

1 UNITED STATES COURT OF APPEALS  
2 FOR THE SECOND CIRCUIT

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4  
5 August Term, 2006

6  
7 (Argued: October 27, 2006

Decided: November 14, 2006)

8  
9 Docket Nos. 05-2487-cr(L), 05-2741-cr(CON), 05-3183-cr(CON), 05-3671-cr(CON)

10  
11  
12 UNITED STATES OF AMERICA,

13 *Appellee,*

14  
15 —v.—

16  
17 EDDIE PRESSLEY, ALSO KNOWN AS CHEEB, ALSO KNOWN AS FAT HEAD, ALSO KNOWN AS BIG HEAD,  
18 *Defendant-Appellant.*

19  
20  
21  
22 B e f o r e :

23 CARDAMONE, WALKER, JR., AND STRAUB, *Circuit Judges.*

24  
25 Appeal from a judgment of conviction entered on June 15, 2005 in the United States District  
26 Court for the Eastern District of New York (Nicholas G. Garaufis, *Judge*), sentencing Defendant-  
27 Appellant Eddie Pressley, in relevant part, to 292 months' imprisonment upon a plea of guilty to one  
28 count of conspiracy to distribute and possess with intent to distribute at least one kilogram of heroin,  
29 in violation of 21 U.S.C. §§ 841(b)(1)(A)(i), 846.

30 We hold that for the purposes of the penalty provisions set forth at 21 U.S.C. § 841(b), a  
31 conspiracy is "a violation" that "involv[es]" the aggregate quantity of narcotics attributable to the  
32 defendant throughout the course of the conspiracy, even if such quantity was transacted in a series of  
33 smaller sales.

1 AFFIRMED.

2  
3 DEVIN McLAUGHLIN, Langrock Sperry & Wool LLP, Middlebury, VT, *for Defendant-*  
4 *Appellant.*

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6 MORRIS J. FODEMAN, Assistant United States Attorney (Roslynn R. Mauskopf, United  
7 States Attorney for the Eastern District of New York, Emily Berger, Assistant United  
8 States Attorney, *on the brief*), Brooklyn, NY, *for Appellee.*  
9

10 *Per Curiam:*

11 Defendant-Appellant Eddie Pressley appeals from a judgment of the District Court for the  
12 Eastern District of New York (Nicholas G. Garaufis, *Judge*), sentencing him in relevant part to 292  
13 months' imprisonment upon a plea of guilty to one count of conspiracy to distribute at least one  
14 kilogram of heroin, in violation of 21 U.S.C. §§ 841(b)(1)(A)(i), 846. Although Pressley allocuted  
15 to conspiring to distribute more than one kilogram of heroin, he now contends that the District Court  
16 committed an error of law in attributing that drug quantity to him for the purposes of § 841(b)'s  
17 penalty provisions. Those provisions establish a gradation of mandatory minima and maxima  
18 according to drug quantity.

19 Pressley urges that the District Court erred by aggregating all of the heroin transactions  
20 attributable to him throughout the conspiracy in order to meet § 841(b)(1)(A)(i)'s one-kilogram  
21 threshold, which triggers a mandatory minimum of 120 months' imprisonment and a maximum of  
22 life. He claims that § 841(b) requires a court to sentence only on the basis of any single transaction  
23 – presumably the largest – that occurred during the conspiracy. Since all of the transactions in  
24 which Pressley engaged involved less than one kilogram of heroin, he maintains that his sentence is  
25 governed by § 841(b)(1)(C). That provision, which applies to heroin offenses involving less than a

1 kilogram, provides for no mandatory minimum and a maximum of 240 months' imprisonment, or  
2 52 months less than Pressley received.

3 As set forth more fully below, we hold that for the purposes of 21 U.S.C. § 841(b), a  
4 conspiracy is "a violation" that "involv[es]" the aggregate quantity of narcotics attributable to the  
5 defendant throughout the entire conspiracy, even if that sum total was transacted in a series of  
6 smaller sales.<sup>1</sup>

### 7 **BACKGROUND**

8 Over the course of 11 years, Pressley and several other co-defendants operated a violent  
9 crack and heroin distribution ring in and around the Gowanus Houses, which is a public housing  
10 complex in Brooklyn. In pleading guilty to conspiring to distribute and possess with intent to  
11 distribute heroin, Pressley specifically admitted that over the course of the conspiracy, he was  
12 responsible for the distribution of more than one kilogram of heroin. Moreover, the evidence  
13 adduced at the trial of one of Pressley's co-defendants established that members of the conspiracy  
14 distributed several kilograms of heroin annually. On appeal, Pressley continues to concede "that the  
15 total quantity of [heroin] attributable to him over the eleven-year conspiracy exceeded" one  
16 kilogram. Nevertheless, he maintains that neither he nor the other members of the conspiracy  
17 possessed or transacted one kilogram of heroin on any single occasion. He contends that he and his  
18 coconspirators consistently trafficked in street-level amounts, and that only "because of the duration  
19 of the conspiracy and the frequency of [these smaller] sales," he became responsible, in the  
20 aggregate, for more than one kilogram of heroin.

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<sup>1</sup>Because we reject Pressley's arguments as to 21 U.S.C. § 841(b), we also reject his ineffective assistance of counsel claim, which is premised upon the correctness of his statutory argument.

At sentencing, the District Court focused on the aggregate amount of heroin attributable to Pressley throughout the 11-year conspiracy, rather than any discrete transaction. As a result, the District Court believed that 21 U.S.C. § 841(b)(1)(A)(i) governed Pressley's sentence. That section applies to narcotics offenses involving, *inter alia*, one or more kilograms of heroin, and provides for a mandatory minimum of 10 years' imprisonment and a maximum of life.

Given the even larger quantities of drugs that Pressley actually sold, according to the Pre-Sentence Report, and his leadership role in the conspiracy, the United States Sentencing Guidelines recommended a range of 292 to 365 months' imprisonment. The District Court sentenced Pressley to the low end of that range.

Pressley now maintains that § 841(b) does not permit the sentencing court to aggregate the amount of drugs attributable to him via the thousands of sales that occurred throughout the course of the conspiracy. He urges that the statute requires a court to sentence only on the basis of a quantity possessed or distributed at any one time during the conspiracy. Applying this theory to his case, he contends that his sentence is governed by 21 U.S.C. § 841(b)(1)(C), which applies to heroin offenses involving less than one kilogram. That section provides for a maximum penalty of 20 years' imprisonment – 52 months less than he received.

## DISCUSSION

We review the District Court’s interpretation of 21 U.S.C. § 841(b)(1)(A) *de novo*. *United States v. Rowe*, 414 F.3d 271, 276 (2d Cir. 2005). That subsection provides that, “In the case of a violation of subsection (a) of this section involving . . . (i) 1 kilogram or more of a mixture or substance containing a detectable amount of heroin . . . such person shall be sentenced to a term of imprisonment which may not be less than 10 years or more than life.” (emphases added).

1 Pressley focuses his argument on the singular language of the statute. Because §  
2 841(b)(1)(A) specifically references “a violation” of the narcotics laws, Pressley contends that the  
3 aggregation of multiple transactions – each of which he characterizes as a distinct violation –  
4 contravenes the statute. He notes that in the context of multiple substantive offenses, as opposed to  
5 conspiratorial crimes, we have remarked that § 841(b) disallows the aggregation of drug quantity.  
6 He further points out that Congress enacted the graduated penalties codified at 21 U.S.C. § 841(b) in  
7 order to punish “major drug traffickers” or “kingpins,” as opposed to street-level dealers such as  
8 himself – even if those street-level dealers exhibit remarkable longevity and engage in consistently  
9 brisk business.

10 We reject Pressley’s view of the statute because it rests on a mistaken notion of  
11 conspiratorial liability. Simply put, a conspiracy *is* a single violation. It is an illegal agreement that  
12 may, and often does, encompass an array of substantive illegal acts carried out in furtherance of the  
13 overall scheme. *United States v. Broce*, 488 U.S. 563, 570-71 (1989) (“A single agreement to  
14 commit several crimes constitutes one conspiracy.”); *Braverman v. United States*, 317 U.S. 49, 53-  
15 54 (1942). Within the context of a conspiracy to distribute large amounts of narcotics, these  
16 subsidiary crimes may take the form of a series of smaller drug sales.

17 Because a conspiracy is a single, unified offense, it constitutes “a violation” for the purposes  
18 of § 841(b). Further, with respect to sentencing any given member of the conspiracy pursuant to §  
19 841(b), the violation “involv[es]” the aggregate quantity of all the subsidiary transactions  
20 attributable to that particular member. *United States v. Gori*, 324 F.3d 234, 237 (3d Cir. 2003)  
21 (holding that § 841(b) allows the aggregation of drug transactions occurring throughout a  
22 conspiracy); *United States v. Walker*, 160 F.3d 1078, 1093 (6th Cir. 1998) (same); *see also United*

1 *States v. Santos*, 195 F.3d 549, 551 n.5 (10th Cir. 1999) (same), *abrogated on other grounds by*  
2 *United States v. Jones*, 235 F.3d 1231 (10th Cir. 2000); *United States v. Tutino*, 883 F.2d 1125,  
3 1141 (2d Cir. 1989) (holding that aggregation of narcotics amounts across multiple transactions is  
4 permissible so long as the transactions form part of “single continuing scheme”).

5         Given the conceptual distinction between conspiratorial and substantive liability, outlined  
6 above, we see no conflict between our holding today and our remark in *United States v. Harrison*,  
7 241 F.3d 289 (2d Cir. 2001), where we noted that § 841(b) does “not call for aggregation of the drug  
8 quantities in the two *substantive* counts.” *Id.* at 291 (emphasis added). Further, we do not believe  
9 that the result in this case conflicts with the congressional intent behind 21 U.S.C. §§ 841(b), 846.  
10 We have interpreted § 846, which provides that “[a]ny person who attempts or conspires to commit  
11 any offense defined in this subchapter shall be subject to the same penalties as those prescribed for  
12 the [substantive] offense,” as reflecting an effort by Congress to “synchronize” the penalties for a  
13 conspiracy and its object. *United States v. Martinez*, 987 F.2d 920, 925 (2d Cir. 1993). We do not,  
14 however, deduce from § 846 any effort to insulate drug conspirators from the long-standing rule  
15 treating a conspiracy as a single, unified violation. *See United States v. Pruitt*, 156 F.3d 638, 644  
16 (6th Cir. 1998).

17         Regarding § 841(b), it is true that in enacting the Narcotics Penalties and Enforcement Act  
18 of 1986, of which the present version of § 841(b) was one component, Congress sought to target  
19 “major traffickers, the manufacturers or heads of organizations, who are responsible for creating and  
20 delivering very large quantities of drugs.” H.R. Rep. No. 99-845 (1986). Yet Congress also sought  
21 to target self-styled retailers such as Pressley. The House Judiciary Committee Report specifically  
22 included within its “focus” those “managers of the retail level traffic, the person who is filling the

1 bags of heroin, packaging crack into vials or wrapping PCP in aluminum foil, and doing so in  
2 substantial street quantities. The Committee is calling such traffickers serious traffickers because  
3 they keep the street markets going.” *Id.*

4 We note that general principles of conspiratorial liability will continue to limit the exposure  
5 of low-level dealers who do not initially agree to transact large quantities of narcotics, or to whom  
6 such quantities are not reasonably foreseeable. *United States v. Adams*, 448 F.3d 492, 499-500 (2d  
7 Cir. 2006) (noting that for the purposes of §§ 841, 846, “we require proof that . . . drug type and  
8 quantity were at least reasonably foreseeable to the co-conspirator defendant”); *cf. United States v.*  
9 *Studley*, 47 F.3d 569, 574-75 (2d Cir. 1995) (holding that in order to sentence a defendant on the  
10 basis of coconspirator conduct pursuant to the Guidelines, the court must find that the conduct was  
11 within the scope of the criminal activity to which the defendant agreed and was reasonably  
12 foreseeable to the defendant).

13 Accordingly, in determining the quantity of narcotics “involv[ed]” with Pressley’s  
14 conspiracy for the purposes of 21 U.S.C. § 841(b), the District Court properly aggregated all the  
15 drug transactions attributable to him throughout the entire 11-year scheme.

## 16 CONCLUSION

17 For the reasons set forth above, the judgment of the District Court is AFFIRMED.