

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 21-13707

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

AMECHE LASHUAN CURRY,
a.k.a. Meche,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Alabama
D.C. Docket No. 1:19-cr-00388-LCB-GMB-7

Before ROSENBAUM, JILL PRYOR, and GRANT, Circuit Judges.

PER CURIAM:

Ameche Curry appeals his 151-month sentence. He argues that the district court erred in calculating his criminal history score because it assigned criminal history points to his uncounseled misdemeanor convictions. After careful consideration, we affirm.

I.

Curry pled guilty to conspiring to distribute controlled substances and other offenses. Prior to his sentencing hearing, a probation officer prepared a pre-sentencing investigation report (“PSI”).

Among other things, the PSI calculated Curry’s criminal history score. It reported that Curry had several prior convictions that received criminal history points. Curry had a 2004 Alabama conviction for third-degree robbery for which he had received a three-year sentence; the PSI assigned three points to this conviction.

The PSI also identified five other prior convictions that could score criminal history points. These convictions, all for misdemeanors, were:

- A 2008 Alabama conviction for assault in the third degree. For this offense, Curry was sentenced to 10 days in custody as well as 24 months of unsupervised probation and ordered to pay a fine.

21-13707

Opinion of the Court

3

- A 2008 Alabama conviction for theft of property in the third degree. For this offense, Curry was sentenced to 24 months of unsupervised probation and ordered to pay a fine.
- A 2012 Alabama conviction for assault in the third degree. For this offense, Curry was sentenced to 10 days in custody, suspended, as well as 24 months of unsupervised probation and ordered to pay a fine.
- A 2015 Alabama conviction for assault in the third degree. For this offense, Curry was sentenced to 30 days in custody, suspended, as well as 24 months of probation and ordered to pay a fine and participate in anger management counseling.
- A 2015 Alabama conviction for harassment in the third degree. For this offense, Curry was sentenced to 30 days in custody, suspended, as well as 24 months of probation and ordered to pay a fine and participate in anger management counseling.

For each of these prior convictions, the PSI reported that it was unknown whether Curry had been represented by counsel. The PSI assigned one point to each prior conviction. Because the Sentencing Guidelines provide that a defendant can receive a maximum of four points from one-point prior sentences, the PSI ultimately assigned Curry a total of four points for the five prior convictions. *See* U.S. Sent'g Guidelines Manual § 4A1.1(c). These

additional points boosted Curry's criminal history category from II to IV and increased his sentencing range under the Guidelines.

At the sentencing hearing, the district court adopted the PSI's criminal history score calculation and assigned Curry a criminal history category of IV. The district court ultimately imposed a sentence of 151 months, which was at the low end of the applicable Guideline range. This is Curry's appeal.

II.

We review *de novo* the district court's application of the Sentencing Guidelines. *United States v. Smith*, 231 F.3d 800, 806 (11th Cir. 2000). We also review constitutional challenges to sentences *de novo*. *United States v. Longoria*, 874 F.3d 1278, 1281 (11th Cir. 2017).

III.

Under the Sentencing Guidelines, a court calculates a defendant's criminal history score by looking at the sentences imposed for his prior criminal convictions. In general, a sentencing court assigns three criminal history points for each prior sentence of imprisonment exceeding one year and one month, two points for each prior sentence of imprisonment between 60 days and one year and one month, and one point for each prior sentence not otherwise counted. U.S.S.G. § 4A1.1(a)–(c). Prior sentences that earn one criminal history point under § 4A1.1(c) include sentences of imprisonment lasting less than 60 days. In addition, a sentence may earn one point when it includes no term of imprisonment, such as

21-13707

Opinion of the Court

5

when a defendant is placed on probation, receives a fine, or is required to live in a halfway house. *See id.* § 4A1.1, cmt. Background.

Curry challenges the addition of four criminal history points based on his one-point prior convictions. He argues that the district court's assignment of criminal history points to these uncounseled misdemeanor convictions violated his constitutional rights.

Both the Supreme Court and this Court have addressed when a court may consider a sentence imposed for a prior uncounseled misdemeanor when calculating a defendant's criminal history score under the Sentencing Guidelines. In *Nichols v. United States*, the Supreme Court held that there was no Sixth Amendment violation when a sentencing court assigned a criminal history point to a defendant's previous misdemeanor conviction for which he was uncounseled when the sentence involved a fine but no incarceration. 511 U.S. 738, 740, 746–47 (1994). Later, in *United States v. Acuna-Reyna*, we addressed whether a sentencing court could “assess a criminal history point for an uncounseled misdemeanor conviction where the defendant was sentenced to probation and a monetary fine.” 677 F.3d 1282, 1282 (11th Cir. 2012). For purposes of that appeal, we assumed that the defendant had a right to counsel in a misdemeanor case when the court imposed a sentence of probation. *Id.* at 1284. We nevertheless concluded that the sentencing court could assign a criminal history point to the sentence because “when a sentence is imposed in violation of a defendant's Sixth Amendment right to counsel, the proper remedy is to vacate that portion of the sentence offensive to the Sixth Amendment

without doing harm to the defendant’s conviction or the remaining, constitutionally inoffensive, portions of his sentence.” *Id.* at 1284–85 (alteration adopted) (internal quotations marks omitted). Even after setting aside the probation portion of the sentence, the defendant’s conviction and monetary fine remained valid. As a result, the sentencing court could assign a criminal history point for the uncounseled misdemeanor conviction based on the fine. *Id.* at 1286.

Curry does not dispute that under *Nichols* and *Acuna-Reyes*, the district court properly assigned him four criminal history points because he had at least four prior misdemeanor convictions for which he received a sentence that included a fine. He argues, nonetheless, that *Nichols* and *Acuna-Reyna* were wrongly decided and that it is inconsistent with the text of the Sixth Amendment to assign a criminal history point to an uncounseled misdemeanor conviction that involved a fine. Instead of following the majority opinion in *Nichols*, he argues, we should follow Justice Blackmun’s dissent in that case. But as a federal inferior court, we remain bound by the majority opinion in *Nichols*. See *Prison Legal News v. Sec’y, Fla. Dep’t of Corr.*, 890 F.3d 954, 966 (11th Cir. 2018) (“The only Court that can properly cut back on Supreme Court decisions is the Supreme Court itself.”). Similarly, although Curry urges us to cast aside *Acuna-Reyna*, under our prior panel precedent rule, we remain bound by the decision. See *Smith v. GTE Corp.*, 236 F.3d 1292, 1300 n.8 (11th Cir. 1998) (“[T]he holding of the first panel to address an issue is the law of this Circuit, thereby binding all

21-13707

Opinion of the Court

7

subsequent panels unless and until the first panel's holding is overruled by the Court sitting en banc or by the Supreme Court.”).

Applying the Supreme Court's decision in *Nichols* and our decision in *Acuna-Reyna*, we cannot say that the district court erred when it assigned four criminal history points for Curry's prior uncounseled misdemeanor convictions.

AFFIRMED.