

Third District Court of Appeal

State of Florida

Opinion filed August 26, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-1004
Lower Tribunal No. 17-609-A-K

Jeffrey Louis Smith,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal from the Circuit Court for Monroe County, Mark Wilson, Judge.

Eugene F. Zenobi, Criminal Conflict and Civil Regional Counsel, Third Region of Florida, and Jacqueline Rae Brandt, Assistant Regional Counsel, for appellant.

Ashley Moody, Attorney General, and Magaly Rodriguez, Assistant Attorney General, for appellee.

Before SCALES, HENDON and MILLER, JJ.

SCALES, J.

After a jury found appellant Jeffrey Louis Smith guilty of fleeing or attempting to elude police officers and of resisting arrest without violence,¹ the trial court sentenced Smith, respectively, to 65.4 months and 364 days in prison, to be served concurrently. Smith contends that the trial court, in determining this sentence, scored two of his past federal convictions incorrectly. Because we conclude that the trial court did not commit a scoresheet error, we affirm.

In 1989, Smith was convicted in the U. S. District Court, Southern District of Georgia of three counts related to his possession and distribution of approximately a kilogram of cocaine.² Sentencing guideline scoresheets reflect an offender's criminal history. Fla. R. Crim. P. 3.701(b)(4). Florida Rule of Criminal Procedure 3.701(d)(5)(B) provides that, for scoring a prior federal conviction, the trial court should look to an analogous or parallel state statute. The trial court found section 893.135(1)(b)1.c. of the Florida Statutes to be analogous to 21 U.S.C. 841(a)(1) and 841(b)(1)(B)(ii).

¹ The police interrupted Smith while he allegedly engaged in the sale of illegal drugs. Smith fled in his car. The jury convicted Smith of violating section 316.1935(1) of the Florida Statutes (fleeing or attempting to elude) and section 843.02 of the Florida Statutes (resisting an officer without violence).

² Smith was convicted of violating: (i) 21 U.S.C. 841(a)(1) (possession with intent to distribute cocaine); (ii) 21 U.S.C. 846 (conspiracy with intent to possess and distribute cocaine); and (iii) 18 U.S.C. 1952 (travel in interstate commerce to possess and distribute cocaine). Section 841(b)(1)(B)(ii) establishes the penalty for violation of section 841(a)(1) when the quantity of the cocaine is 500 grams or more.

Section 893.135(1)(b)1.c. makes the possession or distribution of cocaine in the quantity range of 400 grams to less than 150 kilograms a first-degree felony. The quantity range of both this state statute (400 grams to 150 kilograms) and the federal statute (500 grams or more) capture Smith's possession of approximately a kilogram in the federal case. These quantity ranges are elements of the criminal charge because they serve to increase an offender's punishment. U.S. v. Cotchery, 406 F. Supp. 3d 1215, 1230 (N.D. Ala. 2019); see Dautel v. State, 658 So. 2d 88, 91 (Fla. 1995) (holding that, for calculating sentencing guidelines scoresheet points, only the elements of the prior crime charged are considered in determining the analogous Florida statute).

Accordingly, we discern no error in the trial court's scoring of Smith's federal convictions and his resulting prison sentence in this case.

Affirmed.