No. _____

IN THE SUPREME COURT OF THE UNITED STATES

WILLIE RAY VALENTINE,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent

PETITION FOR A WRIT OF CERTIORARI

APPENDIX

/s/ Taylor Wills Edwards "T.W." Brown
Taylor Wills Edwards "T.W." Brown
Assistant Federal Public Defender
Northern District of Texas
P.O. Box 17743
819 Taylor Street, Room 9A10
Fort Worth, TX 76102
(817) 978-2753
Taylor_W_Brown@fd.org
Texas Bar No. 24087225

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APPENDIX A

United States Court of Appeals for the Fifth Circuit

No. 25-11183

United States Court of Appeals
Fifth Circuit
FILED
August 25, 2026
Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

WILLIE RAY VALENTINE,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:24-CR-476-1

ON PETITION FOR REHEARING

Before STEWART and RICHMAN, *Circuit Judges*.

PER CURIAM:

IT IS ORDERED that the petition for rehearing is DENIED.

APPENDIX B

United States Court of Appeals for the Fifth Circuit

No. 25-11183
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
August 4, 2026
Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

WILLIE RAY VALENTINE,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:24-CR-476-1

Before WIENER, STEWART, and RICHMAN, *Circuit Judges*.

PER CURIAM:[*]

Defendant-Appellant Willie Ray Valentine was convicted of two counts of possession of a firearm by a convicted felon and was sentenced, pursuant to the Armed Career Criminal Act (ACCA), to serve 180 months in prison and five years on supervised release. His challenge to the classification of his prior Texas convictions for possession of cocaine with

[*] This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

intent to deliver as ACCA qualifying offenses fails under our jurisprudence. *See United States v. Clark*, 49 F.4th 889, 891 (5th Cir. 2022); *United States v. Vickers*, 540 F.3d 356, 366 (5th Cir. 2008). His constitutional challenge to the ACCA pursuant to *Erlinger v. United States*, 602 U.S. 821, 834-36 (2024), fails because examination of the record shows that any error was harmless due to his admission in connection with his plea that his three qualifying offenses occurred on separate occasions. *See United States v. Valencia*, 137 F.4th 331, 335 (5th Cir. 2025). The judgment of the district court is AFFIRMED.

APPENDIX C

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

UNITED STATES OF AMERICA

v.

WILLIE RAY VALENTINE

JUDGMENT IN A CRIMINAL CASE

Case Number: **3:24-CR-00476-X(1)**

USM Number: **47028-177**

Frances Cassandra Ekwerekwu

Defendant's Attorney

THE DEFENDANT:

☐	pleaded guilty to count(s)	
☒	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	**Counts One and Two of the Indictment, filed on October 29, 2024.**
☐	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 these offenses:

Title & Section / Nature of Offense	Offense Ended	Count
18 U.S.C. §§ 922(g)(l) and 924(a)(8) Possession of a Firearm by a Convicted Felon	01/10/2024	1
18 U.S.C. §§ 922(g)(l) and 924(a)(8) Possession of a Firearm by a Convicted Felon	08/07/2024	2

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) ☐ is ☐ are 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.

October 21, 2025

Date of Imposition of Judgment

Signature of Judge

BRANTLEY STARR
UNITED STATES DISTRICT JUDGE

Name and Title of Judge

October 23, 2025

Date

DEFENDANT: WILLIE RAY VALENTINE
CASE NUMBER: 3:24-CR-00476-X(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:

One Hundred Eighty (180) months as to count 1; and One Hundred Eighty (180) months as to count 2. Counts 1 and 2 to run currently with each other for an aggregate sentence of 180 monhts.

This case shall run consecutively with any revocation sentence imposed in Case No. 3:13-CR-340-X (1), in U.S. District Court for the Northern District of Texas, Dallas division.

This case shall run concurrently to any sentence imposed in Case Nos. F-2418674 and F-2457687 pending out of the 291st Judicial District Court, Dallas, Texas, as these cases are related to the instant offense. This case should run concurrently to any sentence imposed in Case No. MA2400573, pending in Dallas County Criminal Court 11, in Dallas, Texas.

☒ The court makes the following recommendations to the Bureau of Prisons:
That the defendant be designated to FCI - Seagoville

☒ 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: WILLIE RAY VALENTINE
CASE NUMBER: 3:24-CR-00476-X(1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of : **Five (5) years on Counts 1 and 2 to run currently with each other.**

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: WILLIE RAY VALENTINE
CASE NUMBER: 3:24-CR-00476-X(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.txnp.uscourts.gov.

Defendant's Signature _____ Date _____

DEFENDANT: WILLIE RAY VALENTINE
CASE NUMBER: 3:24-CR-00476-X(1)

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall participate in an outpatient program approved by the probation officer for treatment of narcotic, drug, or alcohol dependency that will include testing for the detection of substance use, abstaining from the use of alcohol and all other intoxicants during and after completion of treatment, and contributing to the costs of services rendered (copayment) at the rate of at least $20 per month.

The defendant shall participate in outpatient mental health treatment services as directed by the probation officer until successfully discharged. These services may include medications prescribed by a licensed physician. You shall contribute to the costs of services rendered (copayment) at a rate of at least $20 per month

DEFENDANT: WILLIE RAY VALENTINE
CASE NUMBER: 3:24-CR-00476-X(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	$200.00	$.00	$.00	$.00	

☐ The determination of restitution is deferred until An *Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

☐ Restitution amount ordered pursuant to plea agreement $

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the schedule of payments page may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.
** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22
*** 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: WILLIE RAY VALENTINE
CASE NUMBER: 3:24-CR-00476-X(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 payments of $200.00 due immediately, balance due

☐ not later than , or

☒ in accordance ☐ C, ☐ D, ☐ E, or ☒ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after the date of this judgment; or

D ☐ Payment in equal 20 *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☒ Special instructions regarding the payment of criminal monetary penalties:
It is ordered that the Defendant shall pay to the United States a special assessment of $200.00 for Counts 1 and 2 , which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court.

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 pay the cost of prosecution.
☐ The defendant shall pay the following court cost(s):
☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

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.

APPENDIX D

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA	)	
	)	
V.	)	**No. 3:24-CR-476-M**
	)	
WILLIE RAY VALENTINE	)	

Defendant's First Motion to Strike or Dismiss Allegations in Indictment

Defendant Willie Valentine stands charged under 18 U.S.C. §924(e), the Armed Career Criminal Act (ACCA), with the possession of a firearm after having sustained three prior convictions for "serious drug offenses" committed on separate occasions. As a matter of law, however, the government cannot prove that his prior convictions constitute "serious drug offenses." This Court should therefore dismiss the indictment's allegation that Defendant committed three serious drug offenses, effectively reducing the charge to 18 U.S.C. §922(g)(1) *simpliciter*.

I. The issue may be decided pre-trial

Federal Rule of Criminal Procedure 12(b)(1) allows a defendant to "raise by pretrial motion any defense, objection, or request that the court can determine without a trial on the merits." Defendant submits here that the government cannot support the Indictment's allegation that he is subject to the provisions of ACCA; specifically, he lacks three prior convictions for "serious drug offenses." That issue

can obviously be resolved without a trial on the merits. The classification of prior offenses under ACCA is a pure legal issue, that this Court can determine without reference to any other fact in the case.

To the extent that this Court has discretion to decide this issue now or defer it, it should exercise that discretion in favor of a pre-trial resolution of the issue. If this Court reserves the question of whether Defendant's prior convictions qualify him for ACCA's enhanced penalties, it will be necessary to have a jury trial on whether Defendant's prior convictions occurred on "separate occasions." *See Erlinger v. United States*, 602 U.S. 821 (2024). But there is no good reason to require this finding of a jury if it will not affect the sentencing range, which the Court can well determine right now. Indeed, the jury might be prejudiced by an inquiry into the Defendant's prior conviction – if he is correct that he lacks three qualifying convictions, there is no reason to expose the jury to this issue. Nor is there a good reason to compel the defendant to choose between plea and trial without as good an understanding of his statutory range as this Court may provide.

This Court should accordingly decide whether the Texas offense of cocaine trafficking constitutes a "serious drug offense," striking or dismissing the Indictment's allegations regarding ACCA if it decides they are not.

II. The Defendant's prior Texas cocaine convictions are non-qualifying.

A. The Texas cocaine offense is overbroad

ACCA provides for a mandatory minimum of 15 years imprisonment, and a maximum of life imprisonment, when the defendant possesses a gun after three qualifying felony convictions, among them "serious drug offenses." 18 U.S.C. §924(e)(2)(A). The statute defines "serious drug offense" as:

> (i) an offense under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46 for which a maximum term of imprisonment of ten years or more is prescribed by law; or
> (ii) an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), for which a maximum term of imprisonment of ten years or more is prescribed by law …

18 U.S.C. §924(e)(2)(A). In deciding whether an offense is a "serious drug offense," this Court employs the categorical approach, which means that it compares the scope of the prior offense to the definition found in ACCA. *See Shular v. United States*, 589 U.S. 154, 160 (2020). If the prior offense is broader than the definition – meaning that it encompasses conduct that does not fall within the definition – it generally will not count as an ACCA predicate. *See Mathis v. United States*, 579 U.S. 500, 508-509 (2016). The analysis compares statutes; it does not look at the defendant's past conduct. *See Mathis*, 579 U.S at 508-509. That practice reflects the language of the statute, saves resources that would otherwise be devoted to litigating sometimes very old incidents, and limits Sixth Amendment concerns that might

otherwise attend judicial inquiry into the facts not previously resolved by a jury. *See id.* at 510-513

The government has given notice of three purportedly qualifying convictions: a federal conviction for trafficking cocaine (for conduct undertaken in 2014), and two prior Texas offenses for possessing cocaine with intent to deliver it (for conduct undertaken August 1, 2002, and October 23, 2003). The Texas offense is overbroad and non-qualifying.

Defendant's prior Texas offense criminalized the trafficking in "Cocaine, including: (i) its salts, its optical, position, and geometric isomers, and the salts of those isomers…" Tex. Health & Saf. Code §481.102(3)(D)(i)(2002) and (2003); *see also* Tex. Health & Saf. Code §481.112(a)(2002) and (2003). By contrast, "section 102 of the Controlled Substances Act (21 U.S.C. 802)," expressly referenced by the ACCA definition of "serious drug offense," uses the federal controlled substance schedules of 21 U.S.C. §812 (2002) and (2003). *See* 21 U.S.C. §802(6)(2002) and (2003). Those schedules reach "cocaine, its salts, optical and geometric isomers, and salts of isomers." 21 U.S.C. §812, Schedule II (a)(4)(2002) and (2003). Facially, the Texas offense criminalizes trafficking in "position isomers" of cocaine, while the Controlled Substance Act (CSA) does not. As such, Defendant's prior offense could be committed by trafficking something that is not "a controlled substance (as defined

in section 102 of the Controlled Substances Act (21 U.S.C. 802)),” and is therefore overbroad and non-qualifying.

B. Defendant’s position is consistent with controlling precedent.

A recent unpublished[1] opinion rejected this because the defendant could not show a reasonable probability that the State would apply its statute to the trafficking of positional isomers, which it believed to be required by *Gonzales v. Duenas-Alvarez*, 549 U.S. 183 (2007). *See* Exhibit A *United States v. Kerstetter*, 22-10253, 2025 WL ____, slip op. at *6-8 (April 10, 2025)(unpublished)(slip op. attached). In that panel view’s, the defendant bears the burden of showing a real case convicting someone under the statute of conviction for facts that fall outside the definition of a “serious drug offense.” *See id*. Notably, the court denied a motion to supplement the record with the same documents at issue here. *See id*. at *6.

Kerstetter pointed to the Supreme Court’s decisions in *Brown v. United States*, 602 U.S. 101 (2024), and *United States v. Taylor*, 596 U.S. 845 (2022), as evidence that the “realistic probability” test does not apply in a certain class of cases. *See id*. at *7. The panel rejected his reliance on *Brown*, reasoning that “[t]he Court” in

[1] A prior published opinion in the same case likewise rejected the argument, but it was vacated by the Supreme Court. *See United States v. Kerstetter*, 82 F.3d 437 (5th Cir. 2023), vacated and remanded 145 S.Ct. 121 (October 7, 2024). The subsequent unpublished opinion recognized that the vacated prior opinion did not control it. *See United States v. Kerstetter*, 22-10253, 2025 WL ____, slip op. at *6 (April 10, 2025)(unpublished)And indeed, the Fifth Circuit “has consistently held that vacated opinions are not precedent…” *Asgeirsson v. Abbott*, 696 F.3d 454, 459 (5th Cir. 2012).

Brown "did not mention *Duenas-Alvarez* or the realistic-probability test, much less disavow either." *Id.* at *8. But in fact *Brown* makes quite clear that a mismatch between the relevant schedules of controlled substances would be dispositive.

In *Brown*, two defendants argued that their state drug convictions did not qualify as ACCA predicates because they criminalized substances not currently prohibited by the CSA, specifically hemp and ioflupone. *See Brown*, 602 U.S. at 106-108. The Supreme Court ruled for the government because the CSA penalized both hemp and ioflupone at the time of prior offenses, *see id.* at 111-115, something that may not be said of positional isomers of cocaine at the time of Defendant's prior offenses, ***compare*** Tex. Health & Safety Code Ann. § 481.102(3)(D)(i)(2002) and (2003) ***with*** 21 U.S.C. §812, Schedule II (a)(4)(2002) and (2003). Significantly, however, the Supreme Court stated expressly that if the CSA had not prohibited ioflupone at the time of the prior offense, then it would not have been qualifying, giving no suggestion that the defendant would have to give evidence of an actual ioflupone prosecution. *See Brown*, 602 U.S. at 109.

Indeed, the language of its opinion conclusively forecloses any such suggestion. It said that if Florida's "cocaine" definition included ioflupane, but Federal "cocaine" did not include that substance, that would mean "no Florida cocaine convictions … would count" as ACCA predicates. *Id*. at 109. "These cocaine convictions would be excluded even though it is highly unlikely that any were based

on the possession or sale of the Parkinson's drug"—and even though there were "'no case reports' involving individuals who misused that drug." *Id.* at 109, 123. As such, the plain language of the *Brown* decision makes perfectly clear that mere overbreadth is adequate in this context, and no further showing of a realistic chance of prosecution is necessary. This "recent and detailed discussion of the law by a majority of the Supreme Court" has "implicitly overruled" contrary Fifth Circuit authority. *Gearlds v. Entergy Servs., Inc.*, 709 F.3d 448, 452 (5th Cir. 2013).

Finally, this Court should examine *United States v. Minor*, 121 F.4th 1085 (2024), which vacated the defendant's sentence for drug trafficking. That sentence had been enhanced under USSG §4B1.2 due to prior convictions for a "controlled substance offense." *Minor*, 121 F.4th at 1088. Specifically, the defendant had been previously convicted in federal court for marijuana trafficking before Congress legalized "hemp." *See id*. at 1089. The panel vacated the sentence because the prior version of the CSA was in this sense broader than the current version, which it held to be incorporated into §4B1.2's definition of a "controlled substance offense." *See id*. at 1088-1094. That is, the defendant's prior statute of conviction could be violated by trafficking hemp, while the current version of the CSA could not be. *See id*. at 1089. *Minor* thus demonstrates that the categorical approach requires the sentencing court to compare the lists of prohibited substances in the context of drug prior

conviction enhancements. And it confirms that challenges on this basis remain viable.

Minor also included the following footnote:

> We conclude that the "realistic probability" test that requires a showing that the prior conviction could, in fact, be for the point in play does not apply here. We continue to apply that realistic probability test to state court convictions, but application to federal statutes should no longer apply as made clear by the Supreme Court and referenced by us. *See United States v. Kerstetter*, 82 F.4th 437, 440-41 (5th Cir. 2023) (per curiam) (distinguishing *United States v. Taylor*, 596 U.S. 845, 142 S. Ct. 2015, 213 L.Ed.2d 349 (2022) from that case because the former involved two federal statutes while the latter involved state cases).

Id. at 1093, n.9.

The present case involves a prior state court conviction, so this language is potentially significant for the resolution of the case. However, the footnote is clearly *dicta* insofar as it addresses state court convictions, since *Minor* involved a prior federal conviction. *See id*. at 1089. The panel's view of the realistic probability test in the context of state statutes therefore could not affect the outcome. Further, *Minor* involved §4B1.2, whereas *Brown* and the current case both arise under ACCA – *Brown* would therefore be controlling even if it did not come from a higher court.

The sole authority cited by *Minor* for the proposition that "the realistic probability test" applies to state cases, moreover, is the published *Kerstetter* opinion, which is a vacated opinion, and therefore not precedential. *See Minor*, 121 F.4th at

1093, n.9. Most of all, this passage in *Minor* is inconsistent with *Brown*, which flatly states that a mismatch between the drug schedules (of the appropriate years) would have been conclusive. *See Brown*, 602 U.S. at 109. On this point, *Brown* is potentially *dicta*, but it is well settled that panels of the Fifth Circuit (and presumably district courts within the Fifth Circuit) are "generally bound by Supreme Court dicta, especially when it is 'recent and detailed.'" *Hollis v. Lynch*, 827 F.3d 436, 448 (5th Cir. 2016)(quoting *Gearlds*, 709 F.3d at 452), *abrogated on other grounds by United States v. Diaz*, 116 F.4th 458 (5th Cir. 2024).

Alternatively, Defendant submits that the attached documents well demonstrate that there is a realistic probability that prosecutors would use the statute to punish the trafficking of positional isomers. *See* Exhibit B. The vacated panel opinion in *Kerstetter* rejected similar documents because they demonstrated prosecutions for possession of positional isomers, but not trafficking in them. *See Kerstetter*, 82 F.3d at 441.

As noted, however, that panel opinion has been vacated, and its elliptical reasoning is not persuasive on this point. Willingness to use the statute to punish simple possession implies willingness to use it to punish trafficking of the same substance. The "reasonable probability" test, after all, asks whether there is "a realistic probability, not a theoretical possibility, that the State would apply its statute to conduct that falls outside the generic definition of the crime." *United States v.*

Castillo-Rivera, 853 F.3d 218, 222 (5th Cir. 2017)(en banc)(quoting *Gonzales v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007)). It does not ask how often people violate the defendant's prior statute of conviction in non-generic (or non-qualifying) ways, but whether "the State would apply its statute" to that conduct if it arose. That is, it asks about the State's willingness to employ the statute to non-qualifying conduct, not the frequency of the conduct. The attached documents – demonstrating the State's willingness to employ the positional isomers provision of the statute to simple possession – also show its willingness to employ the statute against trafficking of the same substance.

This Court should strike or dismiss the allegations from the Indictment invoking ACCA; alternatively, it should provide a pretrial ruling that Defendant is not eligible for these penalties.

Respectfully submitted,
JASON D. HAWKINS
FEDERAL PUBLIC DEFENDER
Northern District of Texas

/s/ *Frances C. Ekwerekwu*
FRANCES C. EKWEREKWU
Assistant Federal Public Defender
Northern District of Texas
Oklahoma Bar No. 32613
525 S. Griffin Street, Suite 629
Dallas, Texas 75202
Phone: (214) 767-2746

CERTIFICATE OF SERVICE

I further certify that on April 14, 2025, this motion was served by electronic means on Assistant United States Attorney John J. Boyle.

/s/ Frances C. Ekwerekwu
FRANCES C. EKWEREKWU
Assistant Federal Public Defender

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

United States of America,	§	
Plaintiff,	§	
	§	
v.	§	**Case No. 3:24-CR-476-M**
	§	
WILLIE RAY VALENTINE,	§	
	§	
	§	

ORDER GRANTING DEFENDANT'S FIRST MOTION TO STRIKE OR DISMISS ALLEGATIONS IN INDICTMENT

On this day, the Court considered Defendant's First Motion to Strike or Dismiss the Allegations in Indictment. The Court, having considered the Motion, is of the opinion that the Motion should be **GRANTED**.

It is therefore **ORDERED** that the Defendant's First Motion to Strike or Dismiss Allegations in Indictment is hereby **GRANTED**.

SO ORDERED on this the_____day of_____, 2025.

BARBARA M. G. LYNN
UNITED STATES DISTRICT JUDGE

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
April 10, 2025
Lyle W. Cayce
Clerk

No. 22-10253

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

DYLAN GREGORY KERSTETTER,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:20-CR-35-1

ON REMAND FROM
THE SUPREME COURT OF THE UNITED STATES

Before SMITH, SOUTHWICK, and HIGGINSON, *Circuit Judges*.

PER CURIAM:[*]

Dylan Gregory Kerstetter pled guilty to possession of a firearm by a felon in violation of 18 U.S.C. § 922(g)(1). On appeal, he argued that a sentencing enhancement that requires certain prior convictions be for offenses committed on different occasions could not be applied unless the

[*] This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

facts supporting the enhancement were charged in the indictment and admitted by the accused or proved to a jury. He also argued that his prior convictions did not qualify for the enhancement. We affirmed. The Supreme Court granted a writ of certiorari, vacated our judgment, and remanded for reconsideration in light of an intervening Supreme Court decision.

We AFFIRM.

FACTUAL AND PROCEDURAL BACKGROUND

In 2019, Dylan Kerstetter was stopped by police in Dallas, Texas, because his vehicle allegedly had false license plates. An officer saw a bag of suspected methamphetamine on the vehicle's floorboard. A later search discovered more illegal drugs. Officers also found two firearms, one in the vehicle's console and the other in a backpack behind the driver's seat.

In January 2020, a federal grand jury indicted Kerstetter for being a felon in possession of a firearm, violating 18 U.S.C. §§ 922(g)(1) and 924(a)(2). The indictment did not allege any prior offenses. Later that year, Kerstetter stipulated he was guilty of being a felon in possession. In a footnote in the stipulation, he acknowledged that current law would allow his sentence to be enhanced due to prior felonies, but he argued that this law denied him due process because the facts relevant to the enhancement needed to be in the indictment and then proven to the fact-finder beyond a reasonable doubt.

In February 2021, Kerstetter pled guilty. His counsel challenged the presentence report's recommendations that are relevant to this appeal. The district court imposed a sentence of 190 months of imprisonment. His sentence reflected the court's application of the sentencing enhancement under the Armed Career Criminal Act ("ACCA"), which applies when a Section 922(g) offender has three prior convictions for "violent felon[ies]" or "serious drug offense[s]" that were "committed on occasions different

from one another." 18 U.S.C. § 924(e)(1). The ACCA requires a mandatory minimum sentence of 15 years imprisonment. *Id.* Without the ACCA, Kerstetter's maximum sentence was 10 years.[1] § 924(a)(2) (2020).

On appeal, we affirmed the district court's use of the sentence enhancement because Kerstetter's "argument that the indictment must allege, and evidence at trial must prove, the facts of the commission of qualifying offenses on different occasions has long been rejected by this court." *United States v. Kerstetter*, 82 F.4th 437, 440 (5th Cir. 2023). Thereafter, the Supreme Court disagreed, holding that a jury, not a judge, must determine whether ACCA predicate offenses occurred on separate occasions. *Erlinger v. United States*, 602 U.S. 821, 835 (2024). The Supreme Court then granted Kerstetter's pending petition for certiorari, vacated our prior judgment, and remanded for further consideration in light of its new ruling. *Kerstetter v. United States*, 145 S. Ct. 121 (2024) (mem.).

DISCUSSION

We first consider the Supreme Court's new holding about the need to charge prior offenses in the indictment and prove them to the jury before they can be used as predicate offenses under the ACCA.

1. Need for prior offenses to be charged in indictment and proven to jury

Kerstetter argues the district court violated his Fifth and Sixth Amendment rights by sentencing him under the ACCA. He asserts "an ACCA sentence is only lawfully available where the indictment alleges that

[1] The non-ACCA maximum penalty was raised from 10 to 15 years' imprisonment in 2022. *See* Bipartisan Safer Communities Act, Pub. L. No. 117-159, § 12004(c), 136 Stat. 1313, 1329 (2022) (codified at 18 U.S.C. § 924(a)(8)). Kerstetter's Section 922(g)(1) offense occurred before the penalty was raised, so he would have been subject to the 10-year maximum penalty.

the three predicate offenses were committed on different occasions." His supplemental briefing here insists he "had a right to be sentenced *for the offense charged in the indictment* and *to which he pleaded guilty*."

The Government concedes that, under *Erlinger*, the district court committed clear and obvious error in sentencing Kerstetter under the ACCA without a jury finding or Kerstetter's admitting that his prior offenses occurred on separate occasions. The parties dispute whether Kerstetter preserved his *Erlinger* objection in district court, a point that controls our standard of review. Nonetheless, we do not decide whether he preserved his objection because Kerstetter's claims fail under either review standard.

"An otherwise valid conviction will not be set aside if the reviewing court may confidently say, on the whole record, that the constitutional error was harmless beyond a reasonable doubt." *United States v. Butler*, 122 F.4th 584, 589 (5th Cir. 2024) (quoting *United States v. Matthews*, 312 F.3d 652, 665 (5th Cir. 2002)). This means we must affirm Kerstetter's sentence if "any rational petit jury, when presented with a proper jury instruction, would have found beyond a reasonable doubt that [his qualifying] offenses occurred on different occasions" based on the record. *Id.* (quotation marks omitted) (quoting *Matthews*, 315 F.3d at 665).

The Government relies on one of our precedents that held a judge's failure to submit the separate-occasions inquiry to the jury was harmless. *Butler*, 122 F.4th at 590. Kerstetter argues that *Butler* is not controlling because of differences in the indictments. In *Butler*, there was a superseding indictment alleging the predicate offenses, *id.* at 587, but there was no superseding indictment in Kerstetter's case. We see no importance to this difference. What controls is *Erlinger*'s holding that failure to have a jury conduct the separate occasions inquiry is *Apprendi* error. *Erlinger*, 602 U.S.

at 835. *Apprendi* error is a failure to charge in an indictment and submit to a jury those facts that will "increase the prescribed range of penalties to which a criminal defendant is exposed." *Apprendi*, 530 U.S. 466, 490 (2000) (quotation omitted). Such error is subject to harmless error review. *United States v. Robinson*, 367 F.3d 278, 285–86 (5th Cir. 2004).

The Court in *Erlinger* made clear that a statutory requirement that offenses occurred on separate occasions is an *Apprendi* matter. The determination requires a "multi-factored" inquiry. *Wooden v. United States*, 595 U.S. 360, 369 (2022). "Timing of course matters," as does geographic proximity and "the character and relationship of the offenses." *Id.* "For the most part, applying this approach will be straightforward and intuitive." *Id.*

The record shows that Kerstetter has four relevant prior offenses. His first offense was unlawful delivery of cocaine committed on February 11, 1993. His second offense was a burglary of a building committed on January 30, 2008. His third offense was burglary of a building committed on April 9, 2008. His fourth offense was delivery of a controlled substance committed on June 14, 2012. The parties do not dispute the existence of the prior convictions.

Nearly 15 years elapsed between Kerstetter's first and second offense. His second and third offenses, both burglary offenses, were separated by more than two months and committed against different victims. Finally, his fourth offense occurred four years after his third offense, and the offenses differed in nature: one was burglary and the other was delivery of a controlled substance. Based on the record, no rational juror could find Kerstetter's offenses did not occur on separate occasions. *See Butler*, 122 F.4th at 590. We hold the district court's error was harmless.

2. Need for prior convictions to be violent felonies or serious drug offenses

Kerstetter also argues that the district court erred in applying the ACCA enhancement because his prior convictions were not violent felonies or serious drug offenses for purposes of Section 924(e). This same argument was made when we first considered the appeal, and we rejected it in the decision that was later vacated by the Supreme Court. *Kerstetter*, 82 F.4th at 440–41. The Government argues that because the Supreme Court vacated that earlier decision and remanded solely for consideration of the *Erlinger* issue, our prior holding that his offenses were violent felonies or serious drug offenses remains binding and is beyond the proper scope of the remand. Our caselaw may not be completely consistent on this point, but we follow the clear holding in one precedent that once the Supreme Court vacates one of our opinions, that "opinion is no longer the law of the case." *Brown v. Bryan County.,* 219 F.3d 450, 453 n.1 (5th Cir. 2000).

We review *de novo* issues regarding whether Kerstetter's prior convictions satisfy the ACCA. *United States v. Prentice*, 956 F.3d 295, 298 (5th Cir. 2020).

First, Kerstetter contends that Texas's burglary statute, Texas Penal Code § 30.02(a), is too broad to be considered generic burglary because the statute "does not require proof of a specific intent to commit a crime inside the premises." This court has already held Section 30.02(a) to be generic for purposes of Section 924(e); thus, the ACCA applies. *United States v. Wallace*, 964 F.3d 386, 389–90 (5th Cir. 2020).

Next, Kerstetter contends that Texas Health & Safety Code § 481.112(a) sweeps too broadly to be a serious drug offense as defined in 18 U.S.C. § 924(e)(2)(A)(ii). He argues it is overbroad for these reasons: (1) the delivery of a controlled substance includes an offer to sell, meaning a person can be convicted for a fraudulent offer to sell; and (2) the list of

substances it covers includes position isomers of cocaine, which are not covered by the Controlled Substances Act. This argument is foreclosed because this court has already "held that the [Section] 481.112 offense constitutes a 'serious drug offense' under the ACCA." *United States v. Clark*, 49 F.4th 889, 892 (5th Cir. 2022) (quoting *United States v. Vickers*, 540 F.3d 356, 366 (5th Cir. 2008)).

On remand from the Supreme Court, Kerstetter sought to supplement the record with the state court records for two cases that purportedly show a realistic probability that Texas "appl[ies] its statute[s] to conduct that falls outside the generic definition of the crime[s]." *United States v. Castillo-Rivera*, 853 F.3d 218, 222 (5th Cir. 2017) (en banc) (quoting *Gonzales v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007)). We denied the motion because, as already discussed here, we have already held that convictions under Section 30.02(a) and Section 481.112(a) qualify as ACCA predicates. "[A]bsent an intervening change in the law, 'one panel of our court may not overturn another panel's decision.'" *Clark*, 49 F.4th at 892 (quoting *Mercado v. Lynch*, 823 F.3d 276, 279 (5th Cir. 2016)).

Kerstetter argues recent Supreme Court decisions provide that intervening change in law because those cases undermine the use of the realistic-probability test in the ACCA context where, as here, the state statute sweeps more broadly than its federal counterpart. *See United States v. Taylor*, 596 U.S. 845 (2022); *see also Brown v. United States*, 602 U.S. 101 (2024).

In *Taylor*, the Court compared two federal statutes to determine "whether the elements of one federal law align with those prescribed in" the other. 596 U.S. at 859. The Court declined to use the realistic-probability test originating in *Gonzales v. Duenas-Alvarez*, 549 U.S. 183 (2007), but did not overrule that decision. *Id.* at 858–59. Instead, the Court distinguished

Duenas-Alvarez, first by saying that the federalism concerns involved when comparing state offenses with federal sentencing enhancements made it reasonable "to consult how a state court would interpret its own State's laws." *Id.* "Second, in *Duenas-Alvarez* the elements of the relevant state and federal offenses clearly overlapped and the only question the Court faced was whether state courts *also* 'applied the statute in a special (nongeneric) manner.'" *Id.* at 859 (alterations adopted) (quoting *Duenas-Alvarez*, 549 U.S. at 193). Conversely, in *Taylor* there was "no overlap to begin with." *Id.* Unlike *Taylor*, we do not need to compare two federal statutes; this case involves a state statute and a federal statute, where "federalism concern[s] are in play." *Id.* Moreover, even after *Taylor*, we have applied the realistic-probability test that stems from *Duenas-Alvarez*. *See Ponce v. Garland*, 70 F.4th 296 (5th Cir. 2023).

Brown likewise does not overrule our circuit precedent. There, the Court held "a prior state drug conviction constitutes an ACCA predicate if the drugs on the federal and state schedules matched when the state drug offense was committed." *Brown,* 602 U.S. at 119. The Court did not mention *Duenas-Alvarez* or the realistic-probability test, much less disavow either. "[A]n intervening change in the law must be unequivocal, not a mere 'hint' of how the Court might rule in the future." *United States v. Alcantar*, 733 F.3d 143, 146 (5th Cir. 2013).

AFFIRMED.

F2152337

The State of Texas vs. PAUL FUMANYA ANAH 283rd
DOB: [redacted] Sex: Male Race: Black

GJ Witness: Read In

Offense	Agency
POSS CS PG1 <1G	TXDPD0000

INDICTMENT NO.: F2152337

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF TEXAS:

The Grand Jury of Dallas County, State of Texas, duly organized at the January Term, A.D., 2022 of the 203rd Judicial District Court for said County, upon its oath do present in and to said Court at said term,

That **PAUL FUMANYA ANAH,** hereinafter called Defendant, **on or about the 13th day of February, 2021** in the County of Dallas, State of Texas, did then and there intentionally and knowingly possess a controlled substance, to-wit: COCAINE, in an amount of less than one gram, including adulterants and dilutants,

FELICIA PITRE
DISTRICT CLERK
DALLAS CO., TEXAS
2022 JUN 15 AM 7:56
Stephanie Walton

Against the peace and dignity of the State.

Joshua L Thompson
Foreman of the Grand Jury

Page 1 of 1

F2152337T

THE STATE OF TEXAS	§	IN THE 283RD JUDICIAL
	§	
VS	§	DISTRICT COURT OF
	§	
PAUL ANAH	§	DALLAS COUNTY, TX

FILED
2023 AUG 16 AM 10:06
FELICIA PITRE
DISTRICT CLERK
DALLAS COUNTY, TEXAS
DEPUTY

MOTION TO AMEND INDICTMENT

Pursuant to Art. 28.10 of the Code of Criminal Procedure, John Creuzot, the Criminal District Attorney of Dallas County, Texas, by and through his Assistant District Attorney, on behalf of the State of Texas, respectfully requests leave to amend the indictment in this case by removing the following language as set forth below:

"COCAINE" and replace with "POSITION ISOMERS OF COCAINE"

The State would show that said amendment does not charge the Defendant with an additional or different offense, nor does it prejudice the substantial rights of the Defendant.

BY: _____
JACOB ZACHARIAH
ASSISTANT DISTRICT ATTORNEY
TEXAS BAR NO. 24079622

CERTIFICATE OF SERVICE

I certify that a copy of this motion was hand delivered to the attorney for defendant on the 16th day of August, 2023.

_____
JACOB ZACHARIAH
ASSISTANT DISTRICT ATTORNEY

ORDER

The foregoing motion is granted on the 3rd day of Oct, 2023.

_____
Judge Presiding

F2152337

The State of Texas vs. PAUL FUMANYA ANAH 283rd
DOB: [redacted] Sex: Male Race: Black

GJ Witness: Read In

Offense	Agency
POSS CS PG1 <1G	TXDPD0000

INDICTMENT NO.: F2152337

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF TEXAS:

The Grand Jury of Dallas County, State of Texas, duly organized at the January Term, A.D., 2022 of the 203rd Judicial District Court for said County, upon its oath do present in and to said Court at said term,

That **PAUL FUMANYA ANAH,** hereinafter called Defendant, **on or about the 13th day of February, 2021** in the County of Dallas, State of Texas, did then and there intentionally and knowingly possess a controlled substance, to-wit: ~~COCAINE,~~ in an amount of less than one gram, including adulterants and dilutants,

positon isomers of cocaine

JZ

Against the peace and dignity of the State.

Joshua L Thompson
Foreman of the Grand Jury

Page 1 of 1

Cause No. F2152337

FILED
2023 AUG 16 AM 10:05
FELICIA PITRE
DISTRICT CLERK
DALLAS CO. TEXAS
DEPUTY

STATE OF TEXAS	§	IN THE 283rd
	§	
VS.	§	DISTRICT COURT
	§	
PAUL ANAH	§	DALLAS COUNTY, TEXAS

PLEA AGREEMENT

The attorney for the State of Texas, the Defendant, his/her attorney (if shown below), shows the Court that the defendant will plead ■ GUILTY ☐ NOLO CONTENDERE to the offense of Possession of Position Isomers of Cocaine <1G as charged in the charging instrument or as a lesser included offense of the offense alleged in the charging instrument and they make the following plea agreement:

Charging Instrument: ■ Indictment ☐ Information

☐ Term of Confinement in ☐ penitentiary ☐ state jail ☐ county jail for ☐ years ☐ months ☐ days

☐ Post-conviction community supervision, confinement probated for ☐ years ☐ months ☐ days

■ Deferred community supervision for 2 ■ years ☐ months ☐ days

☐ Pay fine in the amount of $, as directed by the Supervision Office, ☐ to be paid ☐ probated.

☐ Pay restitution, jointly and severally with co-defendant(s) in the amount of $_____.

☐ Affirmative finding the defendant used or exhibited a deadly weapon, to-wit:_____.

☐ Affirmative finding of family violence. ☐ Affirmative finding of bias or prejudice.

☐ Affirmative finding victim was younger than 17 years of age at time of offense (20.02, 20.03, 20.04).

☐ Affirmative finding victim was younger than 14 years of age at time of offense (62.001)

☐ Serve_____days in the Dallas County Jail to begin_____.

☐ Work Release ☐ Off Work Hours ☐ Weekends_____.

☐ Sentence to run: ☐ Concurrently ☐ Consecutively with cause number(s): _____.

■ Time Credit: From 2/13/21-2/17/21; 2/15/23-2/21/23 To 6/15/23-6/21/23; 8/14/23-8/16/23; 8/31/2023 - 10/3/2023

☐ Have no contact with co-defendant(s), to-wit:_____.

☐ Testify honestly about any co-defendant's participation in this offense, to-wit:_____.

☐ Have no direct or indirect communication with the victim,_____, and his/her family and maintain a distance of at least 50 yards from the victim's residence or place of employment.

☐ Participate in and successfully complete ☐ SAFP Program in the Institutional Division and aftercare program ☐ JCCJTC program at Wilmer.

☐ Participate in and successfully complete ☐ ISF – cognitive track ☐ ISF – substance abuse track ☐ ISF – both tracks.

☐ 12.44(a) ☐ 12.44(b)

■ Other: ~~dismiss misdemeanors~~

JZ HW

COMPLY WITH ALL OTHER CONDITIONS OF COMMUNITY SUPERVISION AS DIRECTED BY THE SUPERVISION OFFICER.

Rev. May 2023

COURT'S ADMONITIONS TO DEFENDANT

1. The offense of Possession of Position Isomers of Cocaine <1G as charged in (or as a lesser included offense of) the charging instrument has a range of punishment (as enhanced, if applicable) of (check one below):

- ☐ **Capital Offense (Death Penalty Waived):** Life without parole in the Institutional Division of the Texas Department of Criminal Justice.
- ☐ **1st Degree Felony:** Life or any term not more than 99 years or less than 5 years in the Institutional Division of the Texas Department of Criminal Justice and an optional fine not to exceed $10,000.
- ☐ **2nd Degree Felony:** A term not more than 20 years or less than 2 years confinement in the Institutional Division of the Texas Department of Criminal Justice and an optional fine not to exceed $10,000.
- ☐ **3rd Degree Felony:** A term not more than 10 years or less than 2 years confinement in the Institutional Division of the Texas Department of Criminal Justice and an optional fine not to exceed $10,000.
- ☑ **State Jail Felony:** A term not more than 2 years or less than 180 days confinement in a State Jail and an optional fine not to exceed $10,000.
- ☐ **Habitual Offender:** Life or a term not more than 99 years or less than 25 years confinement in the Institutional Division of the Texas Department of Criminal Justice.
- ☐ **1st Degree Felony Enhanced:** Life or any term not more than 99 years or less than 15 years in the Institutional Division of the Texas Department of Criminal Justice and an optional fine not to exceed $10,000.
- ☐ **2nd Degree Felony Enhanced:** Life or any term not more than 99 years or less than 5 years in the Institutional Division of the Texas Department of Criminal Justice and an optional fine not to exceed $10,000.
- ☐ **3rd Degree Felony Enhanced:** A term not more than 20 years or less than 2 years confinement in the Institutional Division of the Texas Department of Criminal Justice and an optional fine not to exceed $10,000.
- ☐ **State Jail Felony punished as 2nd Degree Felony:** A term not more than 20 years or less than 2 years confinement in the Institutional Division of the Texas Department of Criminal Justice and an optional fine not to exceed $10,000. **State Jail Felony punished as 3rd Degree Felony:** A term not more than 10 years or less than 2 years confinement in the Institutional Division of the Texas Department of Criminal Justice and an optional fine not to exceed $10,000. **State Jail Felony Punished as Class A Misdemeanor (12.44(a)):** A term of up to 1 year confinement in the Dallas County Jail, or a fine not to exceed $4,000, or both such confinement and fine.
- ☐ **State Jail Felony Reduced to a Class A Misdemeanor (12.44(b)):** A term of up to 1 year confinement in the Dallas County Jail, or a fine not to exceed $4,000, or both such confinement and fine.
- ☐ **Other:**_____.

2. The recommendations of the prosecuting attorney are not binding on the Court. If a plea agreement does exist, the Court will inform you whether it will follow or reject the agreement in open court and before any finding on your plea. Should the Court reject any plea agreement, you will be permitted to withdraw your plea.

3. If the punishment assessed does not exceed the agreement between you and the prosecutor, the Court must give its permission to you before you may appeal on any matter in this case except for those matters raised by written motions prior to trial.

4. If you are not a citizen of the United States of America, a plea of guilty or nolo contendere may, and under current Federal immigration rules is almost certain to, result in your deportation, removal, exclusion from admission to the United States, or the denial of naturalization.

5. You will be required to meet the registration requirements of Chapter 62 of the Code of Criminal Procedure (CCP) if you are convicted or place on deferred adjudication for an offense for which a person is subject to the registration requirements under Chapter 62 CCP.

6. If the Court defers adjudicating your guilt and places you under community supervision, on violation of any condition you may be arrested and detained as provided by law. You are then entitled to a hearing limited to a determination by the Court whether to proceed with an adjudication of guilt on the original charge. After adjudication of guilt, all proceedings, including the assessment of punishment and your right to appeal, continue as if adjudication of guilt had not been deferred.

7. If the Court defers an adjudication of guilt and places you on community supervision, you may have the right to petition the Court for an order of non-disclosure after successfully completing community supervision, unless you are ineligible due to the nature of this offense or your criminal history.

8. If the Court places you on community supervision, after satisfactorily fulfilling the conditions of community supervision and on expiration of the period of community supervision, the court is authorized to release you from the penalties and disabilities resulting from the offense as provided by Article 42A.701(f) CCP.

9. If you are found guilty in the aforementioned cause, the Court will make an affirmative finding that you have been found guilty of a felony offense. You are instructed that a felony conviction impacts your right to vote in the State of Texas. Once the judgment is entered and any appeals are exhausted, you will **not** be qualified to vote in Texas. To become qualified to vote in the State of Texas after having been finally convicted of a felony, you must: 1) fully discharge your sentence, including any term of incarceration, parole, or supervision, 2) have completed your period of probation as ordered by the Court, or 3) have been pardoned or otherwise released from the resulting disability to vote.

DEFENDANT'S WAIVER OF RIGHTS AND JUDICIAL CONFESSION

With the Court's approval, the defendant herein states that he/she:

1. Understands that he has a right to be charged by an indictment returned by a grand jury, and to be served with a copy of the indictment. If an indictment has not been returned in this case, the defendant waives those rights, and agrees to be tried on an information.
2. Is the same person charged in the charging instrument.
3. Waives any and all defects, errors, or irregularities, whether of form or substance, in the charging instrument.
4. Waives arraignment and formal reading of the charging instrument.
5. Waives the ten (10) days allowed to prepare for trial after the appointment of counsel and agrees to proceed on this date.
6. Waives the preparation of a presentence investigation report and/or postsentence investigation report.
7. Waives the right to a jury trial on both guilt and punishment.
8. Waives any and all due diligence claims.
9. Waives the right to subpoena witnesses and have them testify on his/her behalf.
10. Waives the right to remain silent as to guilt and punishment and agrees to testify.
11. Waives the right to appeal to the Court of Appeals.
12. Waives the right to urge a motion for new trial.
13. Waives any right under Arts. 1.14(a) and 38.43, Code of Criminal Procedure, or any other law requiring the State of Texas to preserve evidence containing biological material and agrees that all law enforcement agencies possessing evidence related to this case may dispose of it without further notice to him/her, his/her attorney, or the Court.
14. Waives the right to confront and cross-examine the State's witnesses, and consents to the introduction of evidence against him/her in the form of written and oral stipulations of evidence and testimony, testimony by affidavit, written statements of witnesses, and any other documentary evidence.
15. Waives the right to discovery beyond materials already produced or inspected in the case, and agrees that he/she has received all information necessary to enter his/her plea and dispose of the case.
16. Has had an adequate opportunity to consult with his/her attorney who has explained his/her rights under the constitutions and laws of the United States and the State of Texas and is fully satisfied with the representation provided by his/her attorney.
17. Has had sufficient time to consult with an immigration attorney if so desired, and fully understands the immigration consequences of his/her plea.
18. Understands that child support, restitution, child health care costs, court fees and costs, fines, and any other court order, judgment, or writ may be collected from monies deposited in his/her inmate trust account.
19. a) Waives the requirement under Article 42A.301 of the Code of Criminal Procedure that a risk and needs assessment be conducted prior to the Court determining the initial conditions of Defendant's community supervision in this cause, b) understands the Court will set initial conditions of community supervision prior to a risk and needs assessment being conducted, c) understands a risk and needs assessment will be done after the Court has accepted my plea of guilty or nolo contendere, and d) understands based on the results of the risk and needs assessment, the Court may modify the conditions and order additional conditions of community supervision.

20. Understands that under the Uniform Extradition Act, should he/she be charged with a violation of his/her community supervision and be arrested in another state, he/she has the right to require the issuance and service of a warrant of extradition, the right to hire legal counsel, or, if indigent, to have counsel appointed, and the right to apply for a writ of habeas corpus to contest his/her arrest and return to this State. Understanding this right, he/she voluntarily and knowingly waives his/her rights under the Extradition Act, waives Extradition, and waives his/her right to contest his/her return to the State of Texas from any jurisdiction where he/she may be found. He/she understands and agrees that such waiver is irrevocable.

21. ***JUDICIALLY CONFESSES*** **and admits to committing the offense of**
Possession of Position Isomers of Cocaine <1G
exactly as charged in the charging instrument or as a lesser included offense of the offense alleged in the charging instrument.

22. ***PLEADS TRUE*** **to the ❑FIRST ❑SECOND ❑ ALL of the enhancement paragraphs which are contained in charging instrument, and judicially confesses that he/she is the same person who was previously duly and legally convicted of the offense(s) alleged therein.**

23. Defendant waives any transcription through a certified court reporter of this plea.

DEFENDANT'S APPROVAL

I, the defendant herein, do acknowledge that:

1. My attorney has explained to me, and I have read and understand the foregoing "Plea Agreement", "Court's Admonitions to Defendant", and "Defendant's Waiver of Rights and Judicial Confession".
2. My attorney has explained to me, and I understand the legal effects of waiving my rights and the consequences of my plea.
3. I knowingly, freely, and voluntarily waive my rights, plead "GUILTY" or "NOLO CONTENDERE", and consent to the stipulation of facts.
4. I request that the Court accept my plea, agreements, waivers, statements, and stipulations.

08/16/23
Date

Defendant's signature

PAUL ANAH
Defendant's printed name

DEFENSE ATTORNEY'S APPROVAL

I, the attorney of record for the defendant herein, being a licensed member in good standing of the State Bar of Texas, do hereby certify that:

1. The defendant has a sufficient present ability to consult with me with a reasonable degree of rational understanding, and he/she has a rational as well as factual understanding of the proceedings against him/her.
2. I have read the foregoing "Plea Agreement", "Court's Admonitions to Defendant", and "Defendant's Waiver of Rights and Judicial Confession", fully explained each of them to the defendant, and I am satisfied that he/she understands each of them.
3. I have explained to the defendant the legal effects of waiving his/her rights and the legal consequences of his/her plea, and I am satisfied that he/she understands these rights and the legal consequences of his/her plea.
4. I am satisfied that the defendant's plea, agreements, waivers, statements, and stipulations are knowingly, freely, and voluntarily made, and I do hereby approve and consent to each of them.
5. I acknowledge receipt or inspection of all discovery materials as recorded in the Discovery Log and Acknowledgment of Discovery Rights signed by the parties and filed with the Court as required under Art. 39.14 of the Tex. Code of Criminal Procedure.

8/16/2023
Date

Attorney for Defendant - signature

Henry Wasonga
Attorney for Defendant – printed name

24103981
State Bar No.

STATE'S APPROVAL

THE STATE OF TEXAS, by and through its Criminal District Attorney, upon the acceptance and approval by the Court of the defendant's waivers and stipulations of fact herein, waives its right to a trial by jury. The State further attests that requirements of Art. 39.14 under the Tex. Code of Criminal Procedure have been complied with to the best of its knowledge.

JOHN CREUZOT, Criminal District Attorney
Dallas County, Texas

8/16/23
Date

BY: _____
Attorney for State - signature

Zachariah
Attorney for State – printed name

24079622
State Bar No.

COURT'S APPROVAL

The Court finds the following:

1. The defendant has a sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding and has a rational as well as factual understanding of the proceedings against him or her.
2. The defendant has the age, maturity, and intelligence to understand and does knowingly understand his or her rights with regard to the plea agreement, the admonishments, and waiver of rights and judicial confession.
3. The defendant does knowingly waive his or her rights as described therein.
4. The defendant does understand his or her rights regarding stipulations and does knowingly waive his or her rights to have such facts proved otherwise.
5. The defendant does knowingly stipulate and agree that the facts contained in the "Defendant's Waiver of Rights and Judicial Confession" are true and correct.
6. The defendant does knowingly request that neither a pre- or post-sentence investigation be made.
7. The Court acknowledges that the parties have represented they have complied with Article 39.14(j) of the Texas Code of Criminal Procedure.

IT IS THEREFORE ORDERED that the defendant's waivers as they appear in the aforesaid instruments be and are hereby approved, consented to, and accepted by this court; that the stipulations be and are hereby approved, consented to, and accepted by this court, and, said instruments are hereby ORDERED filed in the papers of this cause.

SIGNED AND ENTERED ON Oct. 3, 2023

Lisa Lawrence Mays
JUDGE PRESIDING

The State of Texas vs. PAUL FUMANYA ANAH 283rd

DOB: [redacted] Sex: Male Race: Black>

Offense	Agency
POSS CS PG1 <1G	TXDPD0000

FILED
2023 AUG 16 AM 10:05
FELICIA PITRE
DISTRICT CLERK
DALLAS CO. TEXAS
DEPUTY

Cause No. F2152337

THE STATE OF TEXAS	§	IN THE 283rd Judicial District Court
VS.	§	OF
PAUL FUMANYA ANAH	§	DALLAS COUNTY, TEXAS

JUDICIAL CONFESSION

Comes now Defendant in the above cause, in writing and in open Court, and consents to the stipulation of the evidence in this case and in so doing expressly waives the appearance, confrontation and cross-examination of witnesses. I further consent to the introduction of this Judicial Confession, and testimony orally, by affidavits, written statements of witnesses and other documentary evidence. Accordingly, having waived my Federal and State constitutional right against self-incrimination, and after having been sworn, upon oath, I judicially confess to the following facts and agree and stipulate that these facts are true and correct and constitute the evidence in this case:

on or about the 13th day of February, 2021, in Dallas County, Texas, I did then and there intentionally and knowingly possess a controlled substance, to-wit: ~~COCAINE,~~ (32) positron isomers of cocaine in an amount of less than one gram, including adulterants and dilutants,

I further judicially confess that I committed the offense with which I stand charged exactly as alleged in the indictment in this cause.

APPROVED BY:

Attorney for Defendant

Defendant

SWORN TO AND SUBSCRIBED before me on the 3 day of Oct, 2023

APPROVED BY:

Assistant District Attorney

FELICIA PITRE, CLERK
DISTRICT COURTS OF
DALLAS COUNTY, TEXAS

By: Deputy District Clerk

Defendant's agreement to stipulate and waiver of confrontation and cross-examination of witnesses are in all things approved by the Court. The above Judicial Confession is hereby approved by the Court.

PRESIDING JUDGE

CASE NO. F-21-52337 COUNT NO.
INCIDENT NO./TRN: 9250167172

THE STATE OF TEXAS	§	IN THE 283RD JUDICIAL DISTRICT COURT
V.	§	
PAUL FUMANYA ANAH	§	DALLAS COUNTY, TEXAS
STATE ID NO.: TX-50310738	§	

ORDER OF DEFERRED ADJUDICATION

Judge Presiding:	LELA LAWRENCE MAYS	Date Proceedings Deferred:	10/03/2023
Attorney for State:	JACOB ZACHARIAH 24079622	Attorney for Defendant:	HENRY WASONGA 24103981

Offense: POSS CS

Charging Instrument: INDICTMENT	Statute for Offense: 481.115(B) Health and Safety Code
Date of Offense: 02/13/2021	Defendant waived the right to trial by jury and entered the plea below: GUILTY
Degree of Offense: STATE JAIL FELONY	Findings on Deadly Weapon: N/A
1st Enhancement Paragraph: N/A	Finding on 1st Enhancement Paragraph: N/A
2nd Enhancement Paragraph: N/A	Findings on 2nd Enhancement Paragraph: N/A

Terms of Plea Bargain (if any): or ☐ Terms of Plea Bargain are attached and incorporated herein by this reference.
2 YEARS DEFERRED PROBATION, NO FINE

ADJUDICATION OF GUILT DEFERRED;

DEFENDANT PLACED ON DEFERRED ADJUDICATION COMMUNITY SUPERVISION.

PERIOD OF DEFERRED ADJUDICATION COMMUNITY SUPERVISION: 2 YEARS.

CONFINEMENT AS A CONDITION OF DEFERRED ADJUDICATION COMMUNITY SUPERVISION:

☐ The Court ORDERS Defendant confined in ☐ THE COUNTY JAIL ☐ A STATE JAIL FACILITY as a condition of deferred adjudication community supervision. The period of confinement as a condition of community supervision starts when Defendant arrives at the designated facility, absent a special order to the contrary.

Fines:	Court Costs:	Restitution:	Restitution Payable to:
$ 0.00	$ 290.00	$	(See special finding or order of restitution which is incorporated herein by this reference.)

☐ Defendant is required to register as sex offender in accordance with Chapter 62, Tex. Code Crim. Proc.
(For sex offender registration purposes only) The age of the victim at the time of the offense was N/A .

Was the victim impact statement returned to the attorney representing the State? N/A

This cause was called and the parties appeared. The State appeared by her District Attorney as named above.
Counsel / Waiver of Counsel (select one)
☒ Defendant appeared with Counsel.
☐ Defendant appeared without counsel and knowingly, intelligently, and voluntarily waived the right to representation by counsel in writing in open court.

Both parties announced ready for trial. Defendant waived the right of trial by jury and entered the plea indicated above. The Court admonished Defendant. It appeared to the Court that Defendant was mentally competent to stand trial, made the plea freely and voluntarily, and was aware of the consequences of the plea. The Court received the plea and entered it of record. Having heard the evidence submitted, the Court FINDS

that such evidence substantiates Defendant's guilt. However, the Court **FINDS** that it is in the best interest of society and Defendant to defer proceedings without entering an adjudication of guilt and to place Defendant on deferred adjudication community supervision.

Therefore, the Court **ORDERS** no judgment entered at this time. The Court further **ORDERS** Defendant placed on deferred adjudication community supervision for the period of time indicated above as long as Defendant abides by the conditions of the deferred adjudication community supervision.

The Court **FINDS** that the Presentence Investigation, if so ordered, was done according to the applicable provisions of Subchapter F, Chapter 42A, Tex. Code Crim. Proc.

After having conducted an inquiry into Defendant's ability to pay, the Court **ORDERS** Defendant to pay the fines, court costs, reimbursement fees, and restitution as indicated above and further detailed below.

The document setting forth the conditions of deferred adjudication community supervision is attached and incorporated herein by this reference.

Fines Imposed Include (check each fine and enter each amount as pronounced by the court):

- ☐ General Fine (§12.32, 12.33, 12.34, or 12.35, Penal Code, Transp. Code, or other Code) $ (not to exceed $10,000)
- ☐ Child Abuse Prevention Fine (Art. 102.0186, Code Crim. Proc.) $ ($100)
- ☐ EMS, Trauma Fine (Art. 102.0185, Code Crim. Proc.) $ ($100)
- ☐ Family Violence Fine (Art. 42A.504 (b), Code Crim. Proc.) $ ($100)
- ☐ Juvenile Delinquency Prevention Fine (Art. 102.0171(a), Code Crim. Proc.) $ ($50)
- ☐ State Traffic Fine (§ 542.4031, Transp. Code) $ ($50)
- ☐ Children's Advocacy Center Fine - as Cond of CS (Art. 42A.455, Code Crim. Proc.) $ (not to exceed $50)
- ☐ Repayment of Reward Fine (Art. 37.073/42.152, Code Crim. Proc.) $ (To Be Determined by the Court)
- ☐ Repayment of Reward Fine - as Cond of CS (Art. 42A.301 (b) (20), Code Crim. Proc.) $ (not to exceed $50)

Furthermore, the following special findings or orders apply:

____.

Signed 27th day of December, 2023.

Lela Lawrence Mays

LELA LAWRENCE MAYS
JUDGE PRESIDING

BY: ANDREW SALAZAR

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