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

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IN THE

**Supreme Court of the United States**

\_\_\_\_\_ TERM, 20\_\_

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Michael Andrew Taylor - Petitioner,

vs.

United States of America - Respondent.

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APPENDIX TO PETITIONER'S APPLICATION FOR EXTENSION OF TIME  
WITHIN WHICH TO FILE FOR A WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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United States Court of Appeals  
For the Eighth Circuit

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No. 23-1267

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United States of America

*Plaintiff - Appellee*

v.

Michael Andrew Taylor

*Defendant - Appellant*

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

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Submitted: October 16, 2023

Filed: December 5, 2023

[Unpublished]

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Before SMITH, Chief Judge, LOKEN and COLLOTON, Circuit Judges.

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PER CURIAM.

At 2:00 a.m. on February 10, 2022, Iowa City police officers, responding to a caller's report, found Michael Andrew Taylor, extremely intoxicated, trying to enter the caller's front door with a pistol lying by his feet, mistakenly believing it was his home two doors away. Officers retrieved the pistol, handcuffed Taylor, and arrested him for public intoxication. Police searched Taylor upon arrest, finding marijuana

and three colored pills in his pocket. At the jail, police found sixteen bags on Taylor, each containing about 0.5 grams of cocaine or cocaine base. Officers took the intoxicated Taylor to the hospital, where he admitted he was a felon and sometimes carried a gun despite his felon status.

Taylor was indicted and pleaded guilty to possession of cocaine and cocaine base with intent to distribute and being a felon in possession of a firearm. The Presentence Investigation Report recommended that Taylor be sentenced as a career offender under USSG § 4B1.1(b)(3) because he has two prior Illinois convictions for manufacture or delivery of cocaine and manufacture or delivery of another Schedule I or II narcotic, and an Iowa domestic abuse assault conviction. The district court<sup>1</sup> overruled Taylor's objection that he is not a career offender because his Illinois convictions are not "controlled substances offenses" under the Sentencing Guidelines and sentenced Taylor as a career offender to 151 months imprisonment, the bottom of his advisory guidelines range of 151 to 188 months. Taylor appeals, arguing the district court erred in sentencing him as a career offender and that his sentence is substantively unreasonable. We affirm.

### **I. The Career Offender Issue**

Taylor is a career offender if he "has at least two prior felony convictions of either a crime of violence or a controlled substance offense." USSG § 4B1.1(a). The Guidelines define controlled substance offense as "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."

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<sup>1</sup>The Honorable Stephanie M. Rose, Chief Judge of the United States District Court for the Southern District of Iowa.

§ 4B1.2(b)(1). Taylor argues the district court erred in sentencing him as a career offender because the two Illinois statutes which he was convicted of violating regulate substances that are not controlled under the federal Controlled Substances Act Schedules. See 21 U.S.C. § 802(6). “We review the career offender designation *de novo*.” United States v. Jefferson, 975 F.3d 700, 706 (8th Cir. 2020), cert. denied, 141 S. Ct. 2820 (2021).

As Taylor concedes, this argument is foreclosed by our recent decision in United States v. Henderson, 11 F.4th 713 (8th Cir. 2021), cert. denied, 142 S. Ct. 1696 (2022). In Henderson, noting that § 4B1.2(b)(1) contains “no requirement that the particular substance underlying the state offense is also controlled under a distinct federal law,” we held that a controlled substance conviction under state law is a “controlled substance offense” under § 4B1.2(b)(1) even if state law regulates substances not controlled under federal law. Id. at 718-19. Though Taylor urges Henderson be overruled, we are bound by decisions of prior panels. See United States v. Warren, 984 F.3d 1301, 1306 (8th Cir.), cert. denied, 142 S. Ct. 124 (2021).

## II. Substantively Unreasonable Sentence

Taylor argues his sentence is substantively unreasonable because the district court erred in its weighing of the relevant 18 U.S.C. § 3553(a) sentencing factors. “We review a defendant's challenge to substantive reasonableness under a highly deferential abuse-of-discretion standard.” United States v. Jones, 71 F.4th 1083, 1086 (8th Cir. 2023). “A sentencing court abuses its discretion when it (1) fails to consider a relevant factor that should have received significant weight; (2) gives significant weight to an improper or irrelevant factor; or (3) considers only the appropriate factors but in weighing those factors commits a clear error of judgment.” Id. at 1087 (quotations omitted). A sentence within the guidelines range, like Taylor’s, is presumptively reasonable. See United States v. Haynes, 62 F.4th 454, 460 (8th Cir. 2023).

Taylor points to mitigating factors he claims the district court insufficiently weighed -- that his 2007 and 2010 Illinois convictions, the basis for substantially increasing his advisory sentencing range as a career offender, are dated and involved small drug quantities; that the incident leading to his arrest was the result of intoxicated confusion, not an attempt to burglarize or frighten the caller; and his unfortunate history and characteristics, being raised in an impoverished, violence-stricken area by a heroin-addicted father, and significant issues related to his own drug addiction.

At sentencing, the district court explicitly stated it considered all the § 3553(a) factors, specifically mentioning mitigating factors Taylor raises on appeal. The court explained the aggravating factors that in its judgment weighed against the downward variance Taylor requested -- that he had more than two convictions qualifying him as a career offender, and that this was his second recent felon-in-possession conviction. “A district court has ‘wide latitude’ to weigh the relevant sentencing criteria.” United States v. Harrison, 37 F.4th 495, 502 (8th Cir. 2022). At bottom, Taylor simply disagrees with how the district court weighed the relevant sentencing factors. That alone does not warrant reversing his sentence. See Jones, 71 F.4th at 1087.

The judgment of the district court is affirmed.

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

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No: 23-1267

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United States of America

Plaintiff - Appellee

v.

Michael Andrew Taylor

Defendant - Appellant

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Appeal from U.S. District Court for the Southern District of Iowa - Eastern  
(3:22-cr-00050-SMR-1)

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**JUDGMENT**

Before SMITH, Chief Judge, LOKEN, and COLLOTON, Circuit Judges.

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

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

December 05, 2023

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

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/s/ Michael E. Gans

Adopted April 15, 2015  
Effective August 1, 2015

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

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

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

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

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

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

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