

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JAN 24 2008

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JEVON LEE MILES,

Defendant - Appellant.

No. 07-10127

D.C. No. CR-05-00041-RLH

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Roger L. Hunt, District Judge Presiding

Submitted January 15, 2008
San Francisco, California

Before: WALLACE and SCHROEDER, Circuit Judges, and BENITEZ**,
District Judge.

Miles appeals from his sentence of eighty-seven months imprisonment and three years supervised release. He challenges the district court's determination that his two previous felony convictions under Ohio Revised Code § 2925.03 qualified

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The Honorable Roger T. Benitez, United States District Judge for the Southern District of California, sitting by designation.

as controlled substance offenses under section 4B1.2(b) of the United States Sentencing Guidelines (Guidelines). We have jurisdiction pursuant to 18 U.S.C. § 3742(a) and 28 U.S.C. § 1291, and we affirm.

The district court properly considered Miles’s plea transcripts to determine which section of the Ohio Revised Code § 2925.03 formed the basis for his convictions. *See Taylor v. United States*, 495 U.S. 575, 602 (1990). The district court then correctly held that his convictions under section (A)(2) of the statute qualified categorically as controlled substance offenses under the Guidelines.

The “reasonable cause to believe” language from the Ohio statute only relates to the defendant’s knowledge of a third-party’s intent to sell (not the case here), and does not impermissibly lower the standard of intent necessary for conviction to ship, transport, deliver, etc. Similarly, the fact that the statute criminalizes mere “transport” and “preparation” does not cause the statute to fall outside the Guidelines definition. A defendant could only be convicted for these actions if he also knew or had reason to know that the controlled substances were intended for sale, which distinguishes this case from *United States v. Rivera-Sanchez*, 247 F.3d 905 (9th Cir. 2001) (en banc).

AFFIRMED.