

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

October 20, 2021
Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JERRY JAMES KENDALL RITCHIE,

Defendant - Appellant.

No. 20-6069.

(D.C. No. 5:18-CR-00283-SLP-1)
(W.D. Okla.)

ORDER AND JUDGMENT*

Before **McHUGH**, **BALDOCK**, and **BRISCOE**, Circuit Judges.

A federal jury in Oklahoma convicted Defendant Ritchie on three counts of criminal misconduct: (1) possession with intent to distribute methamphetamine in violation of 21 U.S.C. § 841(a)(1), (2) possession of a firearm after a felony conviction in violation of 18 U.S.C. § 922(g)(1), and (3) possession of a firearm in furtherance of a drug-trafficking crime in violation of 18 U.S.C. § 924(c)(1)(A). Based on Defendant's § 924(c) conviction and the district court's determination that Defendant qualified as a career offender under U.S.S.G. § 4B1.1(a) as a result of two prior felony convictions for controlled substance offenses in the State of Oklahoma,

* This order and judgment is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Defendant's recommended guideline range was 360 months to life. *See* U.S.S.G. § 4B1.1(c)(3). Defendant did not object to the calculation of this guideline range at sentencing. The district court varied downward from that range and sentenced Defendant to 240-months' imprisonment. On appeal, Defendant now claims the district court committed plain error when it concluded he was a career offender within the meaning of U.S.S.G. § 4B1.1(a).¹ Our jurisdiction arises under 18 U.S.C. § 3742(a)(2). We summarily affirm.

Subsection (a) of U.S.S.G. § 4B1.1 defines a career offender to include those defendants who, among other requisites, have at least two prior felony convictions for a "controlled substance offense." Subsection (b) of U.S.S.G. § 4B1.2 in turn defines "controlled substance offense" as "an offense under federal or state law, punishable by imprisonment for a term exceeding one year, that prohibits the . . . distribution . . . of a controlled substance." Defendant does not deny that he has two prior felony convictions punishable by a term of imprisonment exceeding one year under an Oklahoma statute that prohibits the distribution of a controlled substance. Rather, Defendant argues that his prior state offenses do not qualify as "controlled substance offense[s]" under U.S.S.G. § 4B1.1(a) because the applicable Oklahoma criminal statute, which Defendant says is indivisible, defines "controlled

¹ In his opening brief, Defendant raised one other claim of error. This claim related to the district court's admission at trial of Rule 404(b) evidence. *See* Fed. R. Evid. 404(b). Defendant withdrew his Rule 404(b) claim prior to oral argument.

substance” more broadly than the federal Controlled Substances Act (CSA). *See* 21 U.S.C. 802(6). And, according to Defendant, the definition of a “controlled substance offense” in U.S.S.G. §4B1.2(b) restricts the meaning of this phrase as used in U.S.S.G. § 4B1.1(a) only to substances identified in the CSA.

Unfortunately for Defendant, our recent decision in *United States v. Jones*, No. 20-6112, slip op. at 2 (10th Cir. Oct. 19, 2021), forecloses his argument. In *Jones*, we held on *de novo* review that § 4B1.2(b) does not limit the meaning of a “controlled substance” to substances identified in the CSA. In other words, *Jones* tells us the district court here properly determined that Defendant’s prior felony drug offenses under Oklahoma law come within the meaning of U.S.S.G. § 4B.1.1(a) because they satisfy each of § 4B1.2(b)’s criterion. In addition to being offenses under a state law that prohibits the distribution of (or possession with an intent to distribute) a controlled substance, Defendant’s prior offenses are punishable by at least one year’s imprisonment. *See Jones*, slip op. at 6–7. Accordingly, the judgment of the district court is—

AFFIRMED.

Entered for the Court,

Bobby R. Baldock
United States Circuit Judge