area(s) or item(s) to be searched contain evidence of this violation or contain contraband. Any search must be conducted at a reasonable time and in a reasonable manner. This condition may be invoked with or without the assistance of law enforcement, including the U.S. Marshals Service.

DEFENDANT: CHRISTOPHER JEROME ELLIS
CASE NUMBER: 3:23-cr-00003-002

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

- ☐ Pursuant to 18 U.S.C. § 3573, upon the motion of the government, the Court hereby remits the defendant's Special Penalty Assessment; the fee is waived and no payment is required.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$ 100.00	\$0.00	\$ 0.00	\$ 0.00	\$ 0.00

- ☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.
- ☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
TOTALS	\$0.00	\$0.00	

- ☐ Restitution amount ordered pursuant to plea agreement \$ _____
- ☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine 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 Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- ☐ the interest requirement is waived for the ☐ fine ☐ restitution.
- ☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

*Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

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

DEFENDANT: CHRISTOPHER JEROME ELLIS
CASE NUMBER: 3:23-cr-00003-002

SCHEDULE OF PAYMENTS

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

- A** ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than _____, or
☒ in accordance ☐ C, ☐ D, ☐ E, or ☒ F below; or
- B** ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C** ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D** ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E** ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F** ☒ Special instructions regarding the payment of criminal monetary penalties:
- All criminal monetary payments are to be made to:
Clerk's Office, United States District Court, P.O. Box 9344, Des Moines, IA 50306-9344.
- While on supervised release, you shall cooperate with the United States Probation Office in developing a monthly payment plan, which shall be subject to the approval of the Court, consistent with a schedule of allowable expenses provided by the United States Probation Office.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

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

☐ Joint and Several

Case Number Defendant and Co-Defendant Names (including defendant number)	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate
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- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVT A assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

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

No: 23-3276

United States of America

Plaintiff - Appellee

v.

Christopher Jerome Ellis

Defendant - Appellant

Appeal from U.S. District Court for the Southern District of Iowa - Eastern
(3:23-cr-0003-RGE-2)

JUDGMENT

Before LOKEN, SHEPHERD, and KELLY, Circuit Judges.

This appeal from the United States District Court was submitted on the record of the district court, briefs of the parties and was argued by counsel.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

February 25, 2025

Order Entered in Accordance with Opinion:
Acting Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Maureen W. Gornik

Adopted April 15, 2015
Effective August 1, 2015

Revision of Part V of the Eighth Circuit Plan to Implement the Criminal Justice Act of 1964.

V. Duty of Counsel as to Panel Rehearing, Rehearing En Banc, and Certiorari

Where the decision of the court of appeals is adverse to the defendant in whole or in part, the duty of counsel on appeal extends to (1) advising the defendant of the right to file a petition for panel rehearing and a petition for rehearing en banc in the court of appeals and a petition for writ of certiorari in the Supreme Court of the United States, and (2) informing the defendant of counsel's opinion as to the merit and likelihood of the success of those petitions. If the defendant requests that counsel file any of those petitions, counsel must file the petition if counsel determines that there are reasonable grounds to believe that the petition would satisfy the standards of Federal Rule of Appellate Procedure 40, Federal Rule of Appellate Procedure 35(a) or Supreme Court Rule 10, as applicable. *See Austin v. United States*, 513 U.S. 5 (1994) (per curiam); 8th Cir. R. 35A.

If counsel declines to file a petition for panel rehearing or rehearing en banc requested by the defendant based upon counsel's determination that there are not reasonable grounds to do so, counsel must so inform the court and must file a written motion to withdraw. The motion to withdraw must be filed on or before the due date for a petition for rehearing, must certify that counsel has advised the defendant of the procedures for filing *pro se* a timely petition for rehearing, and must request an extension of time of 28 days within which to file *pro se* a petition for rehearing. The motion also must certify that counsel has advised the defendant of the procedures for filing *pro se* a timely petition for writ of certiorari.

If counsel declines to file a petition for writ of certiorari requested by the defendant based on counsel's determination that there are not reasonable grounds to do so, counsel must so inform the court and must file a written motion to withdraw. The motion must certify that counsel has advised the defendant of the procedures for filing *pro se* a timely petition for writ of certiorari.

A motion to withdraw must be accompanied by counsel's certification that a copy of the motion was furnished to the defendant and to the United States.

Where counsel is granted leave to withdraw pursuant to the procedures of *Anders v. California*, 386 U.S. 738 (1967), and *Penson v. Ohio*, 488 U.S. 75 (1988), counsel's duty of representation is completed, and the clerk's letter transmitting the decision of the court will notify the defendant of the procedures for filing *pro se* a timely petition for panel rehearing, a timely petition for rehearing en banc, and a timely petition for writ of certiorari.

United States Court of Appeals
For The Eighth Circuit
Thomas F. Eagleton U.S. Courthouse
111 South 10th Street, Room 24.329
St. Louis, Missouri 63102

Maureen W. Gornik
Acting Clerk of Court

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February 25, 2025

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RE: 23-3275 United States v. Gilbert Ellis
23-3276 United States v. Christopher Ellis
24-1133 United States v. Joshua Townsend

Dear Counsel:

The court has issued an opinion in these cases. Judgments have been entered in accordance with the opinion.

Please review [Federal Rules of Appellate Procedure](#) and the [Eighth Circuit Rules](#) on post-submission procedure to ensure that any contemplated filing is timely and in compliance with the rules. Note particularly that petitions for rehearing and petitions for rehearing en banc must be received in the clerk's office within 14 days of the date of the entry of judgment. Counsel-filed petitions must be filed electronically in CM/ECF. Paper copies are not required. Except as provided by Rule 25(a)(2)(iii) of the Federal Rules of Appellate Procedure, no grace period for mailing is allowed. Any petition for rehearing or petition for rehearing en banc which is not received within the 14 day period for filing permitted by FRAP 40 may be denied as untimely.

Maureen W. Gornik
Acting Clerk of Court

CRJ

Enclosure(s)

cc: Clerk, U.S. District Court, Southern Iowa
Christopher Jerome Ellis
Gilbert Lee Ellis
Joseph Lubben
Matthew Alan Stone
Joshua Adam Townsen

District Court/Agency Case Number(s): 3:23-cr-00003-RGE-1
3:23-cr-00003-RGE-2
3:23-cr-00003-RGE-5

United States Court of Appeals
For The Eighth Circuit
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February 25, 2025

West Publishing
Opinions Clerk
610 Opperman Drive
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Eagan, MN 55123-0000

RE: 23-3275 United States v. Gilbert Ellis
23-3276 United States v. Christopher Ellis
24-1133 United States v. Joshua Townsen

Dear Sir or Madam:

A published opinion was filed today in the above case.

Counsel who presented argument on behalf of appellant Gilbert Lee Ellis, and appeared on the appellant brief, was Jack Edward Dusthimer, of Davenport, IA.

Counsel who presented argument on behalf of appellant Christopher Jerome Ellis, and appeared on the appellant brief, was Charles D. Paul, of Cedar Rapids, IA.

Counsel who appeared on the brief of appellant Joshua Adam Townsen, was Jessica M. Donels, of Des Moines, IA.

Counsel who presented argument on behalf of the appellee and appeared on the appellee brief, was Joseph Lubben, AUSA, of Des Moines, IA.

The judges who heard the case in the district court were
Honorable Rebecca Goodgame Ebinger and Honorable Stephen B. Jackson.

If you have any questions concerning this case, please call this office.

Maureen W. Gornik
Acting Clerk of Court

CRJ

Enclosure(s)

cc: MO Lawyers Weekly

District Court/Agency Case Number(s): 3:23-cr-00003-RGE-1
3:23-cr-0003-RGE-2
3:23-cr-00003-RGE-5

United States Court of Appeals
For the Eighth Circuit

No. 23-3275

United States of America

Plaintiff - Appellee

v.

Gilbert Lee Ellis

Defendant - Appellant

No. 23-3276

United States of America

Plaintiff - Appellee

v.

Christopher Jerome Ellis

Defendant - Appellant

No. 24-1133

United States of America

Plaintiff - Appellee

v.

Joshua Adam Townsen

Defendant - Appellant

Appeals from United States District Court
for the Southern District of Iowa - Eastern

Submitted: January 16, 2025
Filed: February 25, 2025

Before LOKEN, SHEPHERD, and KELLY, Circuit Judges.

SHEPHERD, Circuit Judge.

Gilbert Ellis, Christopher Ellis, and Joshua Townsen conspired to distribute methamphetamine and heroin. All three pled guilty and now raise various challenges to their sentences. Having jurisdiction under 28 U.S.C. § 1291, we affirm the judgments of the district court.¹

I.

In the summer of 2021, the Southeast Iowa Narcotics Task Force (SEINT), received several tips regarding the distribution of heroin in Burlington, Iowa. Based on these tips and additional information from a confidential informant, SEINT obtained a warrant to search Michael “Mikey” Brown’s home, where detectives discovered marijuana and “packaging material consistent with narcotics distribution.”

¹The Honorable Rebecca Goodgame Ebinger, United States District Judge for the Southern District of Iowa.

In July 2022, Burlington police officers interviewed another confidential source who confirmed Brown's drug involvement and alerted officers to the participation of Gilbert,² who is a wheelchair user. This source told officers that he purchased heroin from Gilbert daily, and, if he could not obtain any from Gilbert, he would purchase the drugs from Brown. After receiving this information, SEINT detectives set up a controlled purchase of heroin from Brown in August 2022. While surveilling this transaction, detectives observed Gilbert drive Brown to the transaction in a vehicle registered to Gilbert's girlfriend.

In September 2022, SEINT developed another confidential source, K.H., whose testimony was incorporated into the record at sentencing. K.H. testified that he was involved in three controlled buys from Gilbert in 2022 and had consistently purchased cocaine and heroin from Gilbert for years. In one controlled buy, Gilbert told K.H. to meet him at a middle school to purchase heroin. When K.H. arrived, he found that Gilbert had sent Christopher to deliver the drugs and complete the transaction. K.H. also testified that all of his drug transactions were "arranged through Gilbert" or that "Gilbert would be involved" even if he was not physically present for the exchange.

A week after the controlled buy at the middle school, officers conducted a traffic stop of a vehicle driven by Theodis Bagby with Brown in the passenger seat. A canine alerted on the vehicle, and officers discovered 1,109.8 grams of pure, ice methamphetamine in the backseat. Bagby told officers that the vehicle was rented by his nephew, Gilbert, and that Gilbert had instructed him to take the vehicle and pick up Brown.

In October 2022, another controlled buy occurred, this time involving Townsen. Before traveling to meet a confidential informant and complete the transaction, Gilbert met with Townsen at a residence. Upon Gilbert's arrival,

²For purposes of clarity, this opinion will refer to Gilbert and Christopher by their first names.

Townsen exited the residence with a black bag containing pure methamphetamine for the buy, which he had procured for Gilbert.

Gilbert, Christopher, Brown, Bagby, and Townsen were indicted in January 2023 and each charged with one count of conspiracy to distribute 50 grams or more of actual methamphetamine and 100 grams or more of a mixture or substance containing heroin, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A)-(C), and 846. Gilbert was also charged with one count of distribution of heroin near a school, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(C), and 860; two counts of distribution of heroin, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C); and two counts of distribution of 50 grams or more of methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(A). Christopher was charged with one additional count of distributing heroin near a school, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(C), and 860. Finally, Townsen was charged with one additional count of distribution of 50 grams or more of methamphetamine, in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(A).

Gilbert pled guilty without a plea agreement to all six counts of heroin and methamphetamine distribution and conspiracy. Gilbert's Presentence Investigation Report (PSR) recommended applying the "manager or supervisor" enhancement under United States Sentencing Guideline (USSG) § 3B1.1(b) because of his leadership role within the conspiracy. At sentencing, Gilbert objected to this enhancement, arguing that he played the same role as his co-conspirators and merely directed others because he was wheelchair-bound. The district court found that Gilbert directed others to distribute multiple quantities of controlled substances and that his use of a wheelchair did not "change the fact" that he still ordered others to carry out the distribution scheme. The district court granted a downward variance and sentenced Gilbert to 240 months' imprisonment and 5 years' supervised release.

Brown, who is not a party to this appeal, pled guilty without a plea agreement. At sentencing, the district court calculated his Guidelines range as 210-262 months' imprisonment but varied downward and imposed a sentence of 150 months'

imprisonment followed by 6 years' supervised release. Bagby, also not a party to this appeal, proceeded to a jury trial, where he was acquitted.

Christopher pled guilty pursuant to a plea agreement. His PSR recommended a total offense level of 34, which reflected classification as a career offender under USSG §§ 4B1.1(a) and (b)(1) based on two prior felonies for a crime of violence or a controlled substance offense. Relevant here, one of the felonies was a 2017 conviction for possession with intent to deliver marijuana in violation of Iowa Code § 124.401(1)(d). Christopher objected to the classification of this conviction as a controlled substance offense at sentencing, but the district court overruled the objection. The district court calculated his Guidelines range as 262 to 327 months' imprisonment but varied downward, ultimately imposing a sentence of 200 months' imprisonment and 5 years' supervised release.

Townsen also pled guilty pursuant to a plea agreement, and his PSR deemed him ineligible for safety-valve relief based on a 2016 burglary conviction. See 18 U.S.C. § 3553(f). Townsen challenged his ineligibility for safety-valve relief under this Court's now-affirmed decision of United States v. Pulsifer, 39 F.4th 1018 (8th Cir. 2022), aff'd, 601 U.S. 124 (2024). The district court relied on Pulsifer and overruled the objection, calculating Townsen's Guidelines range as 120 to 135 months' imprisonment and sentencing him to the mandatory minimum of 120 months' imprisonment and 5 years' supervised release. Gilbert, Christopher, and Townsen now appeal.

II.

Gilbert raises several challenges to his sentence. “We review a district court’s sentence in two steps: first, we review for significant procedural error; and second, if there is no significant procedural error, we review for substantive reasonableness.” United States v. Kistler, 70 F.4th 450, 452 (8th Cir. 2023) (citation omitted). “When we review the imposition of sentences, whether inside or outside

the Guidelines range, we apply ‘a deferential abuse-of-discretion standard.’” United States v. Hayes, 518 F.3d 989, 995 (8th Cir. 2008) (citation omitted).

A.

Gilbert first challenges the application of USSG § 3B1.1(b) to his sentence. “The district court’s determination of a participant’s role in the offense is a factual finding that we review for clear error.” United States v. Ayers, 138 F.3d 360, 364 (8th Cir. 1998). USSG § 3B1.1(b) provides a three-level enhancement if (1) “the defendant was a manager or supervisor (but not an organizer or leader),” and (2) “the criminal activity involved five or more participants or was otherwise extensive.” “The government bears the burden of proving by a preponderance of the evidence that the aggravating role enhancement is warranted.” United States v. Gaines, 639 F.3d 423, 427 (8th Cir. 2011). Under the Guidelines, we construe the terms “manager” and “supervisor” broadly. United States v. Cole, 657 F.3d 685, 687 (8th Cir. 2011) (per curiam). “To determine whether this enhancement applies, the sentencing court considers factors such as the ‘exercise of decision[-]making authority, the nature of participation in the commission of the offense, . . . the nature and scope of the illegal activity, and the degree of control and authority exercised over others.’” United States v. Alcalde, 818 F.3d 791, 794 (8th Cir. 2016) (quoting USSG § 3B1.1 cmt. n.4). Notably, “[t]he enhancement may apply even if a defendant managed or supervised only one person in a single transaction.” United States v. Reyes-Ramirez, 916 F.3d 1146, 1148 (8th Cir. 2019).

We discern no clear error in the district court’s factual finding that Gilbert “was a manager or supervisor” of several drug transactions. See USSG § 3B1.1(b). The testimony of informant K.H. revealed that Gilbert would sometimes have co-conspirators deliver drugs for him. If K.H. was purchasing drugs, the transaction would be “arranged through Gilbert” or controlled by him. Gilbert even acknowledges on appeal several instances in which he directed and controlled drug transactions. Moreover, Gilbert does not contest the accuracy of the exhibits or the proven factual scenarios—he merely argues that, because he is wheelchair-bound,

he “obviously” must rely upon others to do his bidding if significant movement is involved. Appellant Br. 22. K.H.’s testimony alone is enough to support the application of § 3B1.1(b)—K.H. confirmed that Gilbert controlled all of the transactions that K.H. was involved in and that Gilbert directed co-conspirators to deliver drugs on his behalf to K.H. on more than one occasion. “A fair inference from the evidence presented” is that Gilbert supervised his co-conspirators by coordinating the delivery of methamphetamine and instructing them on “where to meet his customers and how much to collect from them.” See United States v. Moore, 798 F. App’x 952, 959 (8th Cir. 2020) (per curiam); see also Reyes-Ramirez, 916 F.3d at 1148 (applying enhancement when defendant “provided courier . . . instructions and logistical support”). The district court did not clearly err in determining that Gilbert was a manager or supervisor under USSG § 3B1.1(b).

Gilbert next asserts that his sentence was procedurally flawed because the district court attributed to him the drugs found during the traffic stop involving Bagby and Brown, adding 1,109.8 grams of pure methamphetamine to his calculated drug weight. Ordinarily, we review “[d]rug quantity determinations . . . for clear error,” Alcalde, 818 F.3d at 794, but Gilbert did not object to these facts before the district court. Thus, we review for plain error. See United States v. Escobar, 909 F.3d 228, 245 (8th Cir. 2018). Under Federal Rule of Criminal Procedure 52(b), “[a] plain error that affects substantial rights may be considered even though it was not brought to the court’s attention.” To prevail, Gilbert must demonstrate (1) an error; (2) that is plain; (3) that affects substantial rights; and (4) that seriously affects the fairness, integrity, or public reputation of judicial proceedings. United States v. Olano, 507 U.S. 725, 732 (1993).

Gilbert cannot demonstrate any plain error. The district court “may accept any undisputed portion of the presentence report as a finding of fact,” Fed. R. Crim. P. 32(i)(3)(A), and Gilbert “did not object to the drug quantity listed in the PSR, [either] prior to [or] at sentencing. By admitting to the drug quantity, [Gilbert] cannot now on appeal assert that the district court erred by accepting an admitted fact.” See Escobar, 909 F.3d at 245. While Gilbert did object to several other

allegations in the PSR, he failed to object to this one. Thus, Gilbert's sentence was not procedurally flawed, and the district court did not plainly err by allocating the drugs discovered during the admitted traffic stop to Gilbert.

B.

Gilbert next argues that his sentence was substantively unreasonable. He argues he should have received a shorter sentence based on (1) his policy disagreement with the Guidelines' treatment of pure methamphetamine and (2) his co-conspirator receiving a shorter sentence. Gilbert's sentence was within Guidelines range, so it is presumptively reasonable. See id. at 241 ("We may presume a within-Guidelines sentence is reasonable.").

Gilbert first argues that his sentence was substantively unreasonable based on the classification of the methamphetamine purity. Gilbert had a total of 1,477.85 grams of pure methamphetamine and 2,268 grams of mixed methamphetamine attributed to him throughout the conspiracy, resulting in a total converted drug weight of 29,557 kilograms for the pure methamphetamine and 4,536 kilograms for the mixed methamphetamine under the Guidelines. See USSG § 2D1.1 cmt. 8(D) (Drug Conversion Tables). At sentencing, Gilbert questioned the "justification" for differentiating mixed and pure methamphetamine, making a policy argument that the court should vary downward on this basis. This Court, however, "ha[s] frequently stated that while a district court may vary from the Guidelines based on a policy disagreement, it is not required to do so." United States v. Noriega, 35 F.4th 643, 652 (8th Cir. 2022). While Gilbert may disagree, his sentence was not substantively unreasonable based on the district court "declining to vary downward based on his policy disagreement with the Guidelines' treatment of a mixture of methamphetamine as opposed to pure methamphetamine." See id.

Gilbert's argument as to the treatment of his co-conspirator, Michael Brown, is likewise without merit. Brown received a sentence of 150 months' imprisonment, a downward variance from the district court's calculated Guidelines' range of 210

to 262 months' imprisonment. Gilbert received 240 months' imprisonment, which was a downward variance from his Guidelines range of 262 to 327 months' imprisonment. But "[t]he statutory direction to avoid unwarranted disparities among defendants, 18 U.S.C. § 3553(a)(6), refers to national disparities, not differences among co-conspirators, so [Gilbert's] argument founders on a mistaken premise." United States v. Pierre, 870 F.3d 845, 850 (8th Cir. 2017). Even so, "any disparity among co-conspirators here was warranted by [Gilbert's] greater culpability in the conspiracy." Id. Gilbert supervised other co-conspirators and received a role enhancement for doing so; Brown received no such enhancement. Additionally, Brown pled guilty to only one drug conspiracy count, while Gilbert pled guilty to six different trafficking, conspiracy, and distribution counts. "[I]t is not an abuse of discretion to impose a sentence that results in disparity between co-defendants where there are legitimate distinctions between" the two. United States v. Jones, 612 F.3d 1040, 1045 (8th Cir. 2010). Thus, the district court did not abuse its discretion by sentencing Gilbert to 240 months' imprisonment.

III.

Christopher challenges the imposition of the career-offender sentencing enhancement, USSG § 4B1.1(a). He argues that his 2017 conviction of possession with intent to deliver marijuana under Iowa Code § 124.401(1)(d) does not qualify as a controlled substance offense, and, therefore, he did not have the requisite number of felonies required to impose the enhancement. "[W]e review de novo whether a prior conviction qualifies as a crime of violence or controlled substance offense under the Guidelines." United States v. Williams, 926 F.3d 966, 969 (8th Cir. 2019).

The career-offender enhancement applies to defendants who are convicted of a felony crime of violence or controlled substance offense and have "at least two prior felony convictions of either a crime of violence or a controlled substance offense." USSG § 4B1.1(a). A controlled substance offense is "an offense under federal or state law, punishable by imprisonment for a term exceeding one year,

that . . . prohibits the . . . distribution, or . . . possession of a controlled substance.” USSG § 4B1.2(b)(1). Christopher has two prior state court felonies: a 2015 conviction for delivery of a controlled substance under Iowa Code § 124.401(1)(c)(3) and a 2017 conviction for possession of marijuana with intent to deliver under Iowa Code § 124.401(1)(d). In his view, his marijuana conviction should not count towards the requisite number of felonies because the Iowa definition of marijuana in 2017 did not align with the federal definition of marijuana at the time of Christopher’s offense, and, therefore, was not a controlled substance offense under the Controlled Substances Act (CSA). See 21 U.S.C. § 812.

In United States v. Henderson, applying a categorical approach, this Court held that, under the Guidelines, “[t]here is no requirement that the particular substance underlying the state offense [must] also [be] controlled under a distinct federal law” to warrant the imposition of the career-offender enhancement. 11 F.4th 713, 718 (8th Cir. 2021). “There is no cross-reference to the [CSA] in § 4B1.2(b),” and “[t]he career-offender guideline defines the term controlled substance offense broadly.” Id. (citation omitted). Thus, a “controlled substance” under § 4.B1.2(b) includes “*any type of drug* whose manufacture, possession, and use is *regulated by law*,” even if the state law is broader than the federal definition. Id. (quoting United States v. Ward, 972 F.3d 364, 370 (4th Cir. 2020)).

Accordingly, Christopher’s argument is foreclosed by Henderson. His 2017 conviction qualifies as a controlled substance offense because, at the time of the offense, Iowa regulated the possession of marijuana. See United States v. Bailey, 37 F.4th 467, 469 (8th Cir. 2022) (per curiam) (“[Defendant’s] uncontested prior marijuana convictions under the hemp-inclusive version of Iowa Code § 124.401(1)(d) categorically qualif[y] as controlled substance offenses for the career[-]offender enhancement.” (quoting United States v. Jackson, No. 20-3684, 2022 WL 303231, at *2 (8th Cir. Feb. 2, 2022))). And because Henderson itself applied the categorical approach, we disagree with Christopher’s argument that Henderson is inconsistent with prior precedent such that we are free to disregard it.

The district court did not err by imposing the career-offender enhancement at sentencing.

IV.

Finally, Townsen argues that he should have been eligible for safety-valve relief under 18 U.S.C. § 3553(f). To be eligible for safety-valve relief, a defendant must not have:

- (A) more than 4 criminal history points, excluding any criminal history points resulting from a 1-point offense, as determined under the sentencing guidelines;
- (B) a prior 3-point offense, as determined under the sentencing guidelines; and
- (C) a prior 2-point violent offense, as determined under the sentencing guidelines.

18 U.S.C. § 3553(f)(1). Should a defendant be eligible for safety valve relief, the sentencing court is able to impose a sentence “without regard to any statutory minimum sentence.” Id. § 3553(f). This appeal was filed before the Supreme Court’s decision in Pulsifer v. United States, which held that “[a] defendant is eligible for safety-valve relief only if he satisfies each of [18 U.S.C. § 3553(f)(1)]’s three conditions.” 601 U.S. 124, 153 (2024). As Townsen candidly acknowledges, his argument is foreclosed by Pulsifer. Appellant Br. 5. Townsen’s 2016 burglary conviction is a 3-point offense under the Guidelines. Because the presence of *any* offense outlined in § 3553(f)(1) disqualifies an individual from safety-valve relief, the district court did not err by sentencing Townsen to the mandatory minimum sentence.

V.

For the foregoing reasons, we affirm the judgments of the district court.

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

No: 23-3276

United States of America

Appellee

v.

Christopher Jerome Ellis

Appellant

Appeal from U.S. District Court for the Southern District of Iowa - Eastern
(3:23-cr-0003-RGE-2)

ORDER

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

May 02, 2025

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

/s/ Susan E. Bindler