APPENDIX

A-1

NOT FOR PUBLICATION

In the

United States Court of Appeals

For the Eleventh Circuit

No. 25-10693

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MARKELL ANTHONY COLEMAN,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 9:24-cr-80108-AMC-1

Before ROSENBAUM, NEWSOM, and GRANT, Circuit Judges.

PER CURIAM:

Markell Coleman appeals his sentence of 92 months' imprisonment for possession of an unregistered machinegun conversion device. First, he argues that the district court erred in determining that his 2016 Florida conviction for sale of cocaine was a "controlled substance offense" and thus qualified him as a career offender because, at the time of his conviction, Florida's definition of cocaine was categorically broader than the comparable federal definition. Second, he argues that the district court abused its discretion in declining to grant him a downward variance because the court overstated his prior criminal history and failed to account for the fact that he committed the least serious offense for which a person could be punished under 26 U.S.C. § 5861(d). Neither argument is availing, and, accordingly, we affirm his sentence.

I

First, we consider whether the district court erred in interpreting the Sentencing Guidelines and applying a career-offender enhancement to Coleman's sentence. We review interpretations of the Sentencing Guidelines de novo. *United States v. Dupree*, 57 F.4th 1269, 1272 (11th Cir. 2023).

The Sentencing Guidelines apply a base offense level of 26 if the offense "involved a . . . firearm that is described in 28 U.S.C. § 5845(a)" and the defendant "committed any part of the instant offense subsequent to sustaining at least two felony convictions of either a crime of violence or a controlled substance offense." U.S.S.G. § 2K2.1(a)(1). A defendant qualifies as a career offender under the Guidelines if: (1) he was at least 18 years old when he committed the instant offense; (2) the instant felony offense is either a "crime of violence" or a "controlled substance offense"; and

(3) he has at least two prior felony convictions for a crime of violence or controlled substance offense. *Id.* § 4B1.1(a). A "controlled substance offense" is, in turn, defined, in relevant part, 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 the possession of a controlled substance . . . with intent to manufacture, import, export, distribute, or dispense." *Id.* § 4B1.2(b). If a defendant qualifies as a career offender, his criminal history category is adjusted to level VI. *Id.* § 4B1.1(b). No one disputes that Coleman's prior Florida conviction for sale of marijuana qualifies as a controlled substance offense. The only remaining question, then, is whether his prior conviction for sale of cocaine qualifies as a controlled substance offense.

In *Dubois I*, we held that a drug regulated by state law is a "controlled substance" for purposes of the Sentencing Guidelines, even if federal law does not regulate the substance, and that the definition of "controlled substance offense" incorporates the state drug schedules in effect at the time of the defendant's conviction. *United States v. Dubois* (*Dubois I*), 94 F.4th 1284, 1296–98 (11th Cir. 2024). The Supreme Court vacated and remanded *Dubois I* for reconsideration in light of its ruling in *United States v. Rahimi*, 602 U.S. 680 (2024). *Dubois v. United States*, 145 S. Ct. 1041, 1041–42 (2025). On remand, we reinstated our previous opinion with respect to controlled substance offenses. *See United States v. Dubois* (*Dubois II*), 139 F.4th 887, 894 (11th Cir. 2025).

At the time that Coleman committed his offense, Florida law prohibited the sale of a "controlled substance," Fla. Stat. §§ 893.13(1) (2016), which was defined as "any substance named or described in Schedules I-V of § 893.03," *id.* § 893.02(4) (2016). Florida's list of controlled substances included "[c]ocaine or ecgonine, including any of their stereoisomers, and any salt, compound, derivative, or preparation of cocaine or ecgonine." *Id.* § 893.03(2)(a)(4) (2016). It is of no moment, therefore, that the federal government removed ioflupane—a stereoisomer of cocaine—from its drug schedules in September 2015. *See* Removal of [^{123}I]Ioflupane From Schedule II of the Controlled Substances Act, 80 Fed. Reg. 54715 (Sep. 11, 2015) (codified at 21 C.F.R. § 1308.12(b)(4)(ii)). All that matters is that Florida prohibited the sale of cocaine and *any* of its stereoisomers at the time that Coleman committed his offense. *See Dubois I*, 94 F.4th at 1296–98.

Here, the district court did not err in determining that Coleman's 2016 Florida conviction for sale of cocaine qualified as a controlled substance offense because Florida law defined cocaine as a controlled substance at the time of his conviction. That was sufficient to sustain his career-offender enhancement. Because the district court did not err, we need not address the government's alternative argument that any error was harmless under *United States v. Keene*, 470 F.3d 1347 (11th Cir. 2006).

II

Next, we consider whether Coleman's sentence was substantively reasonable. When reviewing the substantive reasonableness of a sentence, we consider the totality of the circumstances under a deferential abuse-of-discretion standard. *Gall v. United States*, 552 U.S. 38, 51 (2007). The party challenging the sentence bears the burden of establishing that it is unreasonable based on the facts of the case and the 18 U.S.C. § 3553(a) factors. *United States v. Tome*, 611 F.3d 1371, 1378 (11th Cir. 2010). We expect a sentence within the guideline range to be reasonable. *United States v. Sarras*, 575 F.3d 1191, 1219 (11th Cir. 2009). The district court also has wide discretion to decide whether the § 3553(a) factors justify a variance. *See Gall*, 552 U.S. at 50.

The district court abuses its discretion when it "(1) fails to afford consideration to relevant factors that were due significant weight, (2) gives significant weight to an improper or irrelevant factor, or (3) commits a clear error of judgment in considering the proper factors." *United States v. Irey*, 612 F.3d 1160, 1189 (11th Cir. 2010) (en banc). We will not disturb a sentence unless we are "left with the definite and firm conviction that the district court committed a clear error of judgment in weighing the § 3553(a) factors by arriving at a sentence that lies outside the range of reasonable sentences dictated by the facts of the case." *Id.* at 1190. The district court need not give each § 3553(a) factor equal weight; rather, the court has discretion to "attach great weight to one factor over others." *United States v. Rosales-Bruno*, 789 F.3d 1249, 1254 (11th Cir. 2015) (citation modified).

Here, Coleman has not shown that the district court abused its discretion by declining his motion for a downward variance and imposing a 92-month imprisonment sentence. The district court permissibly based Coleman's sentence on the dangerousness of his offense, his criminal history, and the need to protect the public from further criminality and promote respect for the law. Further, his sentence was on the low end of the range prescribed by the guidelines. The district court, therefore, did not abuse its discretion in imposing a 92-month term of imprisonment.

III

Because Coleman's arguments on appeal do not warrant vacatur of his sentence, we **AFFIRM**.

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

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

May 04, 2026

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 25-10693-JJ
Case Style: USA v. Markell Coleman
District Court Docket No: 9:24-cr-80108-AMC-1

Opinion Issued
Enclosed is a copy of the Court's decision issued today in this case. Judgment has been entered today pursuant to FRAP 36. The Court's mandate will issue at a later date pursuant to FRAP 41(b).

Petitions for Rehearing
The time for filing a petition for panel rehearing or rehearing en banc is governed by 11th Cir. R. 40-2. Please see FRAP 40 and the accompanying circuit rules for information concerning petitions for rehearing.

Costs
No costs are taxed.

Bill of Costs
If costs are taxed, please use the most recent version of the Bill of Costs form available on the Court's website at www.ca11.uscourts.gov. For more information regarding costs, see FRAP 39 and 11th Cir. R. 39-1.

Attorney's Fees
The time to file and required documentation for an application for attorney's fees and any objection to the application are governed by 11th Cir. R. 39-2 and 39-3.

Appointed Counsel
Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation via the eVoucher system no later than 45 days after issuance of the mandate or the filing of a petition for writ of certiorari. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

<u>Clerk's Office Phone Numbers</u>

General Information:	404-335-6100	Attorney Admissions:	404-335-6122
Case Administration:	404-335-6135	Capital Cases:	404-335-6200
CM/ECF Help Desk:	404-335-6125	Cases Set for Oral Argument:	404-335-6141

OPIN-1 Ntc of Issuance of Opinion

A-2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

UNITED STATES OF AMERICA	§	**JUDGMENT IN A CRIMINAL CASE**
	§	
v.	§	
	§	Case Number: **9:24-CR-80108-CANNON(1)**
MARKELL ANTHONY COLEMAN	§	USM Number: **31575-511**
	§	
	§	Counsel for Defendant: **Robert E. Adler**
	§	Counsel for United States: **John C. McMillan**

THE DEFENDANT:

☒	pleaded guilty to	**Count 2 of the Indictment**
☐	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	
☐	pleaded nolo contendere to count(s) which was accepted by the court	
☐	was found guilty on count(s) after a plea of not guilty	

The defendant is adjudicated guilty of this offense:

Title & Section / Nature of Offense	**Offense Ended**	**Count**
26 U.S.C. 5861(d) and 5871 - Unlawful Possession Of An Unregistered Machine Gun	February 2, 2023	2

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

☐ The defendant has been found not guilty on count(s)

☒ Count 1 is dismissed on the motion of the United States

It is ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States Attorney of material changes in economic circumstances.

February 18, 2025
Date of Imposition of Judgment

Signature of Judge

AILEEN M. CANNON
UNITED STATES DISTRICT JUDGE
Name and Title of Judge

February 18, 2025
Date

DEFENDANT: MARKELL ANTHONY COLEMAN
CASE NUMBER: 9:24-CR-80108-CANNON(1)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **92 months**.

☒ The court makes the following recommendations to the Bureau of Prisons:
- Designation as near as possible to South Florida to be near family.

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

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

☐ at ☐ a.m. ☐ p.m. on

☐ as notified by the United States Marshal.

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

☐ before 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 UNITED STATES MARSHAL

DEFENDANT: MARKELL ANTHONY COLEMAN
CASE NUMBER: 9:24-CR-80108-CANNON(1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **three (3) years.**

MANDATORY CONDITIONS

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

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

DEFENDANT: MARKELL ANTHONY COLEMAN
CASE NUMBER: 9:24-CR-80108-CANNON(1)

STANDARD CONDITIONS OF SUPERVISION

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

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

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. I understand additional information regarding these conditions is available at www.flsp.uscourts.gov.

Defendant's Signature ______________________________ Date ____________________

DEFENDANT: MARKELL ANTHONY COLEMAN
CASE NUMBER: 9:24-CR-80108-CANNON(1)

SPECIAL CONDITIONS OF SUPERVISION

Permissible Search: The defendant shall submit to a search of his/her person or property conducted in a reasonable manner and at a reasonable time by the U.S. Probation Officer.

Substance Abuse Treatment: The defendant shall participate in an approved treatment program for drug and/or alcohol abuse and abide by all supplemental conditions of treatment. Participation may include inpatient/outpatient treatment. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third-party payment.

Unpaid Restitution, Fines, or Special Assessments: If the defendant has any unpaid amount of restitution, fines, or special assessments, the defendant shall notify the probation officer of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay.

DEFENDANT: MARKELL ANTHONY COLEMAN
CASE NUMBER: 9:24-CR-80108-CANNON(1)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments page.

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	$100.00	0	0		

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, 18 U.S.C. §2259.
** Justice for Victims of Trafficking Act of 2015, 18 U.S.C. §3014.
*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: MARKELL ANTHONY COLEMAN
CASE NUMBER: 9:24-CR-80108-CANNON(1)

SCHEDULE OF PAYMENTS

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

A ☒ Lump sum payment of $100.00 due immediately.

It is ordered that the Defendant shall pay to the United States a special assessment of $100.00 for Count 2, which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court. Payment is to be addressed to:

U.S. CLERK'S OFFICE
ATTN: FINANCIAL SECTION
400 NORTH MIAMI AVENUE, ROOM 8N09
MIAMI, FLORIDA 33128-7716

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

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

☐ Joint and Several
See above for Defendant and Co-Defendant Names and Case Numbers *(including defendant number)*, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:
FORFEITURE of the defendant's right, title and interest in certain property is hereby ordered consistent with the plea agreement. The United States shall submit a proposed Order of Forfeiture within three days of this proceeding.

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