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IN THE
SUPREME COURT OF THE UNITED STATES

IN RE BRIAN L. REDDEN

ON PETITION FOR WRIT OF MANDAMUS TO
THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

APPENDIX

Brian L. Redden, Pro se
Fed. Reg. No. 13337-025
P.O. BOX 5000
Greenville, Illinois 62246

*** To the Honorable Associate Justice, Elena Kagan ***

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APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604



Office of the Clerk-
Phone: (312) 435-5850
www.ca7.uscourts.gov

ORDER

April 26, 2018

By the Court:

No. 17-1405	UNITED STATES OF AMERICA, Plaintiff - Appellee v. BRIAN L. REDDEN, Defendant - Appellant
Originating Case Information:	
District Court No: 3:16-cr-30072-NJR-1 Southern District of Illinois District Judge Nancy J. Rosenstengel	

Upon consideration of the **APPELLANT'S MOTION TO RECALL THE MANDATE**,
filed on April 25, 2018, by pro se Appellant,

IT IS ORDERED that the request to recall the mandate is **DENIED**.

APPENDIX B

In the
United States Court of Appeals
For the Seventh Circuit

No. 17-1405

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

BRIAN L. REDDEN,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Illinois.

No. 16-CR-30072-NJR-01 — Nancy J. Rosenstengel, *Judge.*

SUBMITTED OCTOBER 23, 2017 — DECIDED NOVEMBER 8, 2017

Before EASTERBROOK, KANNE, and HAMILTON, *Circuit Judges.*

EASTERBROOK, *Circuit Judge.* After pleading guilty to possessing cocaine with intent to distribute, 21 U.S.C. §841(a)(1), Brian Redden was sentenced to 151 months' imprisonment and 3 years' supervised release. He appealed, but his appointed lawyer has moved to withdraw under *Anders v. California*, 386 U.S. 738 (1967), representing that the appeal is frivolous.

We grant that motion, largely for reasons detailed in a nonprecedential order released together with this opinion. One issue raised in Redden's response to the *Anders* brief may have significance for other appeals and justifies discussion in a published opinion.

The district court treated Redden as a career offender under U.S.S.G. §4B1.1 because of his prior convictions. Redden contends that one of these—delivery of a controlled substance in violation of 720 ILCS 570/401—should not have been classified as a “controlled substance offense” for the purpose of §4B1.1(a)(3) because the elements of that Illinois crime differ from the definition in §4B1.2(b):

The term “controlled substance offense” means an offense under federal or state law, punishable by imprisonment for a term exceeding one year, that prohibits the manufacture, import, export, distribution, or dispensing of a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense.

Redden observes that *United States v. Hinkle*, 832 F.3d 569 (5th Cir. 2016), holds that the Texas offense of delivering a controlled substance includes conduct that falls outside this definition and so is not a “controlled substance offense”. He contends that we should treat Illinois law the same way.

The key phrase in §4B1.2(b) is “manufacture, import, export, distribution, or dispensing”. As with most other recidivist enhancements, these words are applied to the elements of the crime of conviction, not to what the accused did in fact. See, e.g., *Mathis v. United States*, 136 S. Ct. 2243 (2016). *Hinkle* found that the elements of the Texas crime do not match the specifications in §4B1.2(b) because it is unlawful in Texas to *offer* a controlled substance for sale, as well as to

manufacture, import, export, distribute, or dispense it. See also *United States v. Madkins*, 866 F.3d 1136, 1145 (10th Cir. 2017) (same conclusion about Kansas law).

Illinois, by contrast, does not make it a crime to offer a controlled substance. The definition that underlies the offense established by 720 ILCS 570/401 tells us that "deliver" and "delivery" mean an "actual, constructive or attempted transfer". 720 ILCS 570/102(h). Any conduct meeting the state's definition of "delivery" comes within §4B1.2(b) because "transfer" is just another word for distribute or dispense. Because Illinois law lacks the feature that made possible a substantive conviction in Texas or Kansas without meeting the requirements of §4B1.2(b), it would be frivolous for counsel to argue that Redden is not a career offender.

Counsel's motion to withdraw is granted, and the appeal is dismissed as frivolous.

APPENDIX C

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with Fed. R. App. P. 32.1

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

Submitted October 23, 2017

Decided November 8, 2017

Before

FRANK H. EASTERBROOK, *Circuit Judge*

MICHAEL S. KANNE, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

No. 17-1405

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

BRIAN L. REDDEN,
Defendant-Appellant.

Appeal from the United States District
Court for the Southern District of Illinois.

No. 16-CR-30072-NJR-01

Nancy J. Rosenstengel,
Judge.

ORDER

Brian Redden fled at high speed when police tried to make a traffic stop. He eventually crashed his car and was caught after a foot chase. The pursuing officers found 34 grams of crack cocaine in a plastic bag that Redden had tossed while running from them. Federal authorities charged him with possessing cocaine with intent to distribute, 21 U.S.C. §841(a)(1). He pleaded guilty and was sentenced to 151 months' imprisonment and 3 years' supervised release. Redden filed a notice of appeal, but his appointed lawyer, who also represented him in the district court, asserts that the appeal is frivolous and seeks to withdraw under *Anders v. California*, 386 U.S. 738 (1967). We grant counsel's motion and dismiss the appeal.

Counsel's *Anders* submission explains the nature of the case and addresses potential issues that an appeal of this kind might be expected to involve. Redden has

filed a response opposing counsel's motion. *See* CIR. R. 51(b). Counsel's analysis appears to be thorough, so we limit our review to the subjects he discusses along with Redden's contentions. *See United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014); *United States v. Wagner*, 103 F.3d 551, 553 (7th Cir. 1996).

Counsel tells us that he consulted Redden about possible grounds for challenging his guilty plea but learned that Redden does not want the plea set aside. Thus counsel appropriately avoids discussing the voluntariness of the plea or the adequacy of Redden's plea colloquy. *See* FED. R. CRIM. P. 11; *United States v. Konczak*, 683 F.3d 348, 349 (7th Cir. 2012); *United States v. Knox*, 287 F.3d 667, 671–72 (7th Cir. 2002).

Redden does want to challenge his classification as a career offender under the Sentencing Guidelines. *See* U.S.S.G. §4B1.1. The district court adopted the probation officer's assessment that Redden is a career offender because of two Illinois convictions for a controlled substance offense: delivery of a controlled substance, 720 ILCS 570/401 (2010), and possession of cannabis with intent to deliver, 720 ILCS 550/5(d) (2014). *See* U.S.S.G. §§ 4B1.1 cmt. n.1, 4B1.2(b). The court calculated a total offense level of 29 (32 less 3 levels for acceptance of responsibility) and a criminal history category of VI, yielding a Guidelines imprisonment range of 151 to 188 months. *See* 21 U.S.C. §841(b)(1)(C); U.S.S.G. §§ 4B1.1(b)(3), 3E1.1, ch. 5, pt. A. Counsel has not identified any conceivable ground for disputing the application of §4B1.1.

Redden, however, proposes two potential grounds in his Rule 51(b) response. He would argue that §4B1.1 is unconstitutionally vague, but *Beckles v. United States*, 137 S. Ct. 886, 894 (2017), holds that the Sentencing Guidelines, being advisory, "are not amenable to a vagueness challenge." Redden also would contend that his conviction for "delivery" of a controlled substance under 720 ILCS 570/401 is not a §4B1.1 predicate. That contention is frivolous for the reasons given in an opinion being released today.

Finally, appellate counsel considers but rightly declines to dispute the reasonableness of Redden's prison term. That 151-month sentence—at the bottom of the Guidelines range—is presumptively reasonable. *See Rita v. United States*, 551 U.S. 338, 347 (2007). Before imposing the term, the district court weighed the factors in 18 U.S.C. §3553(a). The court found that Redden's crime was mitigated by deplorable events in his childhood—he watched his mother suffer domestic abuse and engage in prostitution—as well as his own history of drug addiction and his desire to receive help. At the same time, the court said, Redden's efforts to evade arrest by driving recklessly, fleeing by foot, and then punching a police dog deployed during the chase were

aggravating factors. The court also took into account Redden's criminal history, which includes additional convictions for drug offenses as well as convictions for burglary and gun crimes. Counsel concludes that it would be frivolous to contend that the district court did not adequately justify the term imposed, and we agree.

Accordingly, we grant counsel's motion to withdraw and dismiss the appeal.

**Additional material
from this filing is
available in the
Clerk's Office.**