

United States District Court Southern District of Texas

United States Courts Southern District of Texas ENTERED

AUG 18 1999

Holding Session in Houston

Michael N. Milby, Clerk of Court

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

v.

EDWIN W. RUBIS

Case Number: 4:98CR00057-005

Kenneth McCoy

Defendant's Attorney

See Additional Altrases - Sheet

THE DEFENDANT:

- pleaded guilty to count(s)
pleaded nolo contendere to count(s) which was accepted by the court.
was found guilty on count(s) 1, 4, 5, 7 - 9, 12, 14 - 16, 19 and 26 on December 18, 1998 after a plea of not guilty.

Table with 4 columns: Title & Section, Nature of Offense, Date Offense Concluded, Count Number(s). Rows include 21 U.S.C. § 846, 841(b)(1)(A); 21 U.S.C. § 841(a)(1)(B); 21 U.S.C. § 841(a)(1)(D).

See Additional Counts of Conviction - Sheet 1.01

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count(s)
Count(s) dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's Social Security No.: 458-77-7666

Defendant's Date of Birth: 08/20/1968

Defendant's USM No.: 79282-079

Defendant's Residence Address: 6626 Stroud

Houston TX 77074

Defendant's Mailing Address: 6626 Stroud

Houston TX 77074

August 12, 1999 Date of Imposition of Judgment

Signature of David Hittner, Signature of Judicial Officer

DAVID HITTNER UNITED STATES DISTRICT JUDGE Name and Title of Judicial Officer

Aug. 17, 1999 Date

DB

**DEFENDANT: EDWIN W. RUBIS**  
**CASE NUMBER: 4:98CR00057-005**

**ADDITIONAL COUNTS OF CONVICTION**

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
21 U.S.C. § 841(a)(1)(C)	Possession with intent to distribute marijuana	07/06/1996	9, 12, 14-16 & 19

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**DEFENDANT: EDWIN W. RUBIS**

**CASE NUMBER: 4:98CR00057-005**

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 480 month(s).

The term consists of FOUR HUNDRED EIGHTY (480) MONTHS on each of Counts 1, 4 and 8, SIXTY (60) MONTHS on each of Counts 5, 7 and 26, and TWO HUNDRED FORTY (240) MONTHS on each of Counts 9, 12, 14, 15, 16 and 19, to run concurrently.

See Additional Imprisonment Terms - Sheet

The Court makes the following recommendations to the Bureau of Prisons:

The Court strongly recommends that the defendant be designated to a maximum security facility and requests that this Court or its successor be notified if there is a change in designation. The Court further requests that the defendant be designated to a maximum security facility near Houston, Texas, if possible.

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

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

\_\_\_\_\_ on \_\_\_\_\_

as notified by the United States Marshal.

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

by 2 p.m. on \_\_\_\_\_

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

### RETURN

I have executed this judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_ at \_\_\_\_\_ with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
Deputy U.S. Marshal

**DEFENDANT: EDWIN W. RUBIS**Judgment - Page 3 of 6**CASE NUMBER: 4:98CR00057-005****SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of 5 year(s).

The term consists of FIVE (5) YEARS as to Count 1, FOUR (4) YEARS as to Counts 4 and 8, THREE (3) YEARS as to Counts 9, 12, 14, 15, 16 and 19, and TWO (2) YEARS as to Counts 5, 7 and 26, to run concurrently.

See Additional Supervised Release Terms - Sheet

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.  
The defendant shall not illegally possess a controlled substance.

*For offenses committed on or after September 13, 1994:*

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.

The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable)

The defendant shall not possess a firearm as defined in 18 U.S.C. § 921. (Check, if applicable)

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the additional conditions on the attached page.

See Special Conditions of Supervision - Sheet 3.01

**STANDARD CONDITIONS OF SUPERVISION**

- 1) the defendant shall not leave the judicial district without the permission of the Court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the Court;
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement;
- 14) if restitution has been ordered, the defendant shall make restitution as ordered by the Court and in accordance with the applicable provisions of Title 18 U.S.C. § 2248, 2259, 2264, 2327, 3663, 3663A, and/or 3664. The defendant shall also pay the assessment imposed in accordance with Title 18 U.S.C. § 3013;
- 15) the defendant shall notify the U.S. Probation Office of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution, fines, or special assessments.

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## **TABLE OF AUTHORITIES**

### **Pertinent Text**

#### **I. Rules of the Supreme Court of the United States**

Rule 20. 2. The petition shall be captioned "In re [name of petitioner]" and shall follow, insofar as applicable, the form of a petition for a writ of certiorari prescribed by Rule 14. (g) (i) If review of a state-court judgment. . . . 14. (g) (ii) If review of a judgment of a United States court. 14. (h) See Rule 10. Considerations Governing Review on Certiorari.

Rule 20. 4. (a) A petition seeking a writ of habeas corpus shall comply with the requirements of 28 U.S.C. §§ 2241 and 2242 and in particular with the provision in the last paragraph of §2242, which requires a statement of the "reasons for not making application to the district court of the district in which the applicant is held." [. . .] To justify the granting of a writ of habeas corpus, the petitioner must show that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court.

Rule 20. 4. (b). Habeas corpus proceedings, except in capital cases, are ex parte, unless the Court requires the respondent to show cause why the petition for a writ of habeas corpus should not be granted. [. . .] Neither the denial of the petition, without more, nor an order of transfer to a district court under the authority of 28 U. S. C. § 2241(b), is an adjudication on the merits, and Therefore, does not preclude further application to another court for the relief sought.

Rule 20. 5. The Clerk will distribute the documents to the Court for its consideration when a brief in opposition under subparagraph 3(b) of this Rule has been filed, when a response under subparagraph 4(b) has been ordered and filed, when the time to file has expired, or when the right to file has been expressly waived.

#### **II. Constitutional Provisions**

Article I, Section 9, Clause 2: The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

Article III § 2. The Judicial Power shall extend to all Cases [. . .] arising under this Constitution [. . .] to Controversies to which the United States shall be a Party;

Article VI This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under

the Authority of the United States, shall be the supreme Law of the Land;

Amendment IV. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.

Amendment V. "No person shall be [ . . ] deprived of life, liberty, or property, without due process of law."

### III United States Code

Title 21 Chapter 13- Drug Abuse Prevention and Control  
21; 841(a)(1) ,841(b)(1)(D). and 846 Conspiracy to Distribute a Controlled Substance.

#### Habeas Corpus

28 U.S.C. § 2241 <https://www.law.cornell.edu/uscode/text/28/2241>

(a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.

(b) The Supreme Court, any justice thereof, and any circuit judge may decline to entertain an application for a writ of habeas corpus and may transfer the application for hearing and determination to the district court having jurisdiction to entertain it.

(c)The writ of habeas corpus shall not extend to a prisoner unless—  
(3) He is in custody in violation of the Constitution [ . . ]

28 U.S.C. § 2242. If addressed to the Supreme Court, a justice thereof or a circuit judge state the reasons for not making application to the district court of the district in which the applicant is held.

28 U.S.C. § 2243 A court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted [ . . ] It shall be returned within three days unless for good cause additional time, not exceeding twenty days, is allowed.

28 U.S.C. § 2255 (f) A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of—(1) the date on which the judgment of conviction becomes final;

28 U.S.C. § 2071 Rule making powers generally.

(a) The Supreme Court and all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business. **Such rules shall be consistent with Acts of Congress . . .**

### **Title 21-Food and Drugs Chapter 13- Drug Abuse Prevention and Control.**

#### **21 USC § 811 (d) (1)**

##### **Authority and criteria for classification of substances**

[www.law.cornell.edu/uscode/text/21/811](http://www.law.cornell.edu/uscode/text/21/811)

(a) Rules and regulations of Attorney General **Attorney General shall apply the provisions . . . Except as provided in subsections 811 (d) of this section,**

(d) International treaties, conventions, and protocols requiring control; procedures respecting changes in drug schedules of Convention on Psychotropic Substances

(1) If control is required by United States obligations under international treaties, conventions, or protocols in effect on October 27, 1970, the Attorney General shall issue an order controlling such drug under the schedule he deems most appropriate to carry out such obligations, without regard to the findings required by subsection (a) of this section or section 812(b) of this title and without regard to the procedures prescribed by subsections (a) and (b) of this section. 812(b) <https://www.law.cornell.edu/uscode/text/21/812>

#### **IV. United Nations' *Single Convention on Narcotic Drugs, 1961*** [https://www.unodc.org/pdf/convention\\_1961\\_en.pdf](https://www.unodc.org/pdf/convention_1961_en.pdf)

#### **Article 36. Penal provisions**

1. (a) Subject to its constitutional limitations, each Party shall adopt such measures . . . that serious offences shall be liable to adequate punishment particularly by imprisonment or other penalties of deprivation of liberty.

2. Subject to the constitutional limitations of a Party, its legal system and domestic law,