

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 v.)
)
 JAMES CHARLES BOONE,)
 # 40777-115,)
 Movant.)

No. 78-C-136-C

No. 76-CR-113-C

FILED

JUN 30 1978 *km*

Jack C. Siver, Clerk
U. S. DISTRICT COURT

ORDER

The above named Movant (Defendant) a prisoner in the Federal Correctional Institution at El Reno, Oklahoma has filed herein a Motion to Vacate, set aside or correct sentence pursuant to 28 U.S.C., § 2255. The defendant entered a plea of guilty to having violated T. 21 U.S.C. § 841(a)(1), and on November 3, 1976 this Court sentenced defendant to two years imprisonment. In additon, the Court imposed a special parole term of six (6) years. The sentence of this Court was to run consecutive to any term imposed by the state court in the case in which Movant had been convicted of offenses against the State of Oklahoma.

On October 19, 1977 Movant filed a Motion to Vacate, Set Aside or Correct Sentence pursuant to 28 U.S.C., § 2255 in Case No. 77-C-434, which motion was denied by this Court on December 30, 1977. Movant then filed a Motion to Reconsider which motion was denied March 16, 1978. In his latest Motion, Movant challenges his federal conviction and sentence as being in violation of his rights as guaranteed by the Constitution of the United States upon the following grounds:

1. "That defense counsel was incompetent and ineffective and this incompetent and ineffective counsel denied your defendant Boone his constitutional right to a fair trial & equitable sentence."
2. "Defense counsel did not investigate the facts of the case to enable him to properly inform the Court that defendant was not, in fact, guilty of possession of secobarbitals, but, rather, amphetamines."

3. "That federal sentence should start on July 27, 1976 with jail time credit included and time on bail excluded as officially designated on "information sheet" prepared by U. S. Magistrate at Magistrate # 76-116M."
4. "Evidence in this case was produced by illegal search and seizure tactics by state and federal officers working in consort one with the other and defendant Boone was the victim of illegal entrapment."

In support of ground one of his motion, movant states that:

"Defense counsel advised and persuaded your defendant Boone to plead guilty and waive all defenses on the basis that defendant could 'only by pleading guilty' receive CONCURRENT FEDERAL SENTENCE WHICH WOULD RUNG (sic) WITH THE STATE (OKLAHOMA) TERM. Defense Counsel told your defendant Boone that the Federal Court could and would run its sentence CONCURRENT WITH any sentence already imposed in the state court. Whereas, such advise by Defense counsel is exactly in opposition to federal statute and law because a Federal Judge cannot run a federal sentence CONCURRENT with a state term--such concurrent service is up to the U.S. Attorney General (via transfer procedures)---and therefore, it is evidentiary, that defense counsel did not know the applicable federal law and he did not investigate the applicable federal law and statute prior to advising defendant Boone to Plead Guilty and waive all trial rights."

To support Ground Two of his motion, movant states:

"Defendant Boone was not in possession of Secobarbitals. He was, if anything, in possession of amphetamines and this fact alone were it investigated as to factual data and legal citations would have been a "perfect" defense to the charges in the Indictment. As it stands, the Indictment failed to charge an offense because there could have been no proof" supplied that defendant Boone had possessed (as charged in the indictment) Secobarbitals. Because Defense Counsel advised defendant Boone to plead guilty to an indictment charging a crime he did not (nor could have committed) defense counsel caused the Court to sentence defendant Boone upon a Guilty Plea not founded upon a factual basis as required by Rule 11, FRCrP before a Court can accept such a pleading of Guilty and waiver of trial and evidentiary rights. THIS LACK OF INVESTIGATION OF THE FACTS BY

DEFENSE COUNSEL AND THIS LACK OF DILIGENCE
BY DEFENSE COUNSEL DENIED DUE PROCESS TO
BOONE."

In Ground Four of his motion, movant claims that:

"Evidence seized from federal informant's car (Kathy Norton) was seized without warrant and used against defendant Boone. Even though the evidence was seized from the car of Kathy Norton, said illegally seized evidence was used against defendant Boone and he has standing to complain of this illegal search and seizure. DUE TO INCOMPETENT DEFENSE COUNSEL AS STATED ABOVE, YOUR DEFENDANT BOONE DID NOT KNOWINGLY WAIVE OR FORFEIT HIS CONSTITUTIONAL RIGHTS OF PROTECTION FROM EIVDENCE SEIZED ILLEGALLY. Further, the facts, never brought to light because of ineffective and incompetent defense counsel shows that defendant Boone was 'entrapped' into this offense by the federal informant Kathy Norton with the full knowledge and direction of paid employees of the United States Government and paid employees of the State of Oklahoma."

The transcript of the proceedings of August 12, 1976 shows the following questions by the Court to the Movant and the Movant's responses to those questions:

"THE COURT: All right. Now, I note that in your petition that you have signed and presented to the Court, you state that your lawyer has informed you that the plea of guilty could subject you to a maximum punishment as provided by law, five years imprisonment or a fine of \$15,000, or both.

Now, that's true, but I, again, want to remind you that in addition to that, a special parole term must be, must be imposed by the Court. The statute requires that and it's a minimum of two years and there is no maximum. In other words, the Court could impose a special parole term of life. There is no maximum at all. I want you to understand all that.

Do you understand that?

THE DEFENDANT: Yes.

THE COURT: All right. Very well.

All right. Now, also, the Court, if you enter a plea of guilty to Count I, will have you placed under oath and will have you tell the Court what the facts are in relationship to the charge. And in the event your statements be false or untrue, you could be additionally charged and prosecuted for perjury, or false statements.

Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Very well. Do you have any questions at all about this case?

THE DEFENDANT: No.

THE COURT: About the charge?

THE DEFENDANT: No.

THE COURT; Are you -- have you had ample opportunity to consult with your attorney concerning this matter?

THE DEFENDANT: Yes.

THE COURT: Do you have any questions whatsoever about your rights in regard to trial by jury?

THE DEFENDANT: No, sir.

THE COURT: Have you been promised anything? Has there been any plea bargaining or anything in regard to this case?

THE DEFENDANT: No.

THE COURT: The Court notes that in your petition you state that you have been informed that Count II of the indictment will be dismissed by the Government.

Now, the Court wants you to know that that would indicate the government will ask that the Court dismiss the matter.

Do you understand that?

THE DEFENDANT: Yes.

THE COURT: All right. Have there been any other plea bargaining or any other agreements of any form and any kind entered into?

THE DEFENDANT: No.

THE COURT: Pardon?

THE DEFENDANT: No.

THE COURT: All right. You understand the court may impose such sentence as it deems proper, within the limitations that the law provides, of course.

Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: The statute.

All right. Now, as you stand before the Court, are you under the influence of any drugs, alcohol, medicines or anything that would impair your ability to understand and to participate in these proceedings?

THE DEFENDANT: No.

THE COURT: Would your plea of guilty be made voluntarily? Of your own free will and accord?

THE DEFENDANT: Yes.

THE COURT: Have you in any way, in any way, been forced or coerced to get you to enter a plea of guilty?

THE DEFENDANT: No.

THE COURT: Would your plea of guilty be because you are, in fact, guilty?

THE DEFENDANT: Yes.

THE COURT: All right. Do you have any question whatsoever you wish to ask the Court?

THE DEFENDANT: No.

THE COURT: All right. The Court will now ask you: How do you plead to Count I of the indictment?

THE DEFENDANT: Guilty.

THE COURT: You withdraw your plea of not guilty and enter a plea of guilty; is that what you are telling the Court?

THE DEFENDANT: Yes.

THE COURT: All right. Anything else now you care to tell the Court?

THE DEFENDANT: No.

THE COURT: All right. The clerk will administer an oath to the defendant.

THE CLERK: Raise your right hand, please. You do solemnly swear your testimony in this matter on hearing will be the truth, the whole truth and nothing but the truth, so help you God?

THE DEFENDANT: Yes, ma'am.

THE COURT: All right. You just tell me what happened. What did you do?

THE DEFENDANT: I sold some drugs to Cathy Norton.

THE COURT: I'm sorry, I couldn't hear you.

THE DEFENDANT: I sold some drugs to this girl.

THE COURT: Well, what kind of drugs were they?

THE DEFENDANT: Speed is all I know.

THE COURT: It's alleged that you possessed with intent to distribute approximately 1,700 secobarbital tablets. Did you know that they were Schedule II drugs?

THE DEFENDANT: Not at the time.

THE COURT: What did you think they were, speed?

THE DEFENDANT: Yes.

THE COURT: Well, did you know they were unlawful -- unlawful for you to sell them?

THE DEFENDANT: Yes.

THE COURT: And did you know it was unlawful for you to possess them for purposes of selling them?

THE DEFENDANT: Yes.

THE COURT: When did this occur? It's alleged it occurred on or about July 27th of 1976. Now, when did it occur?

THE DEFENDANT: I guess that was when it was.

THE COURT: Pardon?

THE DEFENDANT: That's when it was.

THE COURT: It was on or about that time?

THE DEFENDANT: Yes.

THE COURT: Where did it occur?

THE DEFENDANT: At my brother's apartment.

THE COURT: Pardon?

THE DEFENDANT: At my brother's apartment.

THE COURT: Where is your brother's apartment?

THE DEFENDANT: I don't know the address.

THE COURT: Well, just --

THE DEFENDANT: The Stratford House.

THE COURT: -- as best you can.

I beg your pardon?

THE DEFENDANT: At the Stratford House on Harvard.

THE COURT: Close to Harvard Avenue?

THE DEFENDANT: Yes, sir.

THE COURT: In Tulsa, Oklahoma.

THE DEFENDANT: Yes, sir.

THE COURT: I see.

MR. BAKER: If Your Honor please, the drugs alleged in Count I, secobarbital, is a downer or depressant drug. The defendant responded to the Court's question by stating that he sold some speed to Cathy Norton. That would be a different drug than the one alleged to be possessed here.

THE COURT: Well, now, you are charged with secobarbital. The Court notes Count II deals with another drug, but --

MR. BAKER: These are the red birds, Jim, you are talking about.

THE DEFENDANT: Yeah, I know now.

THE COURT: All right. You understand what Count I involved?

THE DEFENDANT: Yes.

THE COURT: All right. Now, what did you have, if anything?

THE DEFENDANT: It was reds.

THE COURT: You say it was reds?

THE DEFENDANT: Uh-huh.

THE COURT: Now, what are reds?

THE DEFENDANT: Downers.

THE COURT: Can you describe them to me?

THE DEFENDANT: Just little red capsules.

THE COURT: Little red capsules?

THE DEFENDANT: Uh-huh.

THE COURT: And it's a drug, is it?

THE DEFENDANT: Yes.

THE COURT: Is it a drug that is unlawful to possess it?

THE DEFENDANT: Yes.

THE COURT: And sell it?

THE DEFENDANT: Yes.

THE COURT: Did you know that when you did it?

THE DEFENDANT: Yes.

THE COURT: How many did you have, do you know? It's alleged you had 1,700.

THE DEFENDANT: Well, I sold quite a few.

THE COURT: All right.

Mr. Norton, do you know of any facts that have not been given to the Court by the defendant that this Court should have in taking into consideration before it makes its finding?

MR. NORTON: I know of no facts, Your Honor, that should be brought to the Court's attention.

THE COURT: Are the facts that have been given by the defendant accurate and correct, as they relate to Count I of the indictment?

MR. NORTON: Yes, Your Honor.

THE COURT: The Court understands that the defendant is told -- has explained he possessed knowingly and with the intention to sell and to distribute approximately 1,700 secobarbital or red downer type non-narcotic drugs, is that correct?

MR. NORTON: That would be correct, Your Honor, in conjointly with his brother. I think there is a little problem in knowing exactly how many, but there were some tablets they knew to be illegal contraband drugs in the possession of the two defendants.

THE COURT: I want to make sure that we are talking about --- that the Court fully -- it has been explained to the Court as to what the drugs were, as far as relates to Count I in the allegation of Count I.

Now the drugs that the defendant had been describing, red tablets or pills, are those the drugs that are described in Count I of the indictment?

MR. NORTON: Yes, Your Honor.

THE COURT: Very well.

Mr. Baker, do you know of any facts this Court should be informed of before it makes its finding?

MR. BAKER: Your Honor, I have personal knowledge of this case. I was present during the raid in which these drugs were acquired. They were this defendant's drugs being maintained in his codefendant brother's apartment, and it says -- he has answered to the Court about them.

THE COURT: All right. Gentlemen, is there anything else before the Court makes its findings?

MR. NORTON: Nothing, Your Honor.

THE COURT: Very well. I find, then, that the plea of guilty to Count I made by the defendant is made freely, voluntarily and because he is guilty as charged, and that's correct, is it not?

THE DEFENDANT: Yes, sir.

THE COURT: Very well.

And that that plea of guilty is not made out of ignorance, fear, inadvertence or coercion and with a full understanding of the consequences of the plea.

Is all of that correct?

THE DEFENDANT: Yes, sir.

THE COURT: The court so finds.

I further find that the defendant has admitted the essential elements of the crime as charged and is mentally competent, and all of that is correct, too, is it not?

THE DEFENDANT: Yes, sir.

THE COURT: It is therefore ordered that the defendant's plea of guilty be accepted and entered as prayed for in the petition and as recommended in the certificate of his counsel, his attorney."

(Tr. Pages 10-19)

As shown from the above portions of the transcript, movant's claims are without merit. The record clearly shows that the Court advised the movant of the maximum sentence for the crime charged and that the Court could impose any sentence it deemed proper within the limitations of the law. The defendant personally stated to the Court that he had not been promised anything and that there had been no plea bargaining except with respect to Count II of the Indictment. The record further shows that the Court after placing the defendant under oath, questioned the defendant and defendant's counsel as to the facts upon which the Indictment was based and particularly with respect to the nature of the drugs described in the Indictment. The Court then found that the

defendant had admitted the essential elements of the Indictment and found the defendant guilty as charged. Additionally, Movant and his attorney filed a verified Petition to "Enter Plea of Guilty" in open court on September 9, 1976, which was accepted by Order of the Court on the same date.

On November 3, 1976, the date of sentencing, the Court inquired of the defendant if he knew of any reason why the Court should not pronounce sentence to which the defendant replied "No, Sir". (Tr. 24) The record further reflects that the defendant's attorney asked the Court to "give consideration to the possibility of running concurrently the federal sentence with those state sentences that will be imposed by the Court." (Tr. 25) The Court, however, clearly stated that the sentence on the federal charge would "run consecutive to any term imposed by the state court". (Tr. 27) Following the sentencing of the defendant, the Court inquired of the Government and the defendant if there was "anything further?" to which the attorney for the defendant replied "Nothing from the defendant, Your, Honor." (Tr. 28)

A plea of guilty is a solemn act on the part of a defendant charged with a crime and is not to be disregarded because of belated misgivings about the wisdom of such plea. United States v. Woosley, 440 F.2d 1280 (8th Cir. 1971); Chaney v. United States, No. 761116 Unreported (10th Cir. filed Jan. 4, 1977. In this case the record clearly shows that the guilty plea of the defendant was voluntarily entered with a full understanding of the consequences of such plea. See Stinson v. Turner, 473 F.2d 913 (10th Cir. 1973); Boykin v. Alabama, 395 U.S. 238 (1969).

In Adam v. United States, 274 F.2d 880 (10th Cir. 1960), the Court held that a plea of guilty admits all facts well pleaded in an indictment and further stated that "after

entry of plea and imposition of sentence a judgment is not subject to attack under § 2255 upon the ground that as a factual matter the accused was not guilty of the offense charged * * * the admissions inherent in the guilty plea obviate any necessity for a hearing on the point raised by the motion." 274 F.2d at 883.

Movant claims that his defense counsel was incompetent and ineffective which caused him to enter a plea of guilty in that his defense counsel did not properly investigate the facts or the law in his case. Among other things, the Movant claims that because of his incompetent defense counsel he "did not knowingly waive or forfeit his constitutional rights of protection from evidence seized illegally."

The guidelines for determining whether defense counsel was ineffective or incompetent were set forth in Ellis v. State, 430 F.2d 1352, 1356 (10th Cir. 1970).

"It is the general rule that relief from a final conviction on the ground of incompetent or ineffective counsel will be granted only when the trial was a farce, or a mockery of justice, or was shocking to the conscience of the reviewing court, or the purported representation was only perfunctory, in bad faith, a sham, a pretense, or without adequate opportunity for conference and preparation. Goforth v. United States (10th Cir. 1963), 314 F.2d 868 ***. Williams v. Beto, 354 F.2d 698, 704 (5th Cir. 1965). And this test is applicable to cases in which counsel is retained by or for an accused as well as to cases in which counsel is appointed to represent an indigent defendant. Bell v. State of Alabama, 367 F.2d 243 (5th Cir. 1966)."

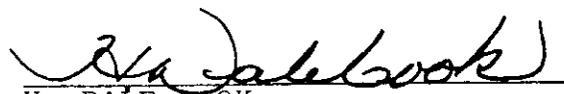
As noted above the transcript of the proceedings herein clearly shows that the plea of guilty was voluntarily entered with a full understanding of the consequences of such plea. There is no credible evidence from the record to support Movant's claim of incompetent counsel. Additionally, movant's Fourth claim of illegally seized evidence is without merit in view of his guilty plea. Adam v. United States, supra. Mahler v. United States, 333 F.2d 472, 474 (10th Cir. 1964)

Finally as to movant's third ground for relief, the movant has not exhausted his administrative remedies in the Bureau of Prisons which is a prerequisite to consideration by the District Court of claim for pretrial jail time credit. Steel v. United States, 400 F. Supp. 39 (E.D. Okl. 1975). See Also Ray v. United States, 334 F. Supp. 901 (N.D. Ga. 1971) in which the Court held:

"Under that section [18 U.S.C.A. § 3568] review procedures have been established for all claims for 'jail time' to be credited by the Attorney-General. Any federal prisoner may set out his claim through the Prisoner's Mail Box and the claim is investigated and determined by the Office of Legal Counsel, Bureau of Prisons, Attorney-General's Office. In practically all instances, such claims are satisfactorily resolved through these procedures. The same should apply here. Through its nationwide staff of personnel, the Department of Justice is better able to secure the facts and through its concurrent administration of the Board of Paroles may already have a considerable store of information regarding such claims. It follows that these administrative procedures must be utilized in such matters. The courts are already burdened with too many matters which are the responsibility of the Executive Department acting through an appropriate Department head. Such responsibility rests on the Attorney-General under this Statute."

Accordingly, for the reasons stated herein the Motion to Vacate, Set Aside or Correct Sentence should be denied, provided that as to ground four of movant's motion, the motion is dismissed without prejudice to the right of the movant to follow the administrative procedure described.

IT IS SO ORDERED this 30th day of June, 1978.


H. DALE COOK
UNITED STATES DISTRICT JUDGE

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THE COURT: About the charge?

THE DEFENDANT: No.

THE COURT; Are you -- have you had ample opportunity to consult with your attorney concerning this matter?

THE DEFENDANT: Yes.

THE COURT: Do you have any questions whatsoever about your rights in regard to trial by jury?

THE DEFENDANT: No, sir.

THE COURT: Have you been promised anything? Has there been any plea bargaining or anything in regard to this case?

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THE COURT: The statute.

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THE COURT: All right. The Court will now ask you: How do you plead to Count I of the indictment?

THE DEFENDANT: Guilty.

THE COURT: You withdraw your plea of not guilty and enter a plea of guilty; is that what you are telling the Court?

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THE CLERK: Raise your right hand, please. You do solemnly swear your testimony in this matter on hearing will be the truth, the whole truth and nothing but the truth, so help you God?

THE DEFENDANT: Yes, ma'am.

THE COURT: All right. You just tell me what happened. What did you do?

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THE COURT: And it's a drug, is it?

THE DEFENDANT: Yes.

THE COURT: Is it a drug that is unlawful to possess it?

THE DEFENDANT: Yes.

THE COURT: And sell it?

THE DEFENDANT: Yes.

THE COURT: Did you know that when you did it?

THE DEFENDANT: Yes.

THE COURT: How many did you have, do you know? It's alleged you had 1,700.

THE DEFENDANT: Well, I sold quite a few.

THE COURT: All right.

Mr. Norton, do you know of any facts that have not been given to the Court by the defendant that this Court should have in taking into consideration before it makes its finding?

MR. NORTON: I know of no facts, Your Honor, that should be brought to the Court's attention.

THE COURT: Are the facts that have been given by the defendant accurate and correct, as they relate to Count I of the indictment?

MR. NORTON: Yes, Your Honor.

THE COURT: The Court understands that the defendant is told -- has explained he possessed knowingly and with the intention to sell and to distribute approximately 1,700 secobarbital or red downer type non-narcotic drugs, is that correct?

MR. NORTON: That would be correct, Your Honor, in conjointly with his brother. I think there is a little problem in knowing exactly how many, but there were some tablets they knew to be illegal contraband drugs in the possession of the two defendants.

THE COURT: I want to make sure that we are talking about --- that the Court fully -- it has been explained to the Court as to what the drugs were, as far as relates to Count I in the allegation of Count I.

Now the drugs that the defendant had been describing, red tablets or pills, are those the drugs that are described in Count I of the indictment?

MR. NORTON: Yes, Your Honor.

THE COURT: Very well.

Mr. Baker, do you know of any facts this Court should be informed of before it makes its finding?

MR. BAKER: Your Honor, I have personal knowledge of this case. I was present during the raid in which these drugs were acquired. They were this defendant's drugs being maintained in his codefendant brother's apartment, and it says -- he has answered to the Court about them.

THE COURT: All right. Gentlemen, is there anything else before the Court makes its findings?

MR. NORTON: Nothing, Your Honor.

THE COURT: Very well. I find, then, that the plea of guilty to Count I made by the defendant is made freely, voluntarily and because he is guilty as charged, and that's correct, is it not?

THE DEFENDANT: Yes, sir.

THE COURT: Very well.

And that that plea of guilty is not made out of ignorance, fear, inadvertence or coercion and with a full understanding of the consequences of the plea.

Is all of that correct?

THE DEFENDANT: Yes, sir.

THE COURT: The court so finds.

I further find that the defendant has admitted the essential elements of the crime as charged and is mentally competent, and all of that is correct, too, is it not?

THE DEFENDANT: Yes, sir.

THE COURT: It is therefore ordered that the defendant's plea of guilty be accepted and entered as prayed for in the petition and as recommended in the certificate of his counsel, his attorney."

(Tr. Pages 10-19)

As shown from the above portions of the transcript, movant's claims are without merit. The record clearly shows that the Court advised the movant of the maximum sentence for the crime charged and that the Court could impose any sentence it deemed proper within the limitations of the law. The defendant personally stated to the Court that he had not been promised anything and that there had been no plea bargaining except with respect to Count II of the Indictment. The record further shows that the Court after placing the defendant under oath, questioned the defendant and defendant's counsel as to the facts upon which the Indictment was based and particularly with respect to the nature of the drugs described in the Indictment. The Court then found that the

defendant had admitted the essential elements of the Indictment and found the defendant guilty as charged. Additionally, Movant and his attorney filed a verified Petition to "Enter Plea of Guilty" in open court on September 9, 1976, which was accepted by Order of the Court on the same date.

On November 3, 1976, the date of sentencing, the Court inquired of the defendant if he knew of any reason why the Court should not pronounce sentence to which the defendant replied "No, Sir". (Tr. 24) The record further reflects that the defendant's attorney asked the Court to "give consideration to the possibility of running concurrently the federal sentence with those state sentences that will be imposed by the Court." (Tr. 25) The Court, however, clearly stated that the sentence on the federal charge would "run consecutive to any term imposed by the state court". (Tr. 27) Following the sentencing of the defendant, the Court inquired of the Government and the defendant if there was "anything further?" to which the attorney for the defendant replied "Nothing from the defendant, Your, Honor." (Tr. 28)

A plea of guilty is a solemn act on the part of a defendant charged with a crime and is not to be disregarded because of belated misgivings about the wisdom of such plea. United States v. Woosley, 440 F.2d 1280 (8th Cir. 1971); Chaney v. United States, No. 761116 Unreported (10th Cir. filed Jan. 4, 1977. In this case the record clearly shows that the guilty plea of the defendant was voluntarily entered with a full understanding of the consequences of such plea. See Stinson v. Turner, 473 F.2d 913 (10th Cir. 1973); Boykin v. Alabama, 395 U.S. 238 (1969).

In Adam v. United States, 274 F.2d 880 (10th Cir. 1960), the Court held that a plea of guilty admits all facts well pleaded in an indictment and further stated that "after

entry of plea and imposition of sentence a judgment is not subject to attack under § 2255 upon the ground that as a factual matter the accused was not guilty of the offense charged * * * the admissions inherent in the guilty plea obviate any necessity for a hearing on the point raised by the motion." 274 F.2d at 883.

Movant claims that his defense counsel was incompetent and ineffective which caused him to enter a plea of guilty in that his defense counsel did not properly investigate the facts or the law in his case. Among other things, the Movant claims that because of his incompetent defense counsel he "did not knowingly waive or forfeit his constitutional rights of protection from evidence seized illegally."

"The guidelines for determining whether defense counsel was ineffective or incompetent were set forth in Ellis v. State, 430 F.2d 1352, 1356 (10th Cir. 1970).

"It is the general rule that relief from a final conviction on the ground of incompetent or ineffective counsel will be granted only when the trial was a farce, or a mockery of justice, or was shocking to the conscience of the reviewing court, or the purported representation was only perfunctory, in bad faith, a sham, a pretense, or without adequate opportunity for conference and preparation. Goforth v. United States (10th Cir. 1963), 314 F.2d 868 ***.' Williams v. Beto, 354 F.2d 698, 704 (5th Cir. 1965). And this test is applicable to cases in which counsel is retained by or for an accused as well as to cases in which counsel is appointed to represent an indigent defendant. Bell v. State of Alabama, 367 F.2d 243 (5th Cir. 1966)."

As noted above the transcript of the proceedings herein clearly shows that the plea of guilty was voluntarily entered with a full understanding of the consequences of such plea. There is no credible evidence from the record to support Movant's claim of incompetent counsel. Additionally, movant's Fourth claim of illegally seized evidence is without merit in view of his guilty plea. Adam v. United States, supra. Mahler v. United States, 333 F.2d 472, 474 (10th Cir. 1964)

Finally as to movant's third ground for relief, the movant has not exhausted his administrative remedies in the Bureau of Prisons which is a prerequisite to consideration by the District Court of claim for pretrial jail time credit. Steel v. United States, 400 F. Supp. 39 (E.D. Okl. 1975). See Also Ray v. United States, 334 F. Supp. 901 (N.D. Ga. 1971) in which the Court held:

"Under that section [18 U.S.C.A. § 3568] review procedures have been established for all claims for 'jail time' to be credited by the Attorney-General. Any federal prisoner may set out his claim through the Prisoner's Mail Box and the claim is investigated and determined by the Office of Legal Counsel, Bureau of Prisons, Attorney-General's Office. In practically all instances, such claims are satisfactorily resolved through these procedures. The same should apply here. Through its nationwide staff of personnel, the Department of Justice is better able to secure the facts and through its concurrent administration of the Board of Paroles may already have a considerable store of information regarding such claims. It follows that these administrative procedures must be utilized in such matters. The courts are already burdened with too many matters which are the responsibility of the Executive Department acting through an appropriate Department head. Such responsibility rests on the Attorney-General under this Statute."

Accordingly, for the reasons stated herein the Motion to Vacate, Set Aside or Correct Sentence should be denied, provided that as to ground four of movant's motion, the motion is dismissed without prejudice to the right of the movant to follow the administrative procedure described.

IT IS SO ORDERED this 30th day of June, 1978.



H. DALE COOK
UNITED STATES DISTRICT JUDGE

DEFENDANT

GEORGE PHILLIP ROBERTS

DOCKET NO.

78-CR-81

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 245 (6/74)

In the presence of the attorney for the government the defendant appeared in person on this date

MONTH	DAY	YEAR
6	23	78

COUNSEL

WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

WITH COUNSEL

David W. Griffith, Court Appointed

(Name of counsel)

PLEA

GUILTY, and the court being satisfied that there is a factual basis for the plea,

NOLO CONTENDERE,

NOT GUILTY

FINDING & JUDGMENT

There being a finding of

NOT GUILTY. Defendant is discharged

GUILTY.

Defendant has been convicted as charged of the offense(s) of **having violated Title 18, U.S.C., Section 2113(d), as charged in the Indictment.**

FILED

JUN 23 1978

Jack C. Silver, Clerk

U.S. DISTRICT COURT

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

Twenty-five (25) Years

SENTENCE OR PROBATION ORDER

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends,

COMMITMENT RECOMMENDATION

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

U.S. District Judge

U.S. Magistrate

H. DALE COOK

Date

6-23-78

CERTIFIED AS A TRUE COPY ON

THIS DATE

By

() CLERK

() DEPUTY

DEFENDANT

ANTHONY J. CAMPBELL

DOCKET NO.

78-CR-28

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO-245 (6/74)

In the presence of the attorney for the government the defendant appeared in person on this date

MONTH 06 DAY 09 YEAR 1978

COUNSEL

WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

WITH COUNSEL

DAVID W. GRIFFITH, court appointed

(Name of counsel)

PLEA

GUILTY, and the court being satisfied that there is a factual basis for the plea,

NOLO CONTENDERE,

NOT GUILTY

There being a finding/verdict of

NOT GUILTY. Defendant is discharged. GUILTY.

FINDING & JUDGMENT

Defendant has been convicted as charged of the offense(s) of having violated Title 18, U.S.C. §1702 and Title 15, U.S.C., §1644, as charged in Counts I and II of the indictment.

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for

treatment and supervision pursuant to Title 18, U.S.C., §5010(b) until discharged by the U. S. Parole Commission, as provided in Title 18, U.S.C., §5017, as to Count I and Count II of the Indictment. Count II shall run concurrent to Count I of the Indictment.

FILED JUN 9 1978

Just G. [unclear], Clerk U. S. DISTRICT COURT

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends, that the defendant be provided psychiatric treatment.

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

U.S. District Judge

U.S. Magistrate

H. Dale Cook

Date June 9, 1978

CERTIFIED AS A TRUE COPY ON

THIS DATE June 9, 1978

By Rosanne J. Miller

CLERK

DEPUTY

Movant's plea of guilty on August 23, 1977, was in full conformity with Rule 11, Federal Rules of Criminal Procedure. The charge and maximum possible sentence were explained to him. It was carefully determined that his plea of guilty was entered of his own free choice, without force, threat or promise. Movant admitted under oath that he had possessed a check knowing that it had been stolen from the mail. The Court was informed and aware that the cast had been removed from his broken leg that morning and considered his demeanor during his plea. Movant was at all times in possession of his faculties, able to understand and respond to the Court's questions, he was alert and gave no indication of dull-wittedness, incoherence or intoxication. He did fail to appear for sentencing on September 6, 1977. Bond was revoked and he was held in custody at the Tulsa County Jail, where he was kept in an alcohol free environment to recover from his inebriation, and was before the Court, sober, for sentencing on September 8, 1977, as he had been at his plea on August 23, 1977. Movant's plea of guilty was free and knowing, it was competently and voluntarily entered in full compliance with Rule 11 and constitutional safeguards as clearly appears of record and from this Court's memory of the proceedings. His valid plea of guilty waives all prior non-jurisdictional defects. Acuna v. Baker, 444 F.2d 59 (10th Cir. 1969); United States v. Nooner, 565 F.2d 633 (10th Cir. 1977).

Further, as appears from the record, defense counsel bargained on Movant's behalf, and Movant entered his plea to only Count One of the indictment and Count Two was dismissed on the Government's motion. Counsel stated on the record that he had had several long conferences in his law office with the Movant. The Court is familiar with the work of defense counsel and knows him to be an able and experienced attorney who has represented enumerable criminal defendants. The Court was under no obligation on a plea of guilty to advise the Movant of appeal procedures, and counsel was under no obligation to appeal absent a specific request from his client to do so. Movant makes no claim that he requested an appeal. He stated on the record, under oath that he was satisfied with his attorney. He must assume the risk of ordinary error in either his or his attorney's assessment of the law and facts. McMann v. Richardson, 397 U. S. 759 (1970). A plea of guilty is a solemn act

not to be disregarded because of belated misgivings about the wisdom of the same. United States v. Woosley, 440 F.2d 1280 (8th Cir. 1971); Chaney v. United States, No. 76-1116 unreported (10th Cir. filed Jan. 4, 1977). It is therefore clear that Movant's first three claims in his § 2255 motion are without merit.

The sentence imposed was well within the maximum provided by law. Such a sentence is not subject to attack on the ground of severity in a direct appeal or a collateral proceeding. Randall v. United States, 324 F.2d 726 (10th Cir. 1963).

Movant's final claim is that the Parole Commission failed to give proper consideration to his case, and he is receiving no medical treatment for his drinking problem. Such issue does not challenge the validity of his plea, conviction and sentence in this Court. Rather, he challenges the Parole Commission's application of its guidelines to his case and that the institution is not providing "medical" treatment for his alcoholism, both of which are administrative responsibilities unrelated to the sentencing process. His appropriate remedy on this issue is to file a habeas corpus petition pursuant to 28 U.S.C. § 2241 in the United States District Court having jurisdiction over his place of confinement, and that only after available administrative remedies have first been exhausted. See, Rogers v. United States, No. 76-1122 unreported (10th Cir. filed Nov. 2, 1976); Weiser v. United States, No. 76-1589 unreported (10th Cir. filed Feb. 10, 1977), which cases are applicable to establish the appropriate procedure in regard to the final issue raised to this Court herein although they deal with a different factual claim than here presented.

IT IS, THEREFORE, ORDERED that the motion pursuant to 28 U.S.C. § 2255 of Carl Edward Brill be and it is hereby overruled and the case is dismissed.

Dated this 8th day of June, 1978, at Tulsa, Oklahoma.


CHIEF JUDGE, UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT OF
OKLAHOMA

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

JUN - 7 1978

**Jack C. Silver, Clerk
U. S. DISTRICT COURT**

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs)
)
 MICHAEL LYNN KIRKLAND,)
)
 Defendant.)

75-CR-95-C

O R D E R

On October 28, 1975, came the attorney for the Government, Ben F. Baker, and the defendant appeared in person and by counsel, James H. Heslett.

IT WAS ADJUDGED that the defendant, upon his plea of guilty to Count 1 of the Indictment, was convicted of having violated Title 18, U.S.C., §1202(a)(1), as charged in Count 1 of the Indictment.

IT WAS ADJUDGED that the imposition of sentence was suspended in Count 1 and the defendant was placed on probation for a period of Three (3) Years from October 28, 1975.

Thereafter, on May 4, 1978, there having been filed an application by the Supervising Probation Officer, Rod Baker, that the defendant's probation be revoked and the grounds therefor being set thereon, and upon approval of the Court, Warrant for Arrest of Probationer was issued.

NOW, on this 7th day of June, 1978, pursuant to said Warrant, the defendant appeared before the Court with his attorney and counsel, James H. Heslett. The Government was present and represented by its attorney, Kenneth P. Snoke. Thereafter, the Court directed that the Probation Officer, Rod Baker, recite and advise the Court and defendant the grounds of revocation, and after statements confirming probation violation by the probationer and his counsel, the Court finds that an evidentiary hearing is not necessary, that the defendant has violated the terms of his probation and that the probation should be revoked.

THE COURT ORDERS that the order of probation entered on October 28, 1975, be revoked and set aside. IT IS ADJUDGED that the defendant MICHAEL LYNN KIRKLAND, is hereby committed to the custody of the Attorney

General or his authorized representative for imprisonment for a period of Eighteen (18) Months. IT IS FURTHER ADJUDGED that the sentence imposed herein shall run concurrently with the sentence imposed on May 30, 1978, by the State of Oklahoma.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Dated this 7th day of June, 1978.


H. DALE COOK
UNITED STATES DISTRICT JUDGE

DEFENDANT

RONALD J. WEBB

DOCKET NO. 78-CR-48

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 245 (6/74)

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date

MONTH 6 DAY 6 YEAR 78

WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

WITH COUNSEL David L. Peterson, Court Appointed (Name of counsel)

PLEA

GUILTY, and the court being satisfied that there is a factual basis for the plea, NOLO CONTENDERE, NOT GUILTY

FINDING & JUDGMENT

There being a finding of GUILTY. Defendant is discharged.

Defendant has been convicted as charged of the offense(s) of having violated Title 18, U.S.C., Section 1202(a), as charged in the Indictment.

FILED JUN - 6 1978 Jack C. Silver, Clerk U. S. DISTRICT COURT

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced: Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

Thirteen (13) Months

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends, that the defendant be sent to the Medical Center at Springfield, Missouri, or other such facility that can provide him with medical evaluation and assistance, and psychological or other assistance for his alcoholism.

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

U.S. District Judge

U.S. Magistrate

H. DALE COOK

H. DALE COOK

Date 6-6-78

CERTIFIED AS A TRUE COPY ON

THIS DATE

By

() CLERK

() DEPUTY

DEFENDANT

PHILLIP ANTHONY BEATY

DOCKET NO.

78-CR-50

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 245 (6/74)

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date

MONTH	DAY	YEAR
6	5	78

WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

WITH COUNSEL

Charles Whitman, Court Appointed

(Name of counsel)

PLEA

GUILTY, and the court being satisfied that there is a factual basis for the plea,

NOLO CONTENDERE,

NOT GUILTY

FINDING & JUDGMENT

There being a finding/verdict of

NOT GUILTY. Defendant is discharged

GUILTY.

Defendant has been convicted as charged of the offense(s) of **having violated Title 26, U.S.C., Section 5861(d), as charged in the Indictment.**

FILED

JUN 5 1978

Jack C. Silver, Clerk

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced because of insufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: ~~the defendant be committed to the custody of the Attorney General or his authorized representative for transportation to the Federal Reformatory for Women at Alderson, West Virginia.~~

The imposition of sentence is hereby suspended and the defendant is placed on probation for a period of Twelve (12) Months from this date.

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

U.S. District Judge

U.S. Magistrate

H. DALE COOK

Date

6-5-78

CERTIFIED AS A TRUE COPY ON

THIS DATE

By

() CLERK

() DEPUTY

UNITED STATES DISTRICT COURT

Northern District of Oklahoma

United States of America)
vs.)
BOBBY JOE McDARIS, JR.)

Criminal No. 78-CR-46 ✓

FILED
IN OPEN COURT
JUN 5 1978 *hm*
Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER FOR DISMISSAL

Pursuant to Rule 48(a) of the Federal Rules of Criminal Procedure and by leave of court endorsed hereon the United States Attorney for the Northern District of Oklahoma hereby dismisses ~~the~~ Count II of the Indictment against (indictment, information, complaint) Bobby Joe McDaris, Jr., defendant.

HUBERT H. BRYANT
United States Attorney

George Carrasquillo
Asst. United States Attorney
GEORGE CARRASQUILLO

Leave of court is granted for the filing of the foregoing dismissal.

W. Dale Cook
United States District Judge

Date: ~~May~~ *June* 5, 1978

DEFENDANT

BOBBY JOE McDARIS, JR.

DOCKET NO.

78-CR-46

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO-245 (6/74)

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date

MONTH	DAY	YEAR
6	5	78

WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

WITH COUNSEL

Eric E. Anderson, Court Appointed

(Name of counsel)

PLEA

GUILTY, and the court being satisfied that there is a factual basis for the plea,

NOLO CONTENDERE,

NOT GUILTY

FINDING & JUDGMENT

There being a finding ~~verdict~~ of

NOT GUILTY. Defendant is discharged

GUILTY.

Defendant has been convicted as charged of the offense(s) of **having violated Title 26, U.S.C., Section 5861(d), as charged in Count One of the Indictment.**

JUN - 5 1978

Jack C. Silver, Clerk

U.S. DISTRICT COURT

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient reason to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that ~~the defendant~~ hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of ~~three years~~

The imposition of sentence in Count One is hereby suspended and the defendant is placed on probation for a period of Three (3) Years from this date.

Upon motion of the Assistant U. S. Attorney, Count Two is dismissed.

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

U.S. District Judge

U.S. Magistrate

H. DALE COOK

Date

6-5-78

CERTIFIED AS A TRUE COPY ON

THIS DATE

By

() CLERK

() DEPUTY

UNITED STATES DISTRICT COURT

Northern District of Oklahoma

United States of America
vs.
Carmeta Sheree Furch

Criminal No. 78-CR-45

FILED
IN OPEN COURT
JUN 5 1978
Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER FOR DISMISSAL

Pursuant to Rule 48(a) of the Federal Rules of Criminal Procedure and by leave of court endorsed hereon the United States Attorney for the Northern District of Oklahoma hereby dismisses ~~the~~ Counts I & III of Indictment against (indictment, information, complaint) Carmeta Sheree Furch defendant.

Hubert H. Bryant
United States Attorney

George Carrasquillo
Asst. United States Attorney
George Carrasquillo

Leave of court is granted for the filing of the foregoing dismissal.

W. S. Sale
United States District Judge

Date: 6-5-78

DEFENDANT

CARMETA SHEREE FURCH

DOCKET NO.

78-CR-45

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 245 (6/74)

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date

MONTH 6 DAY 5 YEAR 78

WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

WITH COUNSEL

Tom Mason, Court Appointed

(Name of counsel)

PLEA

GUILTY, and the court being satisfied that there is a factual basis for the plea,

NOLO CONTENDERE,

NOT GUILTY

There being a finding/verdict of

NOT GUILTY. Defendant is discharged

GUILTY.

JUN - 5 1978

FINDING & JUDGMENT

Defendant has been convicted as charged of the offense(s) of having violated Title 18, Section 495, as charged in Count 2 of the Indictment.

Jack C. Silver, Clerk U.S. DISTRICT COURT

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: ~~the defendant hereby committed to the custody of the Sheriff of the County of Oklahoma for the term of two (2) years from this date.~~

The imposition of sentence in Count 2 is hereby suspended and the defendant is placed on probation for a period of Two (2) Years from this date.

Upon motion of the Assistant U. S. Attorney, Counts 1 and 3 are dismissed.

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

U.S. District Judge

U.S. Magistrate

H. DALE COOK

Date 6-5-78

CERTIFIED AS A TRUE COPY ON

THIS DATE

By

() CLERK

() DEPUTY

United States District Court for

United States of America vs.

NORTHERN DISTRICT OF OKLAHOMA

DEFENDANT

SALVADOR LEON-NUNEZ

DOCKET NO.

78-CR-43

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 245 (6/74)

In the presence of the attorney for the government the defendant appeared in person on this date

MONTH DAY YEAR 6 5 78

COUNSEL

WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

WITH COUNSEL

Ray H. Wilburn, Court Appointed

(Name of counsel)

PLEA

GUILTY, and the court being satisfied that there is a factual basis for the plea,

NOLO CONTENDERE,

NOT GUILTY

There being a finding of

NOT GUILTY. Defendant is discharged

GUILTY.

FINDING & JUDGMENT

Defendant has been convicted as charged of the offense(s) of having violated Title 8, U.S.C., Section 1324(a)(2), as charged in the indictment.

FILED

JUN 15 1978

Jack C. Silver, Clerk

U.S. DISTRICT COURT

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General and recommended for probation for a period of two (2) years from this date.

The imposition of sentence is hereby suspended and the defendant is placed on probation for a period of two (2) Years from this date.

SENTENCE OR PROBATION ORDER

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

U.S. District Judge

U.S. Magistrate

[Signature]

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