

Federal Sentencing

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GUIDE

**Federal Sentencing Guidelines
Cases From All Circuits**

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IN THIS ISSUE:

- 5th Circuit does not decide if role and trust increases must be based on cross-referenced offense. Pg. 1.
- 6th Circuit reverses compassionate release because claim should have been raised in § 2255 motion. Pg. 2
- 7th Circuit reverses for failure to find drug distribution was “reasonably foreseeable.” Pg. 2
- 8th Circuit reverses where court’s reasons for sentence contradicted PSR. Pg. 2
- 1st Circuit denies safety valve for failure to provide complete information. Pg. 3
- 9th Circuit finds no right to “keep and bear arms” during drug offense. Pg. 3
- 4th Circuit says defendant’s masturbation during video call showed “sexual contact.” Pg. 3
- Supreme Court holds § 924(j) firearms sentence need not be consecutive, despite § 924(c). Pg. 4
- 3d Circuit says Hobbs Act robbery is a “crime of violence.” Pg. 4
- 9th Circuit reverses for failure to prove large capacity magazine by clear and convincing evidence. Pg. 5
- 3d Circuit says guideline for illegal reentry after a prior felony includes conspiracy. Pg. 5
- 4th Circuit enforces waiver of appeal despite defendant’s focus on the guidelines. Pg. 7

Guidelines Sentencing, Generally

5th Circuit allows double counting prior conviction to increase offense level and in criminal history. (125) (330) Defendant pleaded guilty to being a felon in possession of a firearm. The district court used his prior felony conviction to enhance his offense level under § 2K2.1(a)(4) and to increase his criminal history category. Defendant argued that this was improper double counting. The Fifth Circuit found no error, noting that that the guidelines allow double counting, unless prohibited. *U.S. v. Lopez*, __ F.4th __ (5th Cir. June 13, 2023) No. 22-40121.

Application Principles, Generally (Chapter 1)

5th Circuit does not decide if role and trust increases must be based on cross-referenced offense. (150)(420) (450)(850) Defendant was convicted of obstruction and perjury. Because these offenses furthered a co-conspirator’s drug trafficking, the district court used the cross-reference in the perjury guideline, § 2J1.3(c) to sentence him under the drug guidelines. It then added two levels under § 3B1.1(c) for his role in suborning perjury, and two more levels for abuse of a position of trust under § 3B1.3. Defendant argued that because his offense level was based on the drug guidelines, the court was required by § 1B1.5(c) to limit his role and trust increases to his role in the drug-trafficking, not his offenses of conviction (perjury and obstruction of justice). The Fifth Circuit found “force” in this argument, citing *U.S. v. Arellanes-Portillo*, 34 F.4th 1132, 1138 (10th Cir. 2022), but found it unnecessary to decide the question because the district court said it would impose the same sentence regardless. *U.S. v. Scott*, __ F.4th __ (5th Cir. June 13, 2023) No. 21-30521.

5th Circuit says motion to reconsider sentence cannot substitute for compassionate release motion. (150) (750) In *U.S. v. Healy*, 376 U.S. 75, 78, 84 S.Ct. 553, 11 L.Ed.2d 527 (1964), the Supreme Court held that a motion to reconsider a sentence tolls the time to file a notice of appeal until the motion to reconsider is resolved. In

this case, however, defendant's motion to reconsider was (in part) a motion for compassionate release under 18 U.S.C. § 3582(c), which expressly states that a district court "may not modify a term of imprisonment once it has been imposed except" in a few limited circumstances. The district court denied the motion to reconsider for lack of jurisdiction, and the Fifth Circuit affirmed by an equally divided court. *U.S. v. Hoffman*, __ F.4th __ (5th Cir. June 9, 2023) No. 20-30323.

6th Circuit reverses compassionate release because claim should have been raised in § 2255 motion. (150)(880)

In 2006, defendant was convicted of participating in a murder-for-hire conspiracy. He was serving a mandatory life sentence when he filed a compassionate release motion under 18 U.S.C. § 3582, alleging that his original sentence violated *Apprendi v. New Jersey*, 530 U.S. 466 (2000), because the district court had found that death resulted from the conspiracy, without submitting that question to the jury. The district court granted the motion, finding that the error plus defendant's rehabilitation constituted "extraordinary and compelling" circumstances warranting defendant's immediate release. The government appealed, and the Sixth Circuit reversed, holding that defendant's challenge to his sentence should have been brought under 28 U.S.C. § 2255, and a compassionate release motion cannot substitute. Moreover, defendant's rehabilitation was not "extraordinary and compelling." *U.S. v. West*, __ F.4th __ (6th Cir. June 9, 2023) No. 22-2037.

7th Circuit reverses for failure to find drug distribution was "reasonably foreseeable." (170)(275)

Defendant was convicted of drug trafficking conspiracy. At sentencing, the district court applied the "relevant conduct" guideline, § 1B1.3, and held defendant responsible for all the drugs the conspiracy had distributed. The Seventh Circuit reversed because the district court failed to find that the drug distribution was "reasonably foreseeable" to defendant. *U.S. v. Granger*, __ F.4th __ (7th Cir. June 9, 2023) No. 21-2874.

5th Circuit finds other firearm was relevant conduct for felon in possession. (175)(330)

Defendant pleaded guilty to being a felon in possession of a firearm. At sentencing, the court added 4 levels under § 2K2.1(b)(6)(B) because defendant used a different firearm in an assault two years after he possessed the firearm that led to his conviction here. The Fifth Circuit found that the other firearm was relevant conduct under § 1B1.3(a) and upheld the enhancement. *U.S. v. Lopez*, __ F.4th __ (5th Cir. June 13, 2023) No. 22-40121.

Offense Conduct, Generally (Ch. 2)

5th Circuit upholds loss calculation based on trial testimony. (219)

Defendant, a DEA agent, was convicted of stealing money from the government. The district court calculated the loss to the government under § 2B1.1. Defendant argued that there were discrepancies in how the district court calculated loss. The Fifth Circuit disagreed, finding that the district court backed up its calculation with trial testimony. *U.S. v. Scott*, __ F.4th __ (5th Cir. June 13, 2023) No. 21-30521.

8th Circuit reverses where court's reasons for sentence contradicted PSR. (240)

Defendant was convicted of drug trafficking. The guidelines range was 63 to 78 months, but the court varied upward to 120 months, stating that defendant was an "essential cog" in a drug conspiracy. The Eighth Circuit reversed, noting that the district court's finding contradicted its adoption of the presentence report's statement that defendant was only involved in a single transaction. *U.S. v. Dickson*, __ F.4th __ (8th Cir. June 15, 2023) No. 22-2002.

8th Circuit affirms within-guidelines sentence despite claim that district court mis-weighted factors. (240)

Defendant was convicted of drug trafficking, with a

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guidelines range of 360 months to life. The district court sentenced him to 360 months. Defendant argued that the district court failed to consider his mitigating circumstances. The Eighth Circuit found that the district court properly weighed the 18 U.S.C. § 3553(a) factors and defendant simply wanted to weigh them differently. *U.S. v. May*, __ F.4th __ (8th Cir. June 14, 2023) No. 21-3075.

8th Circuit says downward variance in drug case was not too high. (240)(741) Defendant was convicted of drug trafficking. His guidelines range was 420 months to life, but the court varied downward to 380 months. The Eighth Circuit rejected defendant's argument that the sentence was too high, ruling that it is "nearly inconceivable" that a sentence below the guidelines range could be substantively unreasonable. *U.S. v. Webb*, __ F.4th __ (8th Cir. June 12, 2023) No. 21-3830.

8th Circuit finds Texas offering to sell a controlled substance is a "serious drug offense." (245) Defendant was convicted of drug trafficking. At sentencing, the district court found that defendant's prior conviction for offering to sell a controlled substance under Texas Health & Safety Code § 481.112 was a "serious drug offense" requiring a mandatory minimum sentence under 21 U.S.C. § 851. The Eighth Circuit agreed, noting that it had already decided that the Texas statute was a "violent felony" under the Armed Career Criminal Act and that settled the issue for § 851. The panel concluded that defendant had waived any arguments to the contrary. *U.S. v. Johnson*, __ F.4th __ (8th Cir. June 16, 2023) No. 22-1447.

1st Circuit denies safety valve for failure to provide complete information. (246) Defendant was convicted of drug trafficking and faced a mandatory minimum sentence. At sentencing, the district court declined to apply the safety valve because it found defendant's trial testimony was not truthful and he did not give all the background information about his crime. The First Circuit affirmed, finding that the district court's interpretation of the evidence was reasonable. *U.S. v. Munera-Gomez*, __ F.4th __ (1st Cir. June 7, 2023) No. 22-1473.

8th Circuit upholds sentencing based on pure methamphetamine. (251) Defendant was convicted of trafficking in methamphetamine. At sentencing, the district court set his offense level higher based on pure methamphetamine. The Eighth Circuit affirmed, rejecting defendant's argument that the district court treated the guidelines as mandatory. Rather, the court reasonably deferred to the Guidelines and Congress in finding that pure meth

is more potent than a mixture or substance containing meth. *U.S. v. Webb*, __ F.4th __ (8th Cir. June 12, 2023) No. 21-3830.

9th Circuit finds no right to "keep and bear arms" during drug offense. (284) Defendant pleaded guilty to drug trafficking. At sentencing, the district court enhanced his offense level by two under § 2D1.1(b)(1) for possession of a firearm during the drug offense. Defendant argued that the increase was unconstitutional under *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S.Ct. 2111 (2022). The Ninth Circuit held that under well-established rules, defendant did not have the right to "keep and bear arms" during his drug offense. *U.S. v. Alaniz*, __ F.4th __ (9th Cir. June 13, 2023) No. 22-30141.

4th Circuit says defendant's masturbation during video call showed "sexual contact." (310) Defendant was convicted of enticing a minor to have sex. At sentencing, the district court enhanced defendant's offense level by two under § 2G2.1(b)(2)(A) for "sexual contact," because the victim masturbated during a video call. The Fourth Circuit upheld the enhancement, but on the basis that defendant engaged in masturbation during the calls to the victim. *U.S. v. Skinner*, __ F.4th __ (4th Cir. June 8, 2023) No. 22-4131.

8th Circuit affirms upward variance in child sex case based on dismissed counts. (310)(741) Defendant pleaded guilty to enticement of a minor. Defendant had a guidelines range of 188 to 235 months, but the parties agreed to recommend a sentence of 120 months. The district court departed and varied upward to 300 months based on counts that had been dismissed, the seriousness of the offense, and defendant's former position as a law enforcement officer. The Eighth Circuit affirmed, ruling that the district court's reasons for the sentence were not unreasonable. *U.S. v. Kistler*, __ F.4th __ (8th Cir. June 6, 2023) No. 22-1514.

5th Circuit upholds cross-reference from obstruction guideline to drug guideline. (320)(380) Defendant, a DEA agent, was convicted of obstruction of justice, among other offenses, because he had given false testimony at the trial of a drug dealer. The district court relied on the cross-reference in § 2J1.3(c)(1) to apply the guideline for accessory after the fact, § 2X3.1, which resulted in a higher offense level. Defendant argued that the cross-reference applied only when defendant sought to "avoid punishment" for his own offenses. The Fifth Circuit rejected this contention and found that defendant

became an accessory when he gave false testimony “in respect to” the drug dealer’s conviction. *U.S. v. Scott*, ___ F.4th ___ (5th Cir. June 13, 2023) No. 21-30521.

Supreme Court holds § 924(j) firearms sentence need not be consecutive, despite § 924(c). (330) Under 18 U.S.C. § 924(c)(1)(D)(ii), multiple convictions for carrying a firearm in relation to a crime of violence must be consecutive. Nevertheless, in a unanimous opinion written by Justice Jackson, the Supreme Court held that the bar against concurrent sentences does not apply to a sentence for causing the death of a person through the use of a firearm during crime of violence or drug trafficking crime under 18 U.S.C. § 924(j). The Court thus abrogated *U.S. v. Barrett*, 937 F.3d 126, 129, n. 2 (2d Cir. 2019); *U.S. v. Berrios*, 676 F.3d 118, 140–144 (3d Cir. 2012); *U.S. v. Bran*, 776 F.3d 276, 280–282 (4th Cir. 2015); and *U.S. v. Dinwiddie*, 618 F.3d 821, 837 (8th Cir. 2010). The Eleventh Circuit’s opinion in *U.S. v. Julian*, 633 F.3d 1250, 1252–1257 (11th Cir. 2011) was affirmed. *Lora v. U.S.*, 599 U.S. ___, ___ S.Ct. ___ (June 16, 2023).

3d Circuit says Hobbs Act robbery is a “crime of violence.” (330) Defendant was convicted of Hobbs Act robbery and carrying a firearm in relation to a crime of violence. He argued that his Hobbs Act robbery was not a crime of violence and thus was not a predicate offense for his firearms conviction. A “crime of violence” is an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another. The Third Circuit found that defendant’s aiding and abetting a Hobbs Act robbery was a “crime of violence.” *U.S. v. Stevens*, ___ F.4th ___ (3d Cir. June 12, 2023) No. 21-2844.

5th Circuit reiterates that guideline enhancements need not be proven beyond a reasonable doubt. (330) Defendant pleaded guilty to being a felon in possession of a firearm. The district court applied several guideline enhancements to increase his offense level. Defendant argued that the enhancements should have been proven beyond a reasonable doubt. The Fifth Circuit reiterated its holding in *U.S. v. Setser*, 568 F.3d 482 (5th Cir. 2009) and other cases, that the preponderance standard applies to enhancements. *U.S. v. Lopez*, ___ F.4th ___ (5th Cir. June 13, 2023) No. 22-40121.

6th Circuit says Ohio robbery is a “crime of violence.” (330) Defendant pleaded guilty to being a felon in possession of a firearm. The guideline for that offense, § 2K2.1(a)(4), sets a higher offense level if defendant has a prior conviction for a “crime of violence.” Defendant

had a prior conviction for robbery under Ohio Rev. Code § 2911.02(A). The Sixth Circuit found that the Ohio statute is categorically a “crime of violence.” *U.S. v. Carter*, ___ F.4th ___ (6th Cir. June 2, 2023) No. 22-3699.

7th Circuit affirms upward firearms variance despite mitigating claims. (330)(741) Defendant was convicted of being a felon in possession of a firearm. His guidelines range was 37 to 46 months, but the court varied upward to 78 months. Defendant argued that the district court did not consider his offense conduct, juvenile history, and the general lack of evidence surrounding deterrence. The Seventh Circuit found that the district court did consider defendant’s mitigating claims and also properly considered the applicable factors. *U.S. v. Saldana-Gonzalez*, ___ F.4th ___ (7th Cir. June 14, 2023) No. 22-1289.

8th Circuit says Missouri robbery is a “crime of violence.” (330) Defendant pleaded guilty to being a felon in possession of a firearm. The guideline for that offense, § 2K2.1(a), sets a higher offense level if defendant had a prior conviction for a “crime of violence,” which includes an offense that has as an element the use, attempted use, or threatened use of physical force against the person of another. Defendant had a prior conviction for second-degree robbery under Missouri Rev. Stat. § 569.030.1 (1979). The Eighth Circuit found the Missouri offense was a “crime of violence.” *U.S. v. Gordon*, ___ F.4th ___ (8th Cir. June 13, 2023) No. 22-2605.

8th Circuit says Iowa assault while displaying a dangerous weapon is a “crime of violence.” (330) Defendant pleaded guilty to possession of a firearm by a felon. The guideline for that offense, § 2K2.1(a), sets an enhanced offense level if defendant had a prior conviction for a “crime of violence.” A “crime of violence” includes an offense that has as an element the use, attempted use, or threatened use of physical force against the person of another. Defendant had a prior conviction under Iowa Code § 708.2(3) for assault while displaying a dangerous weapon. The Eighth Circuit found that the Iowa statute counts as a “crime of violence.” *U.S. v. Green*, ___ F.4th ___ (8th Cir. June 8, 2023) No. 22-1350.

8th Circuit finds defendant committed firearms offense “in connection” with another felony offense. (330) Defendant pleaded guilty to being a felon in possession of a firearm. At sentencing, the district court added four levels under § 2K2.1(b)(6)(B) for possessing the firearm “in connection with another felony offense.” The district court found that the other offense was felony interference with official acts, in violation of state law,

because it took officers three minutes to get the armed defendant out of the car in which he was a passenger. The Eighth Circuit affirmed, noting that defendant was armed when he committed the interference with official acts. *U.S. v. Green*, __ F.4th __ (8th Cir. June 8, 2023) No. 22-1350.

8th Circuit says downward firearms variance was not unreasonably high. (330)(741) Defendant pleaded guilty to possession of a firearm by a felon. The district court varied downward by 12 months and imposed a sentence of 108 months. Defendant argued that his sentence was still too high. The Eighth Circuit found it “nearly inconceivable” that the district court abused its discretion in varying downward, noting that the district court considered the applicable factors. *U.S. v. Green*, __ F.4th __ (8th Cir. June 8, 2023) No. 22-1350.

9th Circuit reverses for failure to prove large capacity magazine by clear and convincing evidence. (330)(755) Defendant pleaded guilty to being a felon in possession of a firearm. Guideline § 2K2.1(a)(4)(B), sets a higher offense level if the firearm is a “semiautomatic firearm that is capable of accepting a large capacity magazine,” which Note 2 says is 15 rounds. The district court applied § 2K2.1(a)(4)(B), but the Ninth Circuit reversed, noting that the government failed to produce the firearm at sentencing, and its expert was “equivocal” on whether the firearm could accept 15 rounds. The evidence thus failed to meet the clear and convincing evidence standard required because the enhancement raised the sentence range by 30 months. *U.S. v. Lucas*, __ F.4th __ (9th Cir. June 14, 2023) No. 22-50064.

3d Circuit says guideline for illegal reentry after a prior felony includes conspiracy. (340) Defendant was convicted of illegal reentry after deportation. Guideline § 2L1.2(b) provides for an increased sentence if the defendant has a prior conviction for “a felony offense.” Here, defendant had a prior conviction for conspiracy to distribute cocaine, and argued that subsection (b) did not apply to conspiracy convictions, citing *U.S. v. Nasir*, 17 F.4th 459 (3d Cir. 2021), which held that the commentary cannot be used to enlarge the guidelines. The Third Circuit found *Nasir* inapplicable because the illegal reentry guideline’s use of the words “felony offense” encompasses prior conspiracy convictions. *U.S. v. Garcia-Vasquez*, __ F.4th __ (3d Cir. June 5, 2023) No. 22-2219.

Adjustments, Generally (Ch. 3)

8th Circuit does not consider obstruction increase where defendant was a career offender. (460)(520) (850) Defendant was convicted of being a felon in possession of a firearm. At sentencing, the district court found that he was a career offender but also added two levels under § 3C1.1 for obstruction of justice. The Eighth Circuit found that it unnecessary to consider the obstruction enhancement because defendant’s career offender status increased his offense level beyond the obstruction enhancement. *U.S. v. McCoy*, __ F.4th __ (8th Cir. June 13, 2023) No. 22-2385.

Criminal History, Generally (§4A1.1)

8th Circuit says opinion on drug priors did not unforeseeably expand career offender guideline. (520) Defendant was convicted of drug trafficking, and the court sentenced him as a career offender, relying on *U.S. v. Henderson*, 17 F.4th 713 (8th Cir. 2021) which held that the term “controlled substance offense” in the career offender guideline, §4B1.1, is not controlled by federal law, but includes state drug offenses as well. On appeal, defendant argued that *Henderson* unforeseeably expanded the career offender provision, so due process barred the court from applying it in this case. The Eighth found no error, noting that *U.S. v. Evans*, 63 F.4th 1157 (8th Cir. 2023) had already rejected defendant’s argument. *U.S. v. Webb*, __ F.4th __ (8th Cir. June 12, 2023) No. 21-3830.

6th Circuit says North Carolina assault with a deadly weapon with intent to kill is a “violent felony.” (540) Defendant was convicted of being a felon in possession of a firearm. The Armed Career Criminal Act requires a 15-year minimum mandatory sentence if the defendant has three prior convictions for, among other offenses, a “violent felony.” A “violent felony” is defined in part as an offense that has as an element the use, attempted use, or threatened use of physical force against the person of another. In *Borden v. U.S.*, 141 S.Ct. 1817 (2021), the Supreme Court held that a “violent felony” must be an intentional or knowing offense. Defendant had a prior conviction for assault with intent to kill under North Carolina Gen. Stat. § 14-32(a). The Sixth Circuit held that the North Carolina offense required intentional conduct and therefore was a “violent felony.” *U.S. v. Smith*, __ F.4th __ (6th Cir. June 9, 2023) No. 21-5811.

8th Circuit bases Armed Career Criminal sentence on drugs found near firearm. (540) Defendant was convicted of being a felon in possession of a firearm. The court sentenced him as an Armed Career Criminal under § 4B1.4(b)(3)(A) because he possessed the firearm near drugs. On appeal, defendant complained that the drugs were found in his bedroom, while the gun was found in his vehicle. The Eighth Circuit found no error, noting that defendant was seen leaving his vehicle shortly before he was discovered in the bedroom. *U.S. v. McCoy*, __ F.4th __ (8th Cir. June 13, 2023) No. 22-2385.

11th Circuit says finding Florida drug offense was “serious drug offense” was not plain error. (540) Defendant was convicted of felon in possession of a firearm. Under the Armed Career Criminal Act, a defendant with three prior convictions for a “serious drug offense” must receive a minimum mandatory 15-year sentence. Defendant had a prior conviction for sale, delivery, and possession with intent to distribute a controlled substance, in violation of Florida Stat. § 893.13(1)(a)(1). Reviewing only for plain error, the Eleventh Circuit found that defendant had not identified an error that was plain or obvious under current law. *U.S. v. Laines*, __ F.4th __ (11th Cir. June 6, 2023) No. 20-11907.

Determining the Sentence (Ch. 5)

1st Circuit upholds restitution of substantial amount in defendant’s inmate trust account. (610) Defendant was convicted of child pornography offenses and ordered to pay immediate restitution on a schedule fixed by the Bureau of Prisons. When the government learned that defendant had a substantial amount of money in his inmate trust account, it obtained an order transferring the money to satisfy his restitution obligation. On appeal, the Third Circuit affirmed, holding that this case was governed by 18 U.S.C. § 3664(n), which requires inmates to turn over “substantial resources” acquired while incarcerated to satisfy restitution obligations. The statute makes no exception for amounts that defendant suddenly has in his inmate trust account. *U.S. v. Saemisch*, __ F.4th __ (1st Cir. June 5, 2023) No. 22-1076.

7th Circuit says restitution can be offset by FTCA settlement. (610) Defendant was convicted of bank fraud and ordered to pay restitution. However, the government also owed defendant money from a Federal Tort Claims Act settlement. Instead of paying defendant, the government sought to reduce defendant’s restitution obligation by the amount of the FTCA settlement. The Seventh Circuit ruled that the government could offset defen-

dant’s restitution obligation with the FTCA settlement. *Stacy v. U.S.*, __ F.4th __ (7th Cir. June 2, 2023) No. 22-2003.

Sentencing Hearing (§6A)

1st Circuit finds defendant waived claim that judge showed bias at sentencing. (770)(850) At defendant’s sentencing hearing for drug trafficking, the judge stated that defendant “came into this country illegally and remained an illegal alien while you committed this and no doubt other crimes.” For the first time on appeal, defendant argued that these remarks showed that the judge was biased. The First Circuit found that defendant waived this argument because he made no effort to carry his burden under the applicable statute or rule. *U.S. v. Munera-Gomez*, __ F.4th __ (1st Cir. June 7, 2023) No. 22-1473.

7th Circuit says judge’s remarks at sentencing did not require a remand. (770) Defendant was convicted of being a felon in possession of a firearm. At sentencing, the district court stated that it was afraid to drive on the expressway because of defendants like him and there was a shooting last week a mile from where the judge had grown up. The Seventh Circuit found these remarks “questionable” because defendant was not convicted of a drive-by shooting, only of gun possession, but it held that the district court had not crossed the line and declined to remand the case. *U.S. v. Saldana-Gonzalez*, __ F.4th __ (7th Cir. June 14, 2023) No. 22-1289.

7th Circuit finds district court did not start with statutory maximum. (770) At defendant’s sentencing for being a felon in possession of a firearm, defendant argued that the district court started from the statutory maximum and went down from there. The Seventh Circuit disagreed, noting that the district court stated that it was mindful of the Supreme Court’s decision in *Gall v. U.S.*, 552 U.S. 38 (2007), which stated that the guidelines were the starting point for sentencing. The district court also said it knew it had to consider the guidelines range. *U.S. v. Saldana-Gonzalez*, __ F.4th __ (7th Cir. June 14, 2023) No. 22-1289.

8th Circuit finds court’s statements about defendant’s criminal history were accurate. (770) At defendant’s sentencing for drug trafficking, the district court remarked that defendant’s criminal history “consisted of violent acts and possession of firearms.” The Eighth Circuit found the district court’s statement accurate because defendant had a history of battery and possessing

firearms. *U.S. v. May*, __ F.4th __ (8th Cir. June 14, 2023) No. 21-3075.

Plea Agreements, Generally (§6B)

4th Circuit enforces waiver of appeal despite defendant's focus on the guidelines. (790) Defendant pleaded guilty to child pornography offenses. His plea agreement allowed him to challenge whether he had a prior conviction that triggered the mandatory minimum in 18 U.S.C. § 2252A(b)(2), but did not allow him to appeal that issue. He filed an appeal that appeared to focus on the guidelines, not the statute. But the Fourth Circuit enforced the waiver and dismissed the appeal, ruling that his underlying claim on appeal was that he was not subject to the mandatory minimum—an issue that was barred by his waiver of appeal. *U.S. v. Sturtz*, __ F.4th __ (4th Cir. June 14, 2023) No. 21-4322.

Appeal of Sentence (18 U.S.C. §3742)

3d Circuit says sentence was not moot where district court could reduce supervised release. (850) Defendant appealed his conviction for illegally entering the U.S. after being convicted of a felony. By the time his appeal was heard, defendant had served his sentence and was to be deported soon. The Third Circuit found that his appeal was not moot because, if the sentence was reversed, the district court could credit any excess imprisonment against his remaining supervised release term. *U.S. v. Garcia-Vasquez*, __ F.4th __ (3d Cir. June 5, 2023) No. 22-2219.

Habeas Corpus/28 U.S.C. §2255 Motions

9th Circuit says habeas claim cannot be brought to challenge covid-19. (880) Defendants brought a motion under 28 U.S.C. § 2241 arguing that the covid-19 epidemic constituted a condition of confinement and the Bureau of Prisons could not provide adequate measures to combat it, requiring defendants' immediate release. The district court denied the § 2241 motions for lack of subject matter jurisdiction. The Ninth Circuit affirmed, finding that the district court properly dismissed the motions and was not required to treat defendants' motion as a civil rights suit. *Pinson v. Carvajal*, __ F.4th __ (9th Cir. June 8, 2023) No. 21-55175.

Topic Numbers In This Issue

125, 150, 170, 175
219, 240, 245, 246, 251, 275, 284
310, 320, 330, 340, 380
460
520, 540
610
741, 742, 755, 770. 790
850, 880

Table of Cases

Lora v. U.S., 599 U.S. __, __ S.Ct. __ (June 16, 2023). Pg. 4
Pinson v. Carvajal, __ F.4th __ (9th Cir. June 8, 2023) No. 21-55175. Pg. 7
Stacy v. U.S., __ F.4th __ (7th Cir. June 2, 2023) No. 22-2003. Pg. 6
U.S. v. Alaniz, __ F.4th __ (9th Cir. June 13, 2023) No. 22-30141. Pg. 3
U.S. v. Carter, __ F.4th __ (6th Cir. June 2, 2023) No. 22-3699. Pg. 4
U.S. v. Dickson, __ F.4th __ (8th Cir. June 15, 2023) No. 22-2002. Pg. 2
U.S. v. Garcia-Vasquez, __ F.4th __ (3d Cir. June 5, 2023) No. 22-2219. Pg. 5, 7
U.S. v. Gordon, __ F.4th __ (8th Cir. June 13, 2023) No. 22-2605. Pg. 4
U.S. v. Granger, __ F.4th __ (7th Cir. June 9, 2023) No. 21-2874. Pg. 2
U.S. v. Green, __ F.4th __ (8th Cir. June 8, 2023) No. 22-1350. Pg. 4, 5
U.S. v. Hoffman, __ F.4th __ (5th Cir. June 9, 2023) No. 20-30323. Pg. 2
U.S. v. Johnson, __ F.4th __ (8th Cir. June 16, 2023) No. 22-1447. Pg. 3
U.S. v. Kistler, __ F.4th __ (8th Cir. June 6, 2023) No. 22-1514. Pg. 3
U.S. v. Laines, __ F.4th __ (11th Cir. June 6, 2023) No. 20-11907. Pg. 6
U.S. v. Lopez, __ F.4th __ (5th Cir. June 13, 2023) No. 22-40121. Pg. 1, 2, 4
U.S. v. Lucas, __ F.4th __ (9th Cir. June 14, 2023) No. 22-50064. Pg. 5
U.S. v. May, __ F.4th __ (8th Cir. June 14, 2023) No. 21-3075. Pg. 3, 7
U.S. v. McCoy, __ F.4th __ (8th Cir. June 13, 2023) No. 22-2385. Pg. 5, 6
U.S. v. Munera-Gomez, __ F.4th __ (1st Cir. June 7, 2023) No. 22-1473. Pg. 3

U.S. v. Munera-Gomez, __ F.4th __ (1st Cir. June 7, 2023) No. 22-1473. Pg. 6

U.S. v. Saemisch, __ F.4th __ (1st Cir. June 5, 2023) No. 22-1076. Pg. 6

U.S. v. Saldana-Gonzalez, __ F.4th __ (7th Cir. June 14, 2023) No. 22-1289. Pg. 4, 6

U.S. v. Scott, __ F.4th __ (5th Cir. June 13, 2023) No. 21-30521. Pg. 1, 2, 4

U.S. v. Skinner, __ F.4th __ (4th Cir. June 8, 2023) No. 22-4131. Pg. 3

U.S. v. Smith, __ F.4th __ (6th Cir. June 9, 2023) No. 21-5811. Pg. 5

U.S. v. Stevens, __ F.4th __ (3d Cir. June 12, 2023) No. 21-2844. Pg. 4

U.S. v. Sturtz, __ F.4th __ (4th Cir. June 14, 2023) No. 21-4322. Pg. 7

U.S. v. Webb, __ F.4th __ (8th Cir. June 12, 2023) No. 21-3830. Pg. 3, 5

U.S. v. West, __ F.4th __ (6th Cir. June 9, 2023) No. 22-2037. Pg. 2