

**PUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 19-4104**

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UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

PRECIAS K. FREEMAN,

Defendant – Appellant.

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Appeal from the United States District Court for the District of South Carolina, at Spartanburg. Timothy M. Cain, District Judge. (7:17-cr-00079-TMC-1)

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Argued: October 30, 2020

Decided: March 30, 2021

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Before GREGORY, Chief Judge, FLOYD, and QUATTLEBAUM, Circuit Judges.

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Vacated and remanded by published opinion. Chief Judge Gregory wrote the opinion, in which Judge Floyd joined. Judge Quattlebaum wrote a dissenting opinion.

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**ARGUED:** Hannah Rogers Metcalfe, METCALFE & ATKINSON, LLC, Greenville, South Carolina, for Appellant. William Jacob Watkins, OFFICE OF THE UNITED STATES ATTORNEY, Greenville, South Carolina, for Appellee. **ON BRIEF:** Peter M. McCoy, Jr., United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Columbia, South Carolina, for Appellee.

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GREGORY, Chief Judge:

Precias Freeman broke her tailbone as a teenager, was prescribed opioids, and has been addicted to the drugs ever since. In 2018, she was sentenced to serve more than 17 years in prison for possession with intent to distribute hydrocodone and oxycodone in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C). After Freeman's appointed counsel initially submitted an *Anders* brief asking for the Court's assistance in identifying any appealable issues, we directed counsel to brief whether Freeman's sentence is substantively reasonable and whether Freeman received ineffective assistance of counsel on the face of the record. On both grounds, we vacate Freeman's sentence and remand this case for resentencing.

I.

Freeman pleaded guilty without the benefit of a plea agreement to an indictment charging her with possession with intent to distribute hydrocodone and oxycodone. 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C). She was charged and sentenced for conduct occurring between October 2014 and October 2016. But as reflected in her criminal history and according to statements she made to the government and the court, Freeman's opioid addiction and pattern of filling forged prescriptions in order to obtain opioids began in 2000, when she was about 18 years old. During her years of addiction and criminal activity, there is no indication that Freeman was ever violent or associated with anyone engaged in violence. Most of the pills that she sold, including all of those sold between 2014 and

2016, were sold below market rate to the same woman. At the time of her arrest, Freeman was in considerable debt.

Freeman was first prescribed opioids as a teenager after breaking her tailbone in the shower. In the most comprehensive interview regarding her conduct, Freeman told the government that the doctor for whom she worked at the time permitted her to write her own prescriptions for the pain medication Lortab, or hydrocodone, beginning with 30-pill prescriptions containing 5 milligrams of hydrocodone each.<sup>1</sup> “[E]ver since then,” she told the government, she has been “hooked” on hydrocodone. Around 2001, while working at another medical practice and while still a teenager, Freeman started printing duplicate prescriptions for patients prescribed opioids and keeping one for herself. Once she filled these duplicate prescriptions, she would use half of the pills and sell the other half to an acquaintance who worked in a hospital as a lab technician. She eventually began writing forged prescriptions.

Over time, Freeman’s fraudulent prescriptions contained more and more pills at higher and higher concentrations, with the amount of prescriptions she filled varying with her personal use of the drugs. By October 2014, the beginning of the period relevant to Freeman’s federal charge, Freeman told federal investigators that she was filling “one prescription per day, four to five days per week.” She used some of the pills and sold

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<sup>1</sup> These facts principally emerge from a proffer interview memorialized by a Drug Enforcement Agency officer that was, according to the parties and the district court, meant to be the basis for Freeman’s accountability at sentencing.

others. By February 2015, her own use had increased to 60 to 80 tablets per day—more than half of the total pills from the forged prescriptions that she was filling.

In 2008 and 2011, Freeman’s conduct resulted in state convictions for obtaining fraudulent prescriptions and related crimes. Her criminal record also shows similar state charges that the state declined to prosecute. All of Freeman’s prior conduct relates to using and selling opioids. Relevant to this appeal, Freeman was eventually arrested on state charges on October 2, 2016, after a Walgreen’s pharmacist recognized her and called police. She was then transported to a hospital, where she tested positive for opiates. That same day, state investigators went to interview Freeman at the hospital. She spoke to them after waiving her *Miranda* rights. While Freeman was incarcerated on the pending state charges, a federal grand jury returned an indictment charging her with possession with intent to distribute hydrocodone and oxycodone. §§ 841(a)(1) and 841(b)(1)(C).<sup>2</sup>

While awaiting sentencing, Freeman spoke to the government pursuant to a standard proffer agreement. During this interview, Freeman conservatively estimated that she sold 52,000 10-mg tablets of hydrocodone to her drug buyer between October 2014 and October 2016. No agreement emerged from Freeman’s proffer. Instead, while she was awaiting sentencing and released on bond, Freeman left South Carolina with her family in September 2017. Shortly before she left, Freeman failed an instant drug test and admitted

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<sup>2</sup> The indictment also states that Freeman “intentionally did combine, conspire, agree and have tacit understanding” with others to distribute hydrocodone and oxycodone, and cites that her conduct thus also violated 21 U.S.C. § 846 (Attempt and Conspiracy). But § 846 does not expose Freeman to any additional liability in this case, because the government has only held Freeman accountable for conduct that she herself admittedly committed in violation of §§ 841(a)(1) and 841(b)(1)(C).

she had taken Lortab. On the basis of the test, her probation officer sought to modify Freeman’s bond to require GPS monitoring, which was ordered by the court on September 7, 2017. However, it does not appear from the record that Freeman left the jurisdiction due to this change in her probation. During this same time period, public records confirm that Freeman and her family were evicted from their apartment, and on September 7th or 8th began living in hotels near their hometown of Shelby, North Carolina, about 40 miles away from their former home in South Carolina.<sup>3</sup> As Freeman explained to the district court at her sentencing, the family—including four children and a pregnant Freeman—left because they “didn’t have anywhere to go.” Freeman was rearrested in March 2018. Between September and March, Freeman remained in and around Shelby with her family. Freeman also gave birth during this time. The docket does not reflect that Freeman missed any court dates or ever attempted to evade arrest between September 2017 and March 2018.

In July 2018, a few months after she was rearrested, Freeman appeared before the district court for a sentencing hearing. The government presented evidence that she had obtained 59 fraudulent prescriptions, each between 90 and 120 pills, including evidence that she filled five prescriptions on December 1, 2014, and 13 prescriptions on December

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<sup>3</sup> In the presentence report (PSR), the court probation officer notes Freeman’s address and states that she was living with her parents at the time that the PSR was first prepared. The docket number of the family’s eviction case appears in the record and corresponds to a public eviction case under the name of “Freeman” and relating to the same address and apartment number listed as Freeman’s in the PSR. The eviction was final on September 8, 2017. The government does not argue that the eviction did not take place or that the court records are inaccurate. This Court takes judicial notice of the fact of the eviction, which is a matter of public record. *See Massachusetts v. Westcott*, 431 U.S. 322, 323 n.2 (1977); *Hall v. Virginia*, 385 F.3d 421, 424 n.3 (4th Cir. 2004).

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