
IN THE SUPREME COURT OF THE UNITED STATES

JOSE ROLANDO ROMERO-PAYAN,
Petitioner,
v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Motion for Leave to Proceed *In Forma Pauperis*

Pursuant to 18 U.S.C. § 3006A and Supreme Court Rule 39, the Petitioner, Jose Rolando Romero-Payan, asks for leave to file a Petition for Writ of Certiorari to the U.S. Court of Appeals for the Ninth Circuit without pre-payment of fees or costs and to proceed *in forma pauperis*. The Petitioner was represented by counsel appointed pursuant to 18 U.S.C. § 3006A in the district court and on appeal to the Court of Appeals for the Ninth Circuit.

Respectfully submitted,

November 15, 2017


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No. _____

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Petition for Writ of Certiorari

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QUESTION PRESENTED

Under *Molina-Martinez v. United States*, 136 S.Ct. 1338 (2016), whether a district court's procedural error affects a defendant's substantial rights, warranting reversal under Federal Rule of Appellate Procedure 52(b), when the court fails to calculate the applicable Guidelines range for supervised release and the only document in the record to have performed the calculation incorrectly recommends a higher, mandatory-minimum term.

PRAYER

Petitioner Jose Rolando Romero-Payan respectfully requests that a writ of certiorari be granted to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINION BELOW

The unpublished memorandum disposition of the United States Court of Appeals for the Ninth Circuit is reproduced in Appendix A to this petition.

JURISDICTION

The court of appeals entered judgment on August 17, 2017. *See* Appendix A. This Court has jurisdiction under 28 U.S.C. § 1254(1).

PERTINENT STATUTORY, GUIDELINES, AND RULES PROVISIONS

The pertinent statutes—18 U.S.C. § 3553(f), 18 U.S.C. § 3559(a)(3), 21 U.S.C. § 841(a)(1), and 21 U.S.C. § 846—are included as Appendices B through E, respectively. The pertinent United States Sentencing Guidelines provisions—U.S.S.G. § 2D1.1(b)(17), U.S.S.G. § 5C1.2, and U.S.S.G. § 5D1.2—are included as Appendices F through H, respectively. Federal Rule of Appellate Procedure 52(b) is included as Appendix I.

STATEMENT OF THE CASE

I. Petitioner's Background.

Petitioner is a thirty-three-year-old family man. He and his wife married fourteen years ago, and the couple has three children, teenage twins and an eight-year-old daughter. Along with Petitioner's mother-in-law, the family lives in a home owned by Petitioner's father in Ciudad Obregon, Sonora, Mexico.

Petitioner has worked hard to provide for and support his family, by selling cars, clothing, and other items at various swap meets throughout Mexico. Before that, he had a long and seemingly successful employment history as a salesperson for two different dairy and meat companies in Mexico, but ultimately left and pursued self-employment to make more money. The family did not lead a lavish life, but Petitioner was generally able to make ends meet.

In August 2015, however, Petitioner's expenses suddenly increased, when his father was diagnosed with a cardiovascular condition known as monofocal premature ventricular beats. Essentially, Petitioner's father's heart began to beat at an abnormally high rate, and the only solution was to install a pacemaker to control the irregular cardiac rhythm. While Petitioner earned enough to cover the costs of planned expenses—food, clothing, and school fees for his children—he did not have the savings to cover this unexpected expense. Consequently, Petitioner made a poor decision to leave behind his law-abiding, family life and turn to drug-

smuggling, as it seemed to him the only way to make money quickly. He subsequently began working as a courier for a drug-trafficking organization.

II. The Prosecution and Guilty Plea.

Following the instructions the drug-trafficking organization gave him, Petitioner drove his car through the Calexico West, California Port of Entry into the United States on September 27, 2015. When Petitioner reached the Border Patrol Checkpoint in Pine Valley, California, a drug-sniffing dog alerted to the car. Agents searched the car and discovered a compartment containing 7.94 kilograms of heroin. Petitioner was subsequently charged with conspiring to distribute heroin, in violation of 21 U.S.C. §§ 841(a)(1) and 846.

Petitioner entered into a plea agreement with the government. The parties agreed to jointly recommend a two-level reduction for safety valve, pursuant to U.S.S.G. § 2D1.1(b)(17) and § 5C1.2, so long as Petitioner truthfully disclosed to the government all information and evidence he had concerning the offense. *See* 18 U.S.C. § 3553(f)(5); U.S.S.G. § 5C1.2(a)(5). If granted, the safety-valve provision would allow the court to impose sentence “without regard to any statutory minimum[.]” 18 U.S.C. § 3553(f); *see also* U.S.S.G. § 5C1.2(a). This exemption applied to the supervised-release component of a sentence, as well as the custodial component. *See* U.S.S.G. § 5C1.2 cmt. n.9; U.S.S.G. § 5D1.2 cmt. n.2.

Following Petitioner’s guilty plea, a probation officer prepared a presentence report (“PSR”). At that time, Petitioner had not gone through the safety valve process. Consequently, the PSR noted that Petitioner “ha[d] not yet satisfied the

criteria for safety valve” and calculated the Guidelines range without taking the safety-valve provision into effect. Accordingly, the PSR stated that the court was required to impose a mandatory minimum three-year term of supervised release, pursuant to 21 U.S.C. § 841(b)(1)(C) and U.S.S.G. § 5D1.2(c).

The PSR did not perform an alternate Guidelines calculation if the court granted Petitioner safety valve. Had the PSR carried out that calculation, it would have found that Petitioner’s conviction for conspiring to distribute heroin carried a 20-year statutory maximum, *see* 21 U.S.C. § 841(b)(1)(C), making it a Class C felony, *see* 18 U.S.C. § 3559(a)(3). For Class C felonies, the Guidelines call for “[a]t least one year but not more than three years” of supervised release. U.S.S.G. § 5D1.2(a)(2).

After his plea and the creation of the PSR, but before sentencing, Petitioner followed through with his safety-valve obligations by submitting a proffer letter to the government. In that letter, he gave a full account of the offense, which the government accepted. As a result, in its sentencing memorandum, the government ultimately recommended a reduction for safety valve. The government did not, however, calculate the Guidelines range for supervised release, but, consistent with the PSR, recommended a three-year term.

For his part, Petitioner submitted a sentencing memorandum requesting a two-level reduction for safety valve. Unlike the government, however, Petitioner did not request any term of supervised release.

III. The Imposition of Supervised Release at Sentencing.

Petitioner appeared in district court for sentencing on March 7, 2016. In calculating the Guidelines range, the court agreed with the parties that Petitioner deserved a two-level reduction for safety valve. Specifically, the court noted Petitioner's proffer letter and indicated that it believed Petitioner had given a truthful account of his involvement in the offense.

Upon taking into account safety valve, as well as other Guidelines considerations, the court calculated a custodial range of 46 to 57 months. The court, in turn, selected the low-end of that range, imposing 46 months of custody. The court then turned to the supervised-release component of the sentence and selected a five-year term. The court stated that supervised release was warranted as an added deterrent "to the extent that I've undervalued the risk of [Petitioner] re-offending." The court did not calculate the Guidelines range for supervised release (one to three years), explain the effect of the grant of safety valve on that Guidelines range, or otherwise provide a reason for varying two years above the high-end of that Guidelines range.

Petitioner's counsel objected to the court's procedural error in denying a minor-role adjustment, but did not separately object to the court's failure to calculate the Guidelines range for supervised release.

IV. Appeal to the Ninth Circuit.

Petitioner subsequently appealed his sentence to the United States Court of Appeals for the Ninth Circuit. He argued, in relevant part, that the court committed procedural error when it failed to calculate the Guidelines range for supervised release. Because the PSR incorrectly calculated the Guidelines range as three years of supervised release, rather than one to three years, Petitioner maintained that there was nothing to indicate the court understood the effect of safety valve on the supervised release component of the sentence.

Reviewing under the plain-error standard, *see* Fed. R. App. P. 52(b), the court of appeals affirmed. *See* Appendix A. The court acknowledged that the district court had not “explicitly calculated the Guidelines range for supervised release,” but concluded that Petitioner had “not shown a reasonable probability that he would have received a different sentence.” Appendix A. This was so, according to the court, because “the district court was aware of the applicable supervised release Guidelines range, which the presentence investigation report, [Petitioner’s] own memorandum, and the government’s sentencing chart all correctly reflected.” *Id.*

REASONS FOR GRANTING THE PETITION

This Court should grant review because the lower court’s decision directly conflicts with *Molina-Martinez v. United States*, 136 S.Ct. 1338 (2016). *See* Supreme Ct. R. 10(c). Indeed, the facts in Petitioner’s case line up exactly with those in *Molina-Martinez*.

In *Molina-Martinez*, the probation officer prepared a PSR that incorrectly calculated a higher Guidelines range. *See* 136 S.Ct. at 1341, 1343. The district court adopted the PSR's Guidelines calculation and sentenced the defendant to the low-end of the incorrectly calculated Guidelines range. *See id.* at 1344. No objection was made in the district court. *See id.*

Rather, the defendant raised the issue for the first time on appeal to the United States Court of Appeals for the Fifth Circuit. *See id.* Acknowledging that plain-error review applied under Federal Rule of Appellate Procedure 52(b), the defendant maintained that he could meet this standard because the incorrect Guidelines calculation was plainly erroneous, affected his substantial rights, and compromised the fairness and integrity of the proceedings. *See id.*

The Fifth Circuit, however, refused to grant the defendant relief. *See id.* In its view, the defendant could not establish that the error affected his substantial rights (*i.e.*, but for the error, there was a reasonable probability that he would have received a different sentence). *See id.* Under the Fifth Circuit's rule, when a correct sentencing range overlapped with an incorrect one, a defendant was required to provide additional evidence showing that the Guidelines miscalculation affected his substantial rights. *See id.* at 1344-45.

This Court granted certiorari to review the differing approaches among the federal courts of appeals to the question of when, under the plain-error standard, a defendant's substantial rights are affected by a court's incorrect calculation of the

Guidelines range. *See id.* at 1345. In answering this question, the Court expressly rejected the Fifth Circuit’s “additional evidence” approach. *See id.* Rather, the Court held that “[w]hen a defendant is sentenced under an incorrect Guidelines range—whether or not the defendant’s ultimate sentence falls within the correct range—the error itself can, and most often will, be sufficient to show a reasonable probability of a different outcome absent the error.” *Id.*

In reaching this conclusion, the Court began by noting the centrality of the United States Sentencing Guidelines to the federal criminal justice system: the “Guidelines provide the framework for tens of thousands of federal sentencing proceedings that occur each year.” *Id.* at 1342. A sentencing court must use the Guidelines as the starting point and initial benchmark. *See id.* at 1346; *Gall v. United States*, 552 U.S. 38, 49 (2007); *Kimbrough v. United States*, 552 U.S. 85, 108 (2007); *Pepper v. United States*, 562 U.S. 476, 490 (2011). And the court must continue to remain cognizant of the Guidelines throughout the sentencing process. *Molina-Martinez*, 136 S.Ct. at 1345; *Peugh v. United States*, 133 S.Ct. 2072, 2083 (2013). The Court further noted empirical evidence showing that the Guidelines are “the lodestar” and tend to drive the sentences imposed by judges in most cases. *Molina-Martinez*, 136 S.Ct. at 1346; *see also Peugh*, 133 S.Ct. at 2084; *Freeman v. United States*, 564 U.S. 522, 529 (2011).

Given the importance of the Guidelines, “an error related to the Guidelines range can be particularly serious.” *Molina-Martinez*, 136 S.Ct. at 1346. The Court

accordingly rejected the Fifth Circuit's more onerous requirements concerning Guidelines-related errors:

In most cases a defendant who has shown that the district court mistakenly deemed applicable an incorrect, higher Guidelines range has demonstrated a reasonable probability of a different outcome. And, again in most cases, that will suffice for relief if the other requirements of Rule 52(b) are met . . . Where, however, the record is silent as to what the district court might have done had it considered the correct Guidelines range, the court's reliance on an incorrect range in most instances will suffice to show an effect on the defendant's substantial rights. Indeed, in the ordinary case a defendant will satisfy his burden to show prejudice by pointing to the application of an incorrect, higher Guidelines range and the sentence he received thereunder. Absent unusual circumstances, he will not be required to show more.

Id. at 1346–47. The Court, in turn, reversed the judgment and remanded the defendant's case for further proceedings.

Under *Molina-Martinez*, then, “a defendant sentenced under an incorrect Guidelines range should be able to rely on that fact to show a reasonable probability that the district court would have imposed a different sentence under the correct range.” *Id.* at 1349. Indeed, this is generally “all that is needed to establish an effect on substantial rights for purposes of obtaining relief under Rule 52(b).” *Id.*

The Ninth Circuit Court of Appeals, however, refused to grant Petitioner relief under Rule 52(b). The court acknowledged that the district court committed procedural error at sentencing by failing to “explicitly calculate[] the Guidelines range for supervised release.” Appendix A. Nevertheless, the court affirmed Petitioner's sentence because, in its estimation, he had not met the substantial-

rights prong of plain-error review. *See Appendix A* (holding that Petitioner “has not shown a reasonable probability that he would have received a different sentence had the district court explicitly calculated the Guidelines range for supervised release.”). The only reason this was so, according to the court, was because “the presentence investigation report, [Petitioner’s] own sentencing memorandum, and the government’s sentencing chart all correctly reflected” the Guidelines range. Appendix A.

None of these documents, however, correctly reflected the Guidelines range for supervised release. Neither Petitioner’s sentencing memorandum nor the government’s sentencing chart calculated the Guidelines range for supervised release. While the PSR did, it incorrectly stated that the district court was required to “impose a term of supervised release of at least three years. 21 U.S.C. § 841(b)(1)(C).”

Petitioner, however, was not subject to a three-year mandatory minimum term of supervised release. Rather, because Petitioner qualified for and was granted safety value, he was free to be sentenced “without regard to any statutory minimum sentence[.]” 18 U.S.C. § 3553(f); *see also* U.S.S.G. § 5C1.2(a). The safety-valve Guideline makes clear that this exemption applies to supervised release, as well as to custody: “A defendant who meets the criteria under this section is exempt from any otherwise applicable statutory minimum sentence of imprisonment and statutory minimum term of supervised release.” U.S.S.G. § 5C1.2 cmt. n.9.

Likewise, the supervised release Guideline reiterates that “[a] defendant who qualifies under § 5C1.2 (Limitation on Applicability of Statutory Minimum Sentence in Certain Cases) is not subject to any statutory minimum sentence of supervised release,” and states that “[i]n such a case, the term of supervised release shall be determined under subsection (a).” U.S.S.G. § 5D1.2 cmt. n.2. Subsection (a), in turn, recommends “[a]t least one year but not more than three years for a defendant convicted of a Class C or D felony.” U.S.S.G. § 5D1.2(a)(2). Petitioner’s conviction for conspiring to distribute heroin carries a 20-year maximum sentence, *see* 21 U.S.C. § 841(b)(1)(C), which makes it a Class C felony. *See* 18 U.S.C. § 3559(a)(3). Therefore, the correct Guidelines range for Petitioner’s term of supervised release was one to three years. *See* U.S.S.G. § 5D1.2(a)(2).

The upshot is that the district court did not calculate the Guidelines range; the government did not calculate the Guidelines range; Petitioner did not calculate the Guidelines range; and the PSR calculated an erroneous, higher mandatory-minimum Guidelines range. Thus, to the extent the district court implicitly adopted the PSR’s Guidelines calculation, as the Ninth Circuit found, Petitioner’s case aligns squarely with the facts *Molina-Martinez* describes: “[a] defendant who has shown that the district court mistakenly deemed applicable an incorrect, higher Guidelines range[.]” 136 S.Ct. at 1346. Under such circumstances, “[i]n most cases a defendant . . . has demonstrated a reasonable probability of a different outcome” and “that will suffice for relief if the other requirements of Rule 52(b) are met.” *Id.*

The Ninth Circuit, however, held the exact opposite—that the district court’s procedural error was insufficient to establish “a reasonable probability that [Petitioner] would have received a different sentence had the district court explicitly calculated the Guidelines range for supervised release.” Appendix A.

In so holding, the Ninth Circuit did not cite *Molina-Martinez* at all or otherwise explain why Petitioner’s sentencing was one of the “unusual circumstances” where a defendant was “required to show more” to satisfy Rule 52(b). 136 S.Ct. at 1347. That is because there was nothing unusual about Petitioner’s sentencing. The district court was keenly aware of the Guidelines range. Indeed, it chose the low-end of the Guidelines range when it came to the custodial component of the sentence.

In turning to supervised release and imposing five years, the court tied this to the custodial Guidelines range, noting “to the extent that I’ve undervalued the risk of him re-offending” by selecting a low-end custodial sentence, supervised release “poses some deterrent.” In other words, the district court believed that an upward variance of two years from the supervised release Guidelines range was necessary as a deterrent to counterbalance its selection of the low-end of the custodial Guidelines range. The “judge [therefore] varie[d] from the [incorrectly] recommended range” of three years of supervised release but nevertheless used that incorrect “range as the beginning point to explain the decision to deviate from it[.]” *Freeman*, 564 U.S. at 529. In this way, “the Guidelines [we]re in a real sense a

basis for the sentence.” *Id.* Had the district court correctly calculated the one-to-three-year Guidelines range, however, it may have believed that a two-year variance from the low end (*i.e.*, a three-year term of supervised release) was sufficient to serve such a deterrent effect.

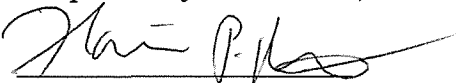
Ultimately, then, Petitioner’s case thus follows the pattern of “most cases”: the Guidelines range affected the sentence, and because Petitioner was “sentenced under an incorrect Guidelines range[,]” he “should be able to rely on that fact” to establish that his substantial rights were affected under Rule 52(b). *Molina-Martinez*, 136 S.Ct. at 1349. Because the Ninth Circuit contravened this rule, Petitioner’s sentence should be vacated and the case remanded.

CONCLUSION

The petition for a writ of certiorari should be granted.

November 15, 2017

Respectfully submitted,


Harini P. Raghupathi

APPENDIX A

696 Fed.Appx. 245

This case was not selected for publication in West's Federal Reporter. See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S.Ct. of App. 9th Cir. Rule 36-3. United States Court of Appeals, Ninth Circuit.

UNITED STATES of America, Plaintiff-Appellee,
v.
Jose Rolando **ROMERO-PAYAN**,
Defendant-Appellant.

No. 16-50094

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Submitted August 9, 2017 *

|
Filed August 17, 2017

* The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Appeal from the United States District Court for the Southern District of California, Larry A. Burns, District Judge, Presiding, D.C. No. 3:15-cr-02703-LAB

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Before: SCHROEDER, TASHIMA, and M. SMITH, Circuit Judges.

MEMORANDUM **

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

Jose Rolando Romero-Payan appeals from the district court's judgment and challenges the 46-month custodial sentence and 5-year term of supervised release imposed following his guilty-plea conviction for conspiracy to distribute heroin, in violation of 21 U.S.C. §§ 841(a)(1) and 846. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Romero-Payan contends that the district court erred by denying a minor role reduction under U.S.S.G. § 3B1.2(b). Contrary to Romero-Payan's contention, the district court did not erroneously compare Romero-Payan to a hypothetical drug courier rather than actual participants in the organization. See U.S.S.G. App. C Amend. 794; *United States v. Quintero-Leyva*, 823 F.3d 519, 523 (9th Cir. 2016) (clarifying that proper point of comparison is other participants in the crime rather than hypothetical average participant). Instead, the district court specifically asked Romero-Payan to identify the other known participant to whom he should be compared and then endeavored to compare him to that participant. The district court also appropriately considered all relevant facts regarding the charged offense and the drug-trafficking organization as a whole. See U.S.S.G. § 3B1.2 cmt. n.3(C); *United States v. Hatley*, 15 F.3d 856, 859-60 (9th Cir. 1994).

Romero-Payan next contends that the district court procedurally erred by failing to calculate the applicable Guidelines range for supervised release and failing to provide an adequate explanation for the term imposed. The district court did not commit any plain error. See *United States v. Valencia-Barragan*, 608 F.3d 1103, 1108 (9th Cir. 2010). Although a district court's failure to calculate the applicable Guidelines range may constitute plain error, see *United States v. Hammons*, 558 F.3d 1100, 1105 (9th Cir. 2009), it is clear from the record that the district court was aware of the applicable supervised release Guidelines range, which the presentence *246 investigation report, Romero-Payan's own sentencing memorandum, and the government's sentencing chart all correctly reflected. Romero-Payan, therefore, has not shown a reasonable probability that he would have received a different sentence had the district court explicitly calculated the Guidelines range for supervised release. See *United States v. Dallman*, 533 F.3d 755, 761-62

(9th Cir. 2008). In addition, the district court's explanation that a five-year term of supervised release was necessary for added deterrence, when viewed in the context of the record as a whole, was a sufficient explanation for the sentence. *See United States v. Carty*, 520 F.3d 984, 992 (9th Cir. 2008) (en banc) (“[A]dequate explanation in some cases may also be inferred from the PSR or the record as a whole.”).

Finally, the five-year term of supervised release is substantively reasonable in light of the 18 U.S.C. § 3583(c) factors and the totality of the circumstances, including

Romero-Payan's active effort to locate and work for a drug-trafficking organization. *See Gall v. United States*, 552 U.S. 38, 51, 128 S.Ct. 586, 169 L.Ed.2d 445 (2007); *United States v. Valdavinos-Torres*, 704 F.3d 679, 693 (9th Cir. 2012).

AFFIRMED.

All Citations

696 Fed.Appx. 245

APPENDIX B

United States Code Annotated

Title 18. Crimes and Criminal Procedure (Refs & Annos)

Part II. Criminal Procedure

Chapter 227. Sentences (Refs & Annos)

Subchapter A. General Provisions (Refs & Annos)

18 U.S.C.A. § 3553

§ 3553. Imposition of a sentence

Effective: May 27, 2010

Currentness

(a) Factors to be considered in imposing a sentence.--The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider--

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

(2) the need for the sentence imposed--

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct;

(C) to protect the public from further crimes of the defendant; and

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

(3) the kinds of sentences available;

(4) the kinds of sentence and the sentencing range established for--

(A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines--

(i) issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(ii) that, except as provided in section 3742(g), are in effect on the date the defendant is sentenced; or

(B) in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to section 994(a)(3) of title 28, United States Code, taking into account any amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28);

(5) any pertinent policy statement--

(A) issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28, United States Code, subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(B) that, except as provided in section 3742(g), is in effect on the date the defendant is sentenced.¹

(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

(7) the need to provide restitution to any victims of the offense.

(b) Application of guidelines in imposing a sentence.--

(1) In general.--Except as provided in paragraph (2), the court shall impose a sentence of the kind, and within the range, referred to in subsection (a)(4) unless the court finds that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described. In determining whether a circumstance was adequately taken into consideration, the court shall consider only the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission. In the absence of an applicable sentencing guideline, the court shall impose an appropriate

sentence, having due regard for the purposes set forth in subsection (a)(2). In the absence of an applicable sentencing guideline in the case of an offense other than a petty offense, the court shall also have due regard for the relationship of the sentence imposed to sentences prescribed by guidelines applicable to similar offenses and offenders, and to the applicable policy statements of the Sentencing Commission.

(2) Child crimes and sexual offenses.--

(A) ² Sentencing.--In sentencing a defendant convicted of an offense under section 1201 involving a minor victim, an offense under section 1591, or an offense under chapter 71, 109A, 110, or 117, the court shall impose a sentence of the kind, and within the range, referred to in subsection (a)(4) unless--

(i) the court finds that there exists an aggravating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence greater than that described;

(ii) the court finds that there exists a mitigating circumstance of a kind or to a degree, that--

(I) has been affirmatively and specifically identified as a permissible ground of downward departure in the sentencing guidelines or policy statements issued under section 994(a) of title 28, taking account of any amendments to such sentencing guidelines or policy statements by Congress;

(II) has not been taken into consideration by the Sentencing Commission in formulating the guidelines; and

(III) should result in a sentence different from that described; or

(iii) the court finds, on motion of the Government, that the defendant has provided substantial assistance in the investigation or prosecution of another person who has committed an offense and that this assistance established a mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence lower than that described.

In determining whether a circumstance was adequately taken into consideration, the court shall consider only the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission, together with any amendments thereto by act of Congress. In the absence of an applicable sentencing guideline, the court shall impose an appropriate sentence, having due regard for the purposes set forth in subsection (a)(2). In the absence of an applicable sentencing guideline in the case of an offense other than a petty offense, the court shall also have due regard for the relationship of the sentence imposed to sentences prescribed by guidelines applicable to similar offenses and offenders, and to the applicable policy statements of the Sentencing Commission, together with any amendments to such guidelines or policy statements by act of Congress.

(c) Statement of reasons for imposing a sentence.--The court, at the time of sentencing, shall state in open court the reasons for its imposition of the particular sentence, and, if the sentence--

(1) is of the kind, and within the range, described in subsection (a)(4) and that range exceeds 24 months, the reason for imposing a sentence at a particular point within the range; or

(2) is not of the kind, or is outside the range, described in subsection (a)(4), the specific reason for the imposition of a sentence different from that described, which reasons must also be stated with specificity in a statement of reasons form issued under section 994(w)(1)(B) of title 28, except to the extent that the court relies upon statements received in camera in accordance with Federal Rule of Criminal Procedure 32. In the event that the court relies upon statements received in camera in accordance with Federal Rule of Criminal Procedure 32 the court shall state that such statements were so received and that it relied upon the content of such statements.

If the court does not order restitution, or orders only partial restitution, the court shall include in the statement the reason therefor. The court shall provide a transcription or other appropriate public record of the court's statement of reasons, together with the order of judgment and commitment, to the Probation System and to the Sentencing Commission,³ and, if the sentence includes a term of imprisonment, to the Bureau of Prisons.

(d) Presentence procedure for an order of notice.--Prior to imposing an order of notice pursuant to section 3555, the court shall give notice to the defendant and the Government that it is considering imposing such an order. Upon motion of the defendant or the Government, or on its own motion, the court shall--

(1) permit the defendant and the Government to submit affidavits and written memoranda addressing matters relevant to the imposition of such an order;

(2) afford counsel an opportunity in open court to address orally the appropriateness of the imposition of such an order; and

(3) include in its statement of reasons pursuant to subsection (c) specific reasons underlying its determinations regarding the nature of such an order.

Upon motion of the defendant or the Government, or on its own motion, the court may in its discretion employ any additional procedures that it concludes will not unduly complicate or prolong the sentencing process.

(e) Limited authority to impose a sentence below a statutory minimum.--Upon motion of the Government, the court shall have the authority to impose a sentence below a level established by statute as a minimum sentence so as to reflect a defendant's substantial assistance in the investigation or prosecution of another person who has committed an offense. Such sentence shall be imposed in accordance with the guidelines and policy statements issued by the Sentencing Commission pursuant to section 994 of title 28, United States Code.

(f) Limitation on applicability of statutory minimums in certain cases.--Notwithstanding any other provision of law, in the case of an offense under section 401, 404, or 406 of the Controlled Substances Act (21 U.S.C. 841, 844, 846) or section 1010 or 1013 of the Controlled Substances Import and Export Act (21 U.S.C. 960, 963), the court shall impose a sentence pursuant to guidelines promulgated by the United States Sentencing Commission under section 994 of title 28 without regard to any statutory minimum sentence, if the court finds at sentencing, after the Government has been afforded the opportunity to make a recommendation, that--

(1) the defendant does not have more than 1 criminal history point, as determined under the sentencing guidelines;

(2) the defendant did not use violence or credible threats of violence or possess a firearm or other dangerous weapon (or induce another participant to do so) in connection with the offense;

(3) the offense did not result in death or serious bodily injury to any person;

(4) the defendant was not an organizer, leader, manager, or supervisor of others in the offense, as determined under the sentencing guidelines and was not engaged in a continuing criminal enterprise, as defined in section 408 of the Controlled Substances Act; and

(5) not later than the time of the sentencing hearing, the defendant has truthfully provided to the Government all information and evidence the defendant has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan, but the fact that the defendant has no relevant or useful other information to provide or that the Government is already aware of the information shall not preclude a determination by the court that the defendant has complied with this requirement.

CREDIT(S)

(Added Pub.L. 98-473, Title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1989; amended Pub.L. 99-570, Title I, § 1007(a), Oct. 27, 1986, 100 Stat. 3207-7; Pub.L. 99-646, §§ 8(a), 9(a), 80(a), 81(a), Nov. 10, 1986, 100 Stat. 3593, 3619; Pub.L. 100-182, §§ 3, 16(a), 17, Dec. 7, 1987, 101 Stat. 1266, 1269, 1270; Pub.L. 100-690, Title VII, § 7102, Nov. 18, 1988, 102 Stat. 4416; Pub.L. 103-322, Title VIII, § 80001(a), Title XXVIII, § 280001, Sept. 13, 1994, 108 Stat. 1985, 2095; Pub.L. 104-294, Title VI, § 601(b)(5), (6), (h), Oct. 11, 1996, 110 Stat. 3499, 3500; Pub.L. 107-273, Div. B, Title IV, § 4002(a)(8), Nov. 2, 2002, 116 Stat. 1807; Pub.L. 108-21, Title IV, § 401(a), (c), (j)(5), Apr. 30, 2003, 117 Stat. 667, 669, 673; Pub.L. 111-174, § 4, May 27, 2010, 124 Stat. 1216.)

Footnotes

1

So in original. The period probably should be a semicolon.

2

§ 3553. Imposition of a sentence, 18 USCA § 3553

So in original. No subpar. (B) has been enacted.

3

So in original. The second comma probably should not appear.

18 U.S.C.A. § 3553, 18 USCA § 3553

Current through P.L. 114-197. Also includes P.L. 114-199.

End of Document

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APPENDIX C

United States Code Annotated
Title 18. Crimes and Criminal Procedure (Refs & Annos)
Part II. Criminal Procedure
Chapter 227. Sentences (Refs & Annos)
Subchapter A. General Provisions (Refs & Annos)

18 U.S.C.A. § 3559

§ 3559. Sentencing classification of offenses

Effective: July 27, 2006

Currentness

(a) Classification.--An offense that is not specifically classified by a letter grade in the section defining it, is classified if the maximum term of imprisonment authorized is--

(1) life imprisonment, or if the maximum penalty is death, as a Class A felony;

(2) twenty-five years or more, as a Class B felony;

(3) less than twenty-five years but ten or more years, as a Class C felony;

(4) less than ten years but five or more years, as a Class D felony;

(5) less than five years but more than one year, as a Class E felony;

(6) one year or less but more than six months, as a Class A misdemeanor;

(7) six months or less but more than thirty days, as a Class B misdemeanor;

(8) thirty days or less but more than five days, as a Class C misdemeanor; or

(9) five days or less, or if no imprisonment is authorized, as an infraction.

(b) Effect of classification.--Except as provided in subsection (c), an offense classified under subsection (a) carries all the incidents assigned to the applicable letter designation, except that the maximum term of imprisonment is the term authorized by the law describing the offense.

(c) Imprisonment of certain violent felons.--

(1) Mandatory life imprisonment.--Notwithstanding any other provision of law, a person who is convicted in a court of the United States of a serious violent felony shall be sentenced to life imprisonment if--

(A) the person has been convicted (and those convictions have become final) on separate prior occasions in a court of the United States or of a State of--

(i) 2 or more serious violent felonies; or

(ii) one or more serious violent felonies and one or more serious drug offenses; and

(B) each serious violent felony or serious drug offense used as a basis for sentencing under this subsection, other than the first, was committed after the defendant's conviction of the preceding serious violent felony or serious drug offense.

(2) Definitions.--For purposes of this subsection--

(A) the term “assault with intent to commit rape” means an offense that has as its elements engaging in physical contact with another person or using or brandishing a weapon against another person with intent to commit aggravated sexual abuse or sexual abuse (as described in sections 2241 and 2242);

(B) the term “arson” means an offense that has as its elements maliciously damaging or destroying any building, inhabited structure, vehicle, vessel, or real property by means of fire or an explosive;

(C) the term “extortion” means an offense that has as its elements the extraction of anything of value from another person by threatening or placing that person in fear of injury to any person or kidnapping of any person;

(D) the term “firearms use” means an offense that has as its elements those described in section 924(c) or 929(a), if the firearm was brandished, discharged, or otherwise used as a weapon and the crime of violence or drug trafficking crime during and relation to which the firearm was used was subject to prosecution in a court of the United States or a court of a State, or both;

(E) the term “kidnapping” means an offense that has as its elements the abduction, restraining, confining, or carrying away of another person by force or threat of force;

(F) the term “serious violent felony” means--

(i) a Federal or State offense, by whatever designation and wherever committed, consisting of murder (as described in section 1111); manslaughter other than involuntary manslaughter (as described in section 1112); assault with intent to commit murder (as described in section 113(a)); assault with intent to commit rape; aggravated sexual abuse and sexual abuse (as described in sections 2241 and 2242); abusive sexual contact (as described in sections

2244 (a)(1) and (a)(2)); kidnapping; aircraft piracy (as described in section 46502 of Title 49); robbery (as described in section 2111, 2113, or 2118); carjacking (as described in section 2119); extortion; arson; firearms use; firearms possession (as described in section 924(c)); or attempt, conspiracy, or solicitation to commit any of the above offenses; and

(ii) any other offense punishable by a maximum term of imprisonment of 10 years or more that has as an element the use, attempted use, or threatened use of physical force against the person of another or that, by its nature, involves a substantial risk that physical force against the person of another may be used in the course of committing the offense;

(G) the term “State” means a State of the United States, the District of Columbia, and a commonwealth, territory, or possession of the United States; and

(H) the term “serious drug offense” means--

(i) an offense that is punishable under section 401(b)(1)(A) or 408 of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A), 848) or section 1010(b)(1)(A) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(1)(A)); or

(ii) an offense under State law that, had the offense been prosecuted in a court of the United States, would have been punishable under section 401(b)(1)(A) or 408 of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A), 848) or section 1010(b)(1)(A) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(1)(A)).

(3) Nonqualifying felonies.--

(A) **Robbery in certain cases.**--Robbery, an attempt, conspiracy, or solicitation to commit robbery; or an offense described in paragraph (2)(F)(ii) shall not serve as a basis for sentencing under this subsection if the defendant establishes by clear and convincing evidence that--

(i) no firearm or other dangerous weapon was used in the offense and no threat of use of a firearm or other dangerous weapon was involved in the offense; and

(ii) the offense did not result in death or serious bodily injury (as defined in section 1365) to any person.

(B) **Arson in certain cases.**--Arson shall not serve as a basis for sentencing under this subsection if the defendant establishes by clear and convincing evidence that--

(i) the offense posed no threat to human life; and

(ii) the defendant reasonably believed the offense posed no threat to human life.

(4) Information filed by United States Attorney.--The provisions of section 411(a) of the Controlled Substances Act (21 U.S.C. 851(a)) shall apply to the imposition of sentence under this subsection.

(5) Rule of construction.--This subsection shall not be construed to preclude imposition of the death penalty.

(6) Special provision for Indian country.--No person subject to the criminal jurisdiction of an Indian tribal government shall be subject to this subsection for any offense for which Federal jurisdiction is solely predicated on Indian country (as defined in section 1151) and which occurs within the boundaries of such Indian country unless the governing body of the tribe has elected that this subsection have effect over land and persons subject to the criminal jurisdiction of the tribe.

(7) Resentencing upon overturning of prior conviction.--If the conviction for a serious violent felony or serious drug offense that was a basis for sentencing under this subsection is found, pursuant to any appropriate State or Federal procedure, to be unconstitutional or is vitiated on the explicit basis of innocence, or if the convicted person is pardoned on the explicit basis of innocence, the person serving a sentence imposed under this subsection shall be resentenced to any sentence that was available at the time of the original sentencing.

(d) Death or imprisonment for crimes against children.--

(1) In general.--Subject to paragraph (2) and notwithstanding any other provision of law, a person who is convicted of a Federal offense that is a serious violent felony (as defined in subsection (c)) or a violation of section 2422, 2423, or 2251 shall, unless the sentence of death is imposed, be sentenced to imprisonment for life, if--

(A) the victim of the offense has not attained the age of 14 years;

(B) the victim dies as a result of the offense; and

(C) the defendant, in the course of the offense, engages in conduct described in section 3591(a)(2).

(2) Exception.--With respect to a person convicted of a Federal offense described in paragraph (1), the court may impose any lesser sentence that is authorized by law to take into account any substantial assistance provided by the defendant in the investigation or prosecution of another person who has committed an offense, in accordance with the Federal Sentencing Guidelines and the policy statements of the Federal Sentencing Commission pursuant to section 994(p) of title 28, or for other good cause.

(e) Mandatory life imprisonment for repeated sex offenses against children.--

(1) In general.--A person who is convicted of a Federal sex offense in which a minor is the victim shall be sentenced to life imprisonment if the person has a prior sex conviction in which a minor was the victim, unless the sentence of death is imposed.

(2) Definitions.--For the purposes of this subsection--

(A) the term “Federal sex offense” means an offense under section 1591 (relating to sex trafficking of children), 2241 (relating to aggravated sexual abuse), 2242 (relating to sexual abuse), 2244(a)(1) (relating to abusive sexual contact), 2245 (relating to sexual abuse resulting in death), 2251 (relating to sexual exploitation of children), 2251A (relating to selling or buying of children), 2422(b) (relating to coercion and enticement of a minor into prostitution), or 2423(a) (relating to transportation of minors);

(B) the term “State sex offense” means an offense under State law that is punishable by more than one year in prison and consists of conduct that would be a Federal sex offense if, to the extent or in the manner specified in the applicable provision of this title--

(i) the offense involved interstate or foreign commerce, or the use of the mails; or

(ii) the conduct occurred in any commonwealth, territory, or possession of the United States, within the special maritime and territorial jurisdiction of the United States, in a Federal prison, on any land or building owned by, leased to, or otherwise used by or under the control of the Government of the United States, or in the Indian country (as defined in section 1151);

(C) the term “prior sex conviction” means a conviction for which the sentence was imposed before the conduct occurred constituting the subsequent Federal sex offense, and which was for a Federal sex offense or a State sex offense;

(D) the term “minor” means an individual who has not attained the age of 17 years; and

(E) the term “State” has the meaning given that term in subsection (c)(2).

(3) Nonqualifying felonies.--An offense described in section 2422(b) or 2423(a) shall not serve as a basis for sentencing under this subsection if the defendant establishes by clear and convincing evidence that--

(A) the sexual act or activity was consensual and not for the purpose of commercial or pecuniary gain;

(B) the sexual act or activity would not be punishable by more than one year in prison under the law of the State in which it occurred; or

(C) no sexual act or activity occurred.

(f) Mandatory minimum terms of imprisonment for violent crimes against children.--A person who is convicted of a Federal offense that is a crime of violence against the person of an individual who has not attained the age of 18 years shall, unless

a greater mandatory minimum sentence of imprisonment is otherwise provided by law and regardless of any maximum term of imprisonment otherwise provided for the offense--

(1) if the crime of violence is murder, be imprisoned for life or for any term of years not less than 30, except that such person shall be punished by death or life imprisonment if the circumstances satisfy any of subparagraphs (A) through (D) of section 3591(a)(2) of this title;

(2) if the crime of violence is kidnapping (as defined in section 1201) or maiming (as defined in section 114), be imprisoned for life or any term of years not less than 25; and

(3) if the crime of violence results in serious bodily injury (as defined in section 1365), or if a dangerous weapon was used during and in relation to the crime of violence, be imprisoned for life or for any term of years not less than 10.

(g)(1) If a defendant who is convicted of a felony offense (other than offense of which an element is the false registration of a domain name) knowingly falsely registered a domain name and knowingly used that domain name in the course of that offense, the maximum imprisonment otherwise provided by law for that offense shall be doubled or increased by 7 years, whichever is less.

(2) As used in this section--

(A) the term “falsely registers” means registers in a manner that prevents the effective identification of or contact with the person who registers; and

(B) the term “domain name” has the meaning given that term is ¹ section 45 of the Act entitled “An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes” approved July 5, 1946 (commonly referred to as the “Trademark Act of 1946”) (15 U.S.C. 1127).

CREDIT(S)

(Added Pub.L. 98-473, Title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1991; amended Pub.L. 100-185, § 5, Dec. 11, 1987, 101 Stat. 1279; Pub.L. 100-690, Title VII, § 7041, Nov. 18, 1988, 102 Stat. 4399; Pub.L. 103-322, Title VII, § 70001, Sept. 13, 1994, 108 Stat. 1982; Pub.L. 105-314, Title V, § 501, Oct. 30, 1998, 112 Stat. 2980; Pub.L. 105-386, § 1(b), Nov. 13, 1998, 112 Stat. 3470; Pub.L. 108-21, Title I, § 106(a), Apr. 30, 2003, 117 Stat. 654; Pub.L. 108-482, Title II, § 204(a), Dec. 23, 2004, 118 Stat. 3917; Pub.L. 109-248, Title II, §§ 202, 206(c), July 27, 2006, 120 Stat. 612, 614.)

Footnotes

¹ So in original. Probably should be the word “in”.

18 U.S.C.A. § 3559, 18 USCA § 3559

Current through P.L. 115-82

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APPENDIX D

United States Code Annotated
Title 21. Food and Drugs (Refs & Annos)
Chapter 13. Drug Abuse Prevention and Control (Refs & Annos)
Subchapter I. Control and Enforcement
Part D. Offenses and Penalties

21 U.S.C.A. § 841

§ 841. Prohibited acts A

Effective: August 3, 2010

Currentness

(a) Unlawful acts

Except as authorized by this subchapter, 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 849, 859, 860, or 861 of this title, 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-piperidinyl] 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-piperidinyl] 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

(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 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 felony drug offense has become final, such person shall be sentenced to a term of imprisonment which may not be less than 20 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 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 849, 859, 860, or 861 of this title after two or more prior convictions for a felony drug

offense have become final, such person shall be sentenced to a mandatory term of life imprisonment without release 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

(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 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 felony drug offense 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 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 Hillory J. Farias and Samantha Reid Date-Rape Drug Prohibition Act of 2000), 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 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 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 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 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 term of supervised release 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 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 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 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 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 term of supervised release 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 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 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.

(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 844 of this title and section 3607 of Title 18.

(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;

(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 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 (including rape), against an individual, violates subsection (a) of this section 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.

(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 subchapter;
- (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 subchapter; or
- (3) with the intent of causing the evasion of the recordkeeping or reporting requirements of section 830 of this title, 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 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, or both.

(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, 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 subchapter (other than in violation of a recordkeeping or reporting requirement of section 830 of this title) shall, except to the extent that paragraph (12), (13), or (14) of section 842(a) of this title applies, be fined under Title 18 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 830 of this title 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 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 subchapter 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, 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 chapter:

(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 regard to whether portions of the evaluation are conducted by other 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 chapter.

(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 chapter.

(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 subchapter; or

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

(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 823(f) of this title (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 829(e) of this title;

(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 sections² 823(f) or 829(e) of this title;

(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 831 of this title.

(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 subchapter;

(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--

(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 Title 47); 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 Title 47 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).

CREDIT(S)

(Pub.L. 91-513, Title II, § 401, Oct. 27, 1970, 84 Stat. 1260; Pub.L. 95-633, Title II, § 201, Nov. 10, 1978, 92 Stat. 3774;

Pub.L. 96-359, § 8(c), Sept. 26, 1980, 94 Stat. 1194; Pub.L. 98-473, Title II, §§ 224(a), 502, 503(b)(1), (2), Oct. 12, 1984, 98 Stat. 2030, 2068, 2070; Pub.L. 99-570, Title I, §§ 1002, 1003(a), 1004(a), 1005(a), 1103, Title XV, § 15005, Oct. 27, 1986, 100 Stat. 3207-2, 3207-5, 3207-6, 3207-11, 3207-192; Pub.L. 100-690, Title VI, §§ 6055, 6254(h), 6452(a), 6470(g), (h), 6479, Nov. 18, 1988, 102 Stat. 4318, 4367, 4371, 4378, 4381; Pub.L. 101-647, Title X, § 1002(e), Title XII, § 1202, Title XXXV, § 3599K, Nov. 29, 1990, 104 Stat. 4828, 4830, 4932; Pub.L. 103-322, Title IX, § 90105(a), (c), Title XVIII, § 180201(b)(2)(A), Sept. 13, 1994, 108 Stat. 1987, 1988, 2047; Pub.L. 104-237, Title II, § 206(a), Title III, § 302(a), Oct. 3, 1996, 110 Stat. 3103, 3105; Pub.L. 104-305, § 2(a), (b)(1), Oct. 13, 1996, 110 Stat. 3807; Pub.L. 105-277, Div. E, § 2(a), Oct. 21, 1998, 112 Stat. 2681-759; Pub.L. 106-172, §§ 3(b)(1), 5(b), 9, Feb. 18, 2000, 114 Stat. 9, 10, 13; Pub.L. 107-273, Div. B, Title III, § 3005(a), Title IV, § 4002(d)(2)(A), Nov. 2, 2002, 116 Stat. 1805, 1809; Pub.L. 109-177, Title VII, §§ 711(f)(1)(B), 732, Mar. 9, 2006, 120 Stat. 262, 270; Pub.L. 109-248, Title II, § 201, July 27, 2006, 120 Stat. 611; Pub.L. 110-425, § 3(e), (f), Oct. 15, 2008, 122 Stat. 4828, 4829; Pub.L. 111-220, §§ 2(a), 4(a), Aug. 3, 2010, 124 Stat. 2372.)

Footnotes

¹

So in original. Probably should be “health”.

²

So in original. Probably should be “section”.

21 U.S.C.A. § 841, 21 USCA § 841

Current through P.L. 114-197. Also includes P.L. 114-199.

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APPENDIX E

United States Code Annotated

Title 21. Food and Drugs (Refs & Annos)

Chapter 13. Drug Abuse Prevention and Control (Refs & Annos)

Subchapter I. Control and Enforcement

Part D. Offenses and Penalties

21 U.S.C.A. § 846

§ 846. Attempt and conspiracy

Currentness

Any person who attempts or conspires to commit any offense defined in this subchapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

CREDIT(S)

(Pub.L. 91-513, Title II, § 406, Oct. 27, 1970, 84 Stat. 1265; Pub.L. 100-690, Title VI, § 6470(a), Nov. 18, 1988, 102 Stat. 4377.)

21 U.S.C.A. § 846, 21 USCA § 846

Current through P.L. 115-82

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APPENDIX F

United States Code Annotated

Federal Sentencing Guidelines (Refs & Annos)

Chapter Two. Offense Conduct (Refs & Annos)

Part D. Offenses Involving Drugs and Narco-Terrorism (Refs & Annos)

1. Unlawful Manufacturing, Importing, Exporting, Trafficking, or Possession; Continuing Criminal Enterprise

USSG, § 2D1.1, 18 U.S.C.A.

§ 2D1.1. Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy

Currentness

(a) Base Offense Level (Apply the greatest):

(1) 43, if the defendant is convicted under 21 U.S.C. § 841(b)(1)(A), (b)(1)(B), or (b)(1)(C), or 21 U.S.C. § 960(b)(1), (b)(2), or (b)(3), and the offense of conviction establishes that death or serious bodily injury resulted from the use of the substance and that the defendant committed the offense after one or more prior convictions for a similar offense; or

(2) 38, if the defendant is convicted under 21 U.S.C. § 841(b)(1)(A), (b)(1)(B), or (b)(1)(C), or 21 U.S.C. § 960(b)(1), (b)(2), or (b)(3), and the offense of conviction establishes that death or serious bodily injury resulted from the use of the substance; or

(3) 30, if the defendant is convicted under 21 U.S.C. § 841(b)(1)(E) or 21 U.S.C. § 960(b)(5), and the offense of conviction establishes that death or serious bodily injury resulted from the use of the substance and that the defendant committed the offense after one or more prior convictions for a similar offense; or

(4) 26, if the defendant is convicted under 21 U.S.C. § 841(b)(1)(E) or 21 U.S.C. § 960(b)(5), and the offense of conviction establishes that death or serious bodily injury resulted from the use of the substance; or

(5) The offense level specified in the Drug Quantity Table set forth in subsection (c), except that if (A) the defendant receives an adjustment under § 3B1.2 (Mitigating Role); and (B) the base offense level under subsection (c) is (i) level 32, decrease by 2 levels; (ii) level 34 or level 36, decrease by 3 levels; or (iii) level 38, decrease by 4 levels. If the resulting offense level is greater than level 32 and the defendant receives the 4-level ("minimal participant") reduction in § 3B1.2(a), decrease to level 32.

(b) Specific Offense Characteristics

(1) If a dangerous weapon (including a firearm) was possessed, increase by 2 levels.

(2) If the defendant used violence, made a credible threat to use violence, or directed the use of violence, increase by 2 levels.

(3) If the defendant unlawfully imported or exported a controlled substance under circumstances in which (A) an aircraft other than a regularly scheduled commercial air carrier was used to import or export the controlled substance, (B) a submersible vessel or semi-submersible vessel as described in 18 U.S.C. § 2285 was used, or (C) the defendant acted as a pilot, copilot, captain, navigator, flight officer, or any other operation officer aboard any craft or vessel carrying a controlled substance, increase by 2 levels. If the resulting offense level is less than level 26, increase to level 26.

(4) If the object of the offense was the distribution of a controlled substance in a prison, correctional facility, or detention facility, increase by 2 levels.

(5) If (A) the offense involved the importation of amphetamine or methamphetamine or the manufacture of amphetamine or methamphetamine from listed chemicals that the defendant knew were imported unlawfully, and (B) the defendant is not subject to an adjustment under § 3B1.2 (Mitigating Role), increase by 2 levels.

(6) If the defendant is convicted under 21 U.S.C. § 865, increase by 2 levels.

(7) If the defendant, or a person for whose conduct the defendant is accountable under § 1B1.3 (Relevant Conduct), distributed a controlled substance through mass-marketing by means of an interactive computer service, increase by 2 levels.

(8) If the offense involved the distribution of an anabolic steroid and a masking agent, increase by 2 levels.

(9) If the defendant distributed an anabolic steroid to an athlete, increase by 2 levels.

(10) If the defendant was convicted under 21 U.S.C. § 841(g)(1)(A), increase by 2 levels.

(11) If the defendant bribed, or attempted to bribe, a law enforcement officer to facilitate the commission of the offense, increase by 2 levels.

(12) If the defendant maintained a premises for the purpose of manufacturing or distributing a controlled substance, increase by 2 levels.

(13) (Apply the greatest):

(A) If the offense involved (i) an unlawful discharge, emission, or release into the environment of a hazardous or toxic substance; or (ii) the unlawful transportation, treatment, storage, or disposal of a hazardous waste, increase by 2 levels.

(B) If the defendant was convicted under 21 U.S.C. § 860a of distributing, or possessing with intent to distribute, methamphetamine on premises where a minor is present or resides, increase by 2 levels. If the resulting offense level is less than level 14, increase to level 14.

(C) If--

(i) the defendant was convicted under 21 U.S.C. § 860a of manufacturing, or possessing with intent to manufacture, methamphetamine on premises where a minor is present or resides; or

(ii) the offense involved the manufacture of amphetamine or methamphetamine and the offense created a substantial risk of harm to (I) human life other than a life described in subdivision (D); or (II) the environment, increase by 3 levels. If the resulting offense level is less than level 27, increase to level 27.

(D) If the offense (i) involved the manufacture of amphetamine or methamphetamine; and (ii) created a substantial risk of harm to the life of a minor or an incompetent, increase by 6 levels. If the resulting offense level is less than level 30, increase to level 30.

(14) If (A) the offense involved the cultivation of marihuana on state or federal land or while trespassing on tribal or private land; and (B) the defendant receives an adjustment under § 3B1.1 (Aggravating Role), increase by 2 levels.

(15) If the defendant receives an adjustment under § 3B1.1 (Aggravating Role) and the offense involved 1 or more of the following factors:

(A)(i) The defendant used fear, impulse, friendship, affection, or some combination thereof to involve another individual in the illegal purchase, sale, transport, or storage of controlled substances, (ii) the individual received little or no compensation from the illegal purchase, sale, transport, or storage of controlled substances, and (iii) the individual had minimal knowledge of the scope and structure of the enterprise;

(B) The defendant, knowing that an individual was (i) less than 18 years of age, (ii) 65 or more years of age, (iii) pregnant, or (iv) unusually vulnerable due to physical or mental condition or otherwise particularly susceptible to the criminal conduct, distributed a controlled substance to that individual or involved that individual in the offense;

(C) The defendant was directly involved in the importation of a controlled substance;

(D) The defendant engaged in witness intimidation, tampered with or destroyed evidence, or otherwise obstructed justice in connection with the investigation or prosecution of the offense;

(E) The defendant committed the offense as part of a pattern of criminal conduct engaged in as a livelihood, increase by 2 levels.

(16) If the defendant receives the 4-level (“minimal participant”) reduction in § 3B1.2(a) and the offense involved all of the following factors:

(A) The defendant was motivated by an intimate or familial relationship or by threats or fear to commit the offense and was otherwise unlikely to commit such an offense;

(B) The defendant received no monetary compensation from the illegal purchase, sale, transport, or storage of controlled substances; and

(C) The defendant had minimal knowledge of the scope and structure of the enterprise,
decrease by 2 levels.

(17) If the defendant meets the criteria set forth in subdivisions (1)-(5) of subsection (a) of § 5C1.2 (Limitation on Applicability of Statutory Minimum Sentences in Certain Cases), decrease by 2 levels.

(c) DRUG QUANTITY TABLE

	<i>Controlled Substances and Quantity*</i>	<i>Base Offense Level</i>
(1)	• 90 KG or more of Heroin; • 450 KG or more of Cocaine; • 25.2 KG or more of Cocaine Base; • 90 KG or more of PCP, or 9 KG or more of PCP (actual); • 45 KG or more of Methamphetamine, or 4.5 KG or more of Methamphetamine (actual), or 4.5 KG or more of “Ice”; • 45 KG or more of Amphetamine, or 4.5 KG or more of Amphetamine (actual); • 900 G or more of LSD; • 36 KG or more of Fentanyl; • 9 KG or more of a Fentanyl Analogue; • 90,000 KG or more of Marihuana; • 18,000 KG or more of Hashish; • 1,800 KG or more of Hashish Oil; • 90,000,000 units or more of Ketamine; • 90,000,000 units or more of Schedule I or II Depressants;	Level 38

- 5,625,000 units or more of Flunitrazepam.
- (2) **Level 36**
- At least 30 KG but less than 90 KG of Heroin;
 - At least 150 KG but less than 450 KG of Cocaine;
 - At least 8.4 KG but less than 25.2 KG of Cocaine Base;
 - At least 30 KG but less than 90 KG of PCP, or at least 3 KG but less than 9 KG of PCP (actual);
 - At least 15 KG but less than 45 KG of Methamphetamine, or at least 1.5 KG but less than 4.5 KG of Methamphetamine (actual), or at least 1.5 KG but less than 4.5 KG of “Ice”;
 - At least 15 KG but less than 45 KG of Amphetamine, or at least 1.5 KG but less than 4.5 KG of Amphetamine (actual);
 - At least 300 G but less than 900 G of LSD;
 - At least 12 KG but less than 36 KG of Fentanyl;
 - At least 3 KG but less than 9 KG of a Fentanyl Analogue;
 - At least 30,000 KG but less than 90,000 KG of Marihuana;
 - At least 6,000 KG but less than 18,000 KG of Hashish;
 - At least 600 KG but less than 1,800 KG of Hashish Oil;
 - At least 30,000,000 units but less than 90,000,000 units of Ketamine;
 - At least 30,000,000 units but less than 90,000,000 units of Schedule I or II Depressants;
 - At least 1,875,000 units but less than 5,625,000 units of Flunitrazepam.
- (3) **Level 34**
- At least 10 KG but less than 30 KG of Heroin;
 - At least 50 KG but less than 150 KG of Cocaine;
 - At least 2.8 KG but less than 8.4 KG of Cocaine Base;
 - At least 10 KG but less than 30 KG of PCP, or at least 1 KG but less than 3 KG of PCP (actual);
 - At least 5 KG but less than 15 KG of Methamphetamine, or at least 500 G but less than 1.5 KG of Methamphetamine (actual), or at least 500 G but less than 1.5 KG of “Ice”;
 - At least 5 KG but less than 15 KG of Amphetamine, or at least 500 G but less than 1.5 KG of Amphetamine (actual);
 - At least 100 G but less than 300 G of LSD;
 - At least 4 KG but less than 12 KG of Fentanyl;
 - At least 1 KG but less than 3 KG of a Fentanyl Analogue;

- At least 10,000 KG but less than 30,000 KG of Marihuana;
 - At least 2,000 KG but less than 6,000 KG of Hashish;
 - At least 200 KG but less than 600 KG of Hashish Oil;
 - At least 10,000,000 but less than 30,000,000 units of Ketamine;
 - At least 10,000,000 but less than 30,000,000 units of Schedule I or II Depressants;
 - At least 625,000 but less than 1,875,000 units of Flunitrazepam.
- (4) Level 32
- At least 3 KG but less than 10 KG of Heroin;
 - At least 15 KG but less than 50 KG of Cocaine;
 - At least 840 G but less than 2.8 KG of Cocaine Base;
 - At least 3 KG but less than 10 KG of PCP, or at least 300 G but less than 1 KG of PCP (actual);
 - At least 1.5 KG but less than 5 KG of Methamphetamine, or at least 150 G but less than 500 G of Methamphetamine (actual), or at least 150 G but less than 500 G of "Ice";
 - At least 1.5 KG but less than 5 KG of Amphetamine, or at least 150 G but less than 500 G of Amphetamine (actual);
 - At least 30 G but less than 100 G of LSD;
 - At least 1.2 KG but less than 4 KG of Fentanyl;
 - At least 300 G but less than 1 KG of a Fentanyl Analogue;
 - At least 3,000 KG but less than 10,000 KG of Marihuana;
 - At least 600 KG but less than 2,000 KG of Hashish;
 - At least 60 KG but less than 200 KG of Hashish Oil;
 - At least 3,000,000 but less than 10,000,000 units of Ketamine;
 - At least 3,000,000 but less than 10,000,000 units of Schedule I or II Depressants;
 - At least 187,500 but less than 625,000 units of Flunitrazepam.
- (5) Level 30
- At least 1 KG but less than 3 KG of Heroin;
 - At least 5 KG but less than 15 KG of Cocaine;
 - At least 280 G but less than 840 G of Cocaine Base;
 - At least 1 KG but less than 3 KG of PCP, or at least 100 G but less than 300 G of PCP (actual);
 - At least 500 G but less than 1.5 KG of Methamphetamine, at least 50 G but less than 150 G of Methamphetamine (actual), or at least 50 G but less than 150 G of "Ice";

- At least 500 G but less than 1.5 KG of Amphetamine, or at least 50 G but less than 150 G of Amphetamine (actual);
 - At least 10 G but less than 30 G of LSD;
 - At least 400 G but less than 1.2 KG of Fentanyl;
 - At least 100 G but less than 300 G of a Fentanyl Analogue;
 - At least 1,000 KG but less than 3,000 KG of Marihuana;
 - At least 200 KG but less than 600 KG of Hashish;
 - At least 20 KG but less than 60 KG of Hashish Oil;
 - At least 1,000,000 but less than 3,000,000 units of Ketamine;
 - At least 1,000,000 but less than 3,000,000 units of Schedule I or II Depressants;
 - At least 62,500 but less than 187,500 units of Flunitrazepam.
- (6) • At least 700 G but less than 1 KG of Heroin; **Level 28**
- At least 3.5 KG but less than 5 KG of Cocaine;
- At least 196 G but less than 280 G of Cocaine Base;
- At least 700 G but less than 1 KG of PCP, or at least 70 G but less than 100 G of PCP (actual);
- At least 350 G but less than 500 G of Methamphetamine, or at least 35 G but less than 50 G of Methamphetamine (actual), or at least 35 G but less than 50 G of “Ice”;
- At least 350 G but less than 500 G of Amphetamine, or at least 35 G but less than 50 G of Amphetamine (actual);
- At least 7 G but less than 10 G of LSD;
- At least 280 G but less than 400 G of Fentanyl;
- At least 70 G but less than 100 G of a Fentanyl Analogue;
- At least 700 KG but less than 1,000 KG of Marihuana;
- At least 140 KG but less than 200 KG of Hashish;
- At least 14 KG but less than 20 KG of Hashish Oil;
- At least 700,000 but less than 1,000,000 units of Ketamine;
- At least 700,000 but less than 1,000,000 units of Schedule I or II Depressants;
- At least 43,750 but less than 62,500 units of Flunitrazepam.
- (7) • At least 400 G but less than 700 G of Heroin; **Level 26**
- At least 2 KG but less than 3.5 KG of Cocaine;

- At least 112 G but less than 196 G of Cocaine Base;
 - At least 400 G but less than 700 G of PCP, or at least 40 G but less than 70 G of PCP (actual);
 - At least 200 G but less than 350 G of Methamphetamine, or at least 20 G but less than 35 G of Methamphetamine (actual), or at least 20 G but less than 35 G of “Ice”;
 - At least 200 G but less than 350 G of Amphetamine, or at least 20 G but less than 35 G of Amphetamine (actual);
 - At least 4 G but less than 7 G of LSD;
 - At least 160 G but less than 280 G of Fentanyl;
 - At least 40 G but less than 70 G of a Fentanyl Analogue;
 - At least 400 KG but less than 700 KG of Marihuana;
 - At least 80 KG but less than 140 KG of Hashish;
 - At least 8 KG but less than 14 KG of Hashish Oil;
 - At least 400,000 but less than 700,000 units of Ketamine;
 - At least 400,000 but less than 700,000 units of Schedule I or II Depressants;
 - At least 25,000 but less than 43,750 units of Flunitrazepam.
- (8) • At least 100 G but less than 400 G of Heroin; **Level 24**
- At least 500 G but less than 2 KG of Cocaine;
 - At least 28 G but less than 112 G of Cocaine Base;
 - At least 100 G but less than 400 G of PCP, or at least 10 G but less than 40 G of PCP (actual);
 - At least 50 G but less than 200 G of Methamphetamine, or at least 5 G but less than 20 G of Methamphetamine (actual), or at least 5 G but less than 20 G of “Ice”;
 - At least 50 G but less than 200 G of Amphetamine, or at least 5 G but less than 20 G of Amphetamine (actual);
 - At least 1 G but less than 4 G of LSD;
 - At least 40 G but less than 160 G of Fentanyl;
 - At least 10 G but less than 40 G of a Fentanyl Analogue;
 - At least 100 KG but less than 400 KG of Marihuana;
 - At least 20 KG but less than 80 KG of Hashish;
 - At least 2 KG but less than 8 KG of Hashish Oil;
 - At least 100,000 but less than 400,000 units of Ketamine;

- At least 100,000 but less than 400,000 units of Schedule I or II Depressants;
 - At least 6,250 but less than 25,000 units of Flunitrazepam.
- (9) Level 22
- At least 80 G but less than 100 G of Heroin;
 - At least 400 G but less than 500 G of Cocaine;
 - At least 22.4 G but less than 28 G of Cocaine Base;
 - At least 80 G but less than 100 G of PCP, or at least 8 G but less than 10 G of PCP (actual);
 - At least 40 G but less than 50 G of Methamphetamine, or at least 4 G but less than 5 G of Methamphetamine (actual), or at least 4 G but less than 5 G of “Ice”;
 - At least 40 G but less than 50 G of Amphetamine, or at least 4 G but less than 5 G of Amphetamine (actual);
 - At least 800 MG but less than 1 G of LSD;
 - At least 32 G but less than 40 G of Fentanyl;
 - At least 8 G but less than 10 G of a Fentanyl Analogue;
 - At least 80 KG but less than 100 KG of Marihuana;
 - At least 16 KG but less than 20 KG of Hashish;
 - At least 1.6 KG but less than 2 KG of Hashish Oil;
 - At least 80,000 but less than 100,000 units of Ketamine;
 - At least 80,000 but less than 100,000 units of Schedule I or II Depressants;
 - At least 5,000 but less than 6,250 units of Flunitrazepam.
- (10) Level 20
- At least 60 G but less than 80 G of Heroin;
 - At least 300 G but less than 400 G of Cocaine;
 - At least 16.8 G but less than 22.4 G of Cocaine Base;
 - At least 60 G but less than 80 G of PCP, or at least 6 G but less than 8 G of PCP (actual);
 - At least 30 G but less than 40 G of Methamphetamine, or at least 3 G but less than 4 G of Methamphetamine (actual), or at least 3 G but less than 4 G of “Ice”;
 - At least 30 G but less than 40 G of Amphetamine, or at least 3 G but less than 4 G of Amphetamine (actual);
 - At least 600 MG but less than 800 MG of LSD;
 - At least 24 G but less than 32 G of Fentanyl;
 - At least 6 G but less than 8 G of a Fentanyl Analogue;

- At least 60 KG but less than 80 KG of Marihuana;
 - At least 12 KG but less than 16 KG of Hashish;
 - At least 1.2 KG but less than 1.6 KG of Hashish Oil;
 - At least 60,000 but less than 80,000 units of Ketamine;
 - At least 60,000 but less than 80,000 units of Schedule I or II Depressants;
 - 60,000 units or more of Schedule III substances (except Ketamine);
 - At least 3,750 but less than 5,000 units of Flunitrazepam.
- (11) • At least 40 G but less than 60 G of Heroin; **Level 18**
- At least 200 G but less than 300 G of Cocaine;
 - At least 11.2 G but less than 16.8 G of Cocaine Base;
 - At least 40 G but less than 60 G of PCP, or at least 4 G but less than 6 G of PCP (actual);
 - At least 20 G but less than 30 G of Methamphetamine, or at least 2 G but less than 3 G of Methamphetamine (actual), or at least 2 G but less than 3 G of “Ice”;
 - At least 20 G but less than 30 G of Amphetamine, or at least 2 G but less than 3 G of Amphetamine (actual);
 - At least 400 MG but less than 600 MG of LSD;
 - At least 16 G but less than 24 G of Fentanyl;
 - At least 4 G but less than 6 G of a Fentanyl Analogue;
 - At least 40 KG but less than 60 KG of Marihuana;
 - At least 8 KG but less than 12 KG of Hashish;
 - At least 800 G but less than 1.2 KG of Hashish Oil;
 - At least 40,000 but less than 60,000 units of Ketamine;
 - At least 40,000 but less than 60,000 units of Schedule I or II Depressants;
 - At least 40,000 but less than 60,000 units of Schedule III substances (except Ketamine);
 - At least 2,500 but less than 3,750 units of Flunitrazepam.
- (12) • At least 20 G but less than 40 G of Heroin; **Level 16**
- At least 100 G but less than 200 G of Cocaine;
 - At least 5.6 G but less than 11.2 G of Cocaine Base;
 - At least 20 G but less than 40 G of PCP, or at least 2 G but less than 4 G of PCP (actual);

- At least 10 G but less than 20 G of Methamphetamine, or at least 1 G but less than 2 G of Methamphetamine (actual), or at least 1 G but less than 2 G of “Ice”;
 - At least 10 G but less than 20 G of Amphetamine, or at least 1 G but less than 2 G of Amphetamine (actual);
 - At least 200 MG but less than 400 MG of LSD;
 - At least 8 G but less than 16 G of Fentanyl;
 - At least 2 G but less than 4 G of a Fentanyl Analogue;
 - At least 20 KG but less than 40 KG of Marihuana;
 - At least 5 KG but less than 8 KG of Hashish;
 - At least 500 G but less than 800 G of Hashish Oil;
 - At least 20,000 but less than 40,000 units of Ketamine;
 - At least 20,000 but less than 40,000 units of Schedule I or II Depressants;
 - At least 20,000 but less than 40,000 units of Schedule III substances (except Ketamine);
 - At least 1,250 but less than 2,500 units of Flunitrazepam.
- (13) • At least 10 G but less than 20 G of Heroin; **Level 14**
- At least 50 G but less than 100 G of Cocaine;
 - At least 2.8 G but less than 5.6 G of Cocaine Base;
 - At least 10 G but less than 20 G of PCP, or at least 1 G but less than 2 G of PCP (actual);
 - At least 5 G but less than 10 G of Methamphetamine, or at least 500 MG but less than 1 G of Methamphetamine (actual), or at least 500 MG but less than 1 G of “Ice”;
 - At least 5 G but less than 10 G of Amphetamine, or at least 500 MG but less than 1 G of Amphetamine (actual);
 - At least 100 MG but less than 200 MG of LSD;
 - At least 4 G but less than 8 G of Fentanyl;
 - At least 1 G but less than 2 G of a Fentanyl Analogue;
 - At least 10 KG but less than 20 KG of Marihuana;
 - At least 2 KG but less than 5 KG of Hashish;
 - At least 200 G but less than 500 G of Hashish Oil;
 - At least 10,000 but less than 20,000 units of Ketamine;
 - At least 10,000 but less than 20,000 units of Schedule I or II Depressants;
 - At least 10,000 but less than 20,000 units of Schedule III substances (except Ketamine);

- At least 625 but less than 1,250 units of Flunitrazepam.
- (14) • Less than 10 G of Heroin; Level 12
- Less than 50 G of Cocaine;
- Less than 2.8 G of Cocaine Base;
- Less than 10 G of PCP, or less than 1 G of PCP (actual);
- Less than 5 G of Methamphetamine, or less than 500 MG of Methamphetamine (actual), or less than 500 MG of “Ice”;
- Less than 5 G of Amphetamine, or less than 500 MG of Amphetamine (actual);
- Less than 100 MG of LSD;
- Less than 4 G of Fentanyl;
- Less than 1 G of a Fentanyl Analogue;
- At least 5 KG but less than 10 KG of Marihuana;
- At least 1 KG but less than 2 KG of Hashish;
- At least 100 G but less than 200 G of Hashish Oil;
- At least 5,000 but less than 10,000 units of Ketamine;
- At least 5,000 but less than 10,000 units of Schedule I or II Depressants;
- At least 5,000 but less than 10,000 units of Schedule III substances (except Ketamine);
- At least 312 but less than 625 units of Flunitrazepam;
- 80,000 units or more of Schedule IV substances (except Flunitrazepam).
- (15) • At least 2.5 KG but less than 5 KG of Marihuana; Level 10
- At least 500 G but less than 1 KG of Hashish;
- At least 50 G but less than 100 G of Hashish Oil;
- At least 2,500 but less than 5,000 units of Ketamine;
- At least 2,500 but less than 5,000 units of Schedule I or II Depressants;
- At least 2,500 but less than 5,000 units of Schedule III substances (except Ketamine);
- At least 156 but less than 312 units of Flunitrazepam;
- At least 40,000 but less than 80,000 units of Schedule IV substances (except Flunitrazepam).
- (16) • At least 1 KG but less than 2.5 KG of Marihuana; Level 8
- At least 200 G but less than 500 G of Hashish;

- At least 20 G but less than 50 G of Hashish Oil;
- At least 1,000 units but less than 2,500 units of Ketamine;
- At least 1,000 but less than 2,500 units of Schedule I or II Depressants;
- At least 1,000 but less than 2,500 units of Schedule III substances (except Ketamine);
- Less than 156 units of Flunitrazepam;
- At least 16,000 but less than 40,000 units of Schedule IV substances (except Flunitrazepam);
- 160,000 units or more of Schedule V substances.

- (17) **Level 6**
- Less than 1 KG of Marihuana;
 - Less than 200 G of Hashish;
 - Less than 20 G of Hashish Oil;
 - Less than 1,000 units of Ketamine;
 - Less than 1,000 units of Schedule I or II Depressants;
 - Less than 1,000 units of Schedule III substances (except Ketamine);
 - Less than 16,000 units of Schedule IV substances (except Flunitrazepam);
 - Less than 160,000 units of Schedule V substances.

(d) Cross References

(1) If a victim was killed under circumstances that would constitute murder under 18 U.S.C. § 1111 had such killing taken place within the territorial or maritime jurisdiction of the United States, apply § 2A1.1 (First Degree Murder) or § 2A1.2 (Second Degree Murder), as appropriate, if the resulting offense level is greater than that determined under this guideline.

(2) If the defendant was convicted under 21 U.S.C. § 841(b)(7) (of distributing a controlled substance with intent to commit a crime of violence), apply § 2X1.1 (Attempt, Solicitation or Conspiracy) in respect to the crime of violence that the defendant committed, or attempted or intended to commit, if the resulting offense level is greater than that determined above.

(e) Special Instruction

(1) If (A) subsection (d)(2) does not apply; and (B) the defendant committed, or attempted to commit, a sexual offense against another individual by distributing, with or without that individual's knowledge, a controlled substance to that individual, an adjustment under § 3A1.1(b)(1) shall apply.

CREDIT(S)

(Effective November 1, 1987; amended effective January 15, 1988; November 1, 1989; November 1, 1990; November 1, 1991; November 1, 1992; November 1, 1993; September 23, 1994; November 1, 1994; November 1, 1995; November 1, 1997; November 1, 2000; December 16, 2000; May 1, 2001; November 1, 2001; November 1, 2002; November 1, 2003; November 1, 2004; November 1, 2005; March 27, 2006; November 1, 2006; November 1, 2007; May 1, 2008; November 1, 2009; November 1, 2010; November 1, 2011; November 1, 2012; November 1, 2013; November 1, 2014; November 1, 2015.)

Federal Sentencing Guidelines, § 2D1.1, 18 U.S.C.A., FSG § 2D1.1
As amended to 9-5-2017

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APPENDIX G

United States Code Annotated
Federal Sentencing Guidelines (Refs & Annos)
Chapter Five. Determining the Sentence (Refs & Annos)
Part C. Imprisonment

USSG, § 5C1.2, 18 U.S.C.A.

§ 5C1.2. Limitation on Applicability of Statutory Minimum Sentences in Certain Cases

Currentness

(a) Except as provided in subsection (b), in the case of an offense under 21 U.S.C. § 841, § 844, § 846, § 960, or § 963, the court shall impose a sentence in accordance with the applicable guidelines without regard to any statutory minimum sentence, if the court finds that the defendant meets the criteria in 18 U.S.C. § 3553(f)(1)-(5) set forth below:

(1) the defendant does not have more than 1 criminal history point, as determined under the sentencing guidelines before application of subsection (b) of § 4A1.3 (Departures Based on Inadequacy of Criminal History Category);

(2) the defendant did not use violence or credible threats of violence or possess a firearm or other dangerous weapon (or induce another participant to do so) in connection with the offense;

(3) the offense did not result in death or serious bodily injury to any person;

(4) the defendant was not an organizer, leader, manager, or supervisor of others in the offense, as determined under the sentencing guidelines and was not engaged in a continuing criminal enterprise, as defined in 21 U.S.C. § 848; and

(5) not later than the time of the sentencing hearing, the defendant has truthfully provided to the Government all information and evidence the defendant has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan, but the fact that the defendant has no relevant or useful other information to provide or that the Government is already aware of the information shall not preclude a determination by the court that the defendant has complied with this requirement.

(b) In the case of a defendant (1) who meets the criteria set forth in subsection (a); and (2) for whom the statutorily required minimum sentence is at least five years, the offense level applicable from Chapters Two (Offense Conduct) and Three (Adjustments) shall be not less than level 17.

CREDIT(S)

(Effective September 23, 1994; amended effective November 1, 1995; November 1, 1996; November 1, 1997; November 1, 2001; October 27, 2003; November 1, 2004; November 1, 2009.)

Federal Sentencing Guidelines, § 5C1.2, 18 U.S.C.A., FSG § 5C1.2

As amended to 9-5-2017

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APPENDIX H

United States Code Annotated Federal Sentencing Guidelines (Refs & Annos) Chapter Five. Determining the Sentence (Refs & Annos) Part D. Supervised Release

USSG, § 5D1.2, 18 U.S.C.A.

§ 5D1.2. Term of Supervised Release

Currentness

(a) Except as provided in subsections (b) and (c), if a term of supervised release is ordered, the length of the term shall be:

(1) At least two years but not more than five years for a defendant convicted of a Class A or B felony. *See* 18 U.S.C. § 3583(b)(1).

(2) At least one year but not more than three years for a defendant convicted of a Class C or D felony. *See* 18 U.S.C. § 3583(b)(2).

(3) One year for a defendant convicted of a Class E felony or a Class A misdemeanor. *See* 18 U.S.C. § 3583(b)(3).

(b) Notwithstanding subdivisions (a)(1) through (3), the length of the term of supervised release shall be not less than the minimum term of years specified for the offense under subdivisions (a)(1) through (3) and may be up to life, if the offense is--

(1) any offense listed in 18 U.S.C. § 2332b(g)(5)(B), the commission of which resulted in, or created a foreseeable risk of, death or serious bodily injury to another person; or

(2) a sex offense.

(Policy Statement) If the instant offense of conviction is a sex offense, however, the statutory maximum term of supervised release is recommended.

(c) The term of supervised release imposed shall be not less than any statutorily required term of supervised release.

CREDIT(S)

(Effective November 1, 1987; amended effective January 15, 1988; November 1, 1989; November 1, 1995; November 1, 1997; November 1, 2001; November 1, 2002; November 1, 2004; November 1, 2005; November 1, 2007; November 1, 2009; November 1, 2011; November 1, 2014.)

Federal Sentencing Guidelines, § 5D1.2, 18 U.S.C.A., FSG § 5D1.2

As amended to 9-5-2017

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APPENDIX I

United States Code Annotated Federal Rules of Criminal Procedure for the United States District Courts (Refs & Annos) IX. General Provisions
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Federal Rules of Criminal Procedure, Rule 52

Rule 52. Harmless and Plain Error

Currentness

(a) Harmless Error. Any error, defect, irregularity, or variance that does not affect substantial rights must be disregarded.

(b) Plain Error. A plain error that affects substantial rights may be considered even though it was not brought to the court's attention.

CREDIT(S)

(As amended Apr. 29, 2002, eff. Dec. 1, 2002.)

Fed. Rules Cr. Proc. Rule 52, 18 U.S.C.A., FRCRP Rule 52
Including Amendments Received Through 11-1-17

IN THE
Supreme Court of the United States

JOSE ROLANDO ROMERO-PAYAN,
Petitioner,
v.

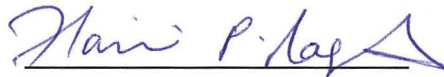
UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

Certificate of Service

I, Harini P. Raghupathi, appointed to represent the petitioner under the Criminal Justice Act, certify that on November 15, 2017, one copy of the Petition for a Writ of Certiorari, the Appendix, and a Motion to Proceed *In Forma Pauperis* in the above-captioned case were served by first-class mail, postage prepaid, to respondent's counsel. I further certify that all parties required to be served have been served. Service was addressed as follows:

Noel Francisco
Solicitor General of the United States
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