NONPRECEDENTIAL DISPOSITION
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United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Argued February 9, 2023
Decided August 2, 2023

Before

FRANK H. EASTERBROOK, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 22-1391

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

DERRICK T. NEVILLE, JR.,
Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Illinois, Western Division.

No. 3:17-cr-50032

Frederick J. Kapala,
Judge.

O R D E R

Derrick Neville pleaded guilty to possession with intent to distribute cocaine base and heroin and possession of a firearm as a felon. *See* 21 U.S.C. § 841(a)(1); 18 U.S.C. §§ 922(g)(1), 924(e). Overruling Neville's objection at resentencing (his prior sentence was vacated for reasons immaterial to this appeal), the district court held that Neville's 2014 Illinois conviction for possession with intent to deliver one to fifteen grams of cocaine, *see* 720 Ill. Comp. Stat. 570/401(c)(2), qualified as a "controlled substance offense" under Sections 4B1.1(a) and 4B1.2(b) of the United States Sentencing Guidelines. This, along with his other prior offenses, triggered the Guidelines' career-offender enhancement, which increased Neville's guidelines range of 100–125 months

to 151–188 months. After both parties presented arguments regarding the sentencing factors under 18 U.S.C. § 3553(a), the district court imposed a sentence of 130 months.

On appeal, Neville argues that the district court should not have applied the career-offender enhancement. First, he points out that Illinois's statutory definition of cocaine is broader than the federal definition of cocaine under the Controlled Substances Act, 21 U.S.C. § 802(6). Then, invoking the categorical approach announced in *Taylor v. United States*, 495 U.S. 575 (1990), Neville argues that his 2014 conviction cannot count as a "controlled substance offense" under U.S.S.G. § 4B1.1(a) and § 4B1.2(b).

We rejected this precise argument in *United States v. Ruth*, 966 F.3d 643, 644 (7th Cir. 2020). We reasoned there that the term "controlled substance offense" is defined broadly by the Sentencing Guidelines and "include[s] state-law offenses related to controlled or counterfeit substances punishable by imprisonment for a term exceeding one year." *Id.* at 652 (quoting *United States v. Hudson*, 618 F.3d 700, 703 (7th Cir. 2010)). We further concluded that a controlled substance is "any of a category of behavior-altering or addictive drugs, as heroin or cocaine, whose possession and use are restricted by law." *Id.* at 654 (quoting *Controlled Substance*, The Random House Dictionary of the English Language (2d ed. 1987)).

We have repeatedly reaffirmed *Ruth*, denying numerous requests to overrule it. *See, e.g.*, *United States v. Jones*, 56 F.4th 455, 503 (7th Cir. 2022), *cert. denied sub nom. Owens v. United States*, 143 S. Ct. 1766 (2023); *United States v. Ramirez*, 52 F.4th 705, 707 (7th Cir. 2022), *cert. denied sub nom. Ramirez v. United States*, 143 S. Ct. 2480 (2023); *United States v. Wallace*, 991 F.3d 810, 816–17 (7th Cir.), *cert. denied sub nom. Wallace v. United States*, 142 S. Ct. 362 (2021). What is more, since *Ruth*, "our position has gained, not weakened, as the dialogue among the circuits has continued." *Ramirez*, 52 F.4th at 715. And the Supreme Court has made it clear that the issue is not ready to be heard, notwithstanding tension between the circuits. *See Sisk v. United States*, 142 S. Ct. 785, 785 (2022) (denying certiorari); *Wallace*, 142 S. Ct. at 362 (same).

Despite this, Neville remains adamant that *Ruth* should be reexamined. He argues that the parties in *Ruth* never fully briefed or argued the specific issues of the text and history of the career-offender enhancement. This may be, but the issues were nonetheless fully considered in *Ruth*, as well as in *Wallace*. *See Wallace*, 991 F.3d at 816 ("The Sentencing Commission knew how to cross-reference federal statutory definitions in the guidelines. But § 4B1.2(b) 'does not incorporate, cross-reference, or in any way refer to the Controlled Substances Act.'") (quoting *Ruth*, 966 F.3d at 651).

Neville's arguments are no different than those we rejected in *Ruth*, *Wallace*, and other cases. We again decline to revisit *Ruth*, and the judgment of the district court is affirmed.