

FILED

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

OCT 30 1978

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

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. ) Nos. 78-C-17-B  
 ) 77-CR-19  
WILLIAM DEAN HINSON, )  
 )  
Defendant. )

O R D E R

The Court has for consideration Defendant's Motion to Vacate or Set Aside Sentence and has reviewed the file, the briefs and all of the recommendations concerning the motion, and being fully advised in the premises, finds:

That the Defendant's Motion to Vacate or Set Aside Sentence should be overruled for the following reasons:

On January 11, 1978, Defendant filed a Motion to Vacate or Set Aside Sentence pursuant to Title 28, U.S.C. §2255, alleging mental incompetency at the time of the violation for which he was incarcerated, at the time of his guilty plea therefor, and at sentencing. Defendant had previously filed numerous post-verdict and sentencing Motions, all of which were denied by the Court. In none of said Motions had the issue of competency been raised until the §2255 Motion of January 11, 1978, more than a year after the date of the violation for which he was incarcerated.

The Court, in an Order of June 22, 1978, stated that because the issue of competency was not raised prior to Defendant's plea of guilty and because no mental examination had been requested or otherwise ordered, an evidentiary hearing should be conducted. See, Ellison v. U.S., 324 F.2d 710 (10th Cir. 1963); Arnold v. U.S., 432 F.2d 871 (10th Cir. 1970); Eskridge v. U.S., 443 F.2d 440 (10th Cir. 1971).

Defendant contends that he is being deprived of his liberty in violation of his rights guaranteed by the Constitution

of the United States of America in that he was mentally incompetent at: the time of the acts charged in the indictment, i.e., entering a federally insured bank with intent to commit a felony, in violation of Title 18, U.S.C. §2113(a); the time his plea of guilty was entered thereto to the point that he could not control his acts, understand the gravity and nature of the proceedings or assist in his defense.

In support of his claim, Defendant testified at the hearing that he had consumed two quarts of beer and smoked a marijuana cigarette the early evening of the night the violation occurred; that he frequently smoked marijuana and indulged in other "light" drugs. Although counsel made the point of Defendant's being an alcoholic or heavy consumer of alcoholic beverages, the testimony of Defendant indicated the only such beverage he consumed was beer; that on previous occasions he had consumed more than the two quarts consumed on the night in question. He further testified that he smoked marijuana daily and that on the night in question he smoked one cigarette. By Defendant's own admission, he stated he knew what he was doing, but that the consequences were simply of no moment to him. The only explanation he gave for his actions was that he felt like an outsider at Edison High School because his parents were not wealthy. These feelings of rebellion manifested themselves in the commission of the crime in question as well as in his failure to complete his senior year of high school.

Defendant submitted himself to psychiatric counseling during the interim of his plea of guilty and the date of sentencing. The result of which was a finding of social maladjustment caused by peer group pressure and an unstable marital setting in the home. There was no finding of mental incompetency.

Mr. Steven J. Martin, the United States Probation Officer assigned to the case testified of his visits and consultations with Defendant. In describing Defendant's demeanor, attitude and assessment of his involvement in the offense as charged, Defendant was observed as being a mentally competent young adult who lacked a good sense of self-discipline. Mr.

Martin testified that Defendant admitted his guilt on numerous occasions and indicated a complete understanding of his acts at all times. He stated further that Defendant displayed a total lack of respect for the law, exhibiting no concern for the consequences of past misdeeds.

#### FINDINGS OF FACT

1. The Defendant, William Dean Hinson, committed the offense as charged in the Indictment.
2. Prior to the commission of such offense, the Defendant voluntarily consumed two quarts of beer and smoked a marijuana cigarette.
3. The Defendant had previously and with great frequency consumed larger quantities of beer and smoked larger amounts of marijuana voluntarily; that there was no evidence that the consumption of either caused the Defendant to be intoxicated or to be otherwise incapable of appreciating his conduct or the consequences thereof.
4. The Defendant had submitted to professional counseling and guidance and that conclusions drawn therefrom failed to establish the mental incompetency of Defendant.
5. The Defendant was mentally capable of knowing what he was doing at the time the offense in question was committed.
6. The Defendant was capable of knowing that it was wrong.
7. The Defendant was mentally capable of controlling his conduct.
8. The Defendant was mentally capable of understanding and did understand the charge against him at the time he entered his plea of guilty.
9. The Defendant was capable of assisting in his defense at all pertinent times.
10. The Defendant was mentally competent at the time of sentencing in this case.

## CONCLUSIONS OF LAW

1. At the evidentiary hearing herein, the Defendant did not meet the burden squarely placed on him to establish by a preponderance of the evidence that he was in fact incompetent at the time and as he asserts in his §2255 Motion. Ridge v. Turner, 444 F.2d 3 (10th Cir. 1971); Crail v. United States, 430 F.2d 459 (10th Cir. 1970).

2. The test for mental competency on the date of the alleged offense is whether the accused was mentally capable of knowing what he was doing, was mentally capable of knowing that it was wrong, and mentally capable of controlling his conduct. Wion v. United States, 325 F.2d 420 (10th Cir. 1963) cert. denied 377 U.S. 946 (1964). Defendant did not satisfy the elements thereof.

3. The test for mental competency at the time of trial, as set out in Dusky v. United States, 362 U.S. 402 (1960), is whether the Defendant is mentally capable of understanding the charge against him and the proceedings, and whether the Defendant is capable of understanding and assisting counsel in his defense.

4. The standard for determining an individual's competency to enter a valid plea of guilty is the same as that required to stand trial. Crail v. United States, Supra., Malinauskas v. United States, 505 F.2d 649 (5th Cir. 1974). Such standards were not met by Defendant herein.

5. A Motion to Vacate will not lie when upon mere allegations of incompetency the record clearly reflects that a complete explanation of the charges and the consequences of a guilty plea to the same had been given to the Defendant by the Assistant United States Attorney, the Court, and able defense counsel who interjected comments freely, especially when no mention of lack of competency was made at any time by Defendant or his counsel. Bongiorno v. U.S., 424 F.2d 383 (1970); Hutchinson v. U.S., 369 F. Supp. 280 (W.D. Okla. 1973).

IT IS, THEREFORE, ORDERED that the Defendant's Motion to Vacate or Set Aside Sentence is hereby overruled.

Dated this 30<sup>th</sup> day of October, 1978.

Allen E. Barrow  
CHIEF JUDGE, UNITED STATES DISTRICT  
COURT FOR THE NORTHERN DISTRICT OF  
OKLAHOMA

OCT 24 1978

IN THE UNITED STATES DISTRICT COURT FOR THE Jack C. Silver, Clerk  
 NORTHERN DISTRICT OF OKLAHOMA U. S. DISTRICT COURT

UNITED STATES OF AMERICA, )  
 ) Plaintiff, )  
 v. ) NO. 76-CR-158-B ✓  
 ) )  
 DENNIS EDWARD PARNELL, )  
 ) Defendant. )

J U D G M E N T

On this 12th day of October, 1978, this matter comes on for hearing, the United States of America appearing by George Carrasquillo, Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Dennis Edward Parnell, and Allied Fidelity Insurance Company, as surety, appearing not. There being before the Court the Motion of the United States for Judgment on the appearance bond herein, and the Court being fully advised in the premises finds that said Motion should be sustained; said Motion having been made and found to be proper under the provisions of Rule 46(e) of the Federal Rules of Criminal Procedure. Judgment herein should be rendered in favor of the Plaintiff and against Dennis Edward Parnell and Allied Fidelity Insurance Company.

The Court further finds that the forfeiture of the appearance bond of Dennis Edward Parnell in the amount of \$15,000.00, which was ordered by this Court on August 31, 1978, should be sustained.

Further, the Court finds that when the appeal bond was set it was the intent of the Court that said bond cover the restitution ordered in the Judgment and Commitment of Dennis Edward Parnell on March 22, 1977. Therefore, said restitution in the amount of \$12,439.00 owed by Defendant Parnell as his pro rata share of the injury suffered by the victims from the group of conspirators should be retained in the Registry of the United States District Court for the Northern District of Oklahoma for repayment to the grain companies, including farmers made destitute by the acts of the coconspirators, and the remainder in the sum of \$2,561.00 should be deposited in the general fund of the Treasury. Of course, should the fugitive Defendant, Dennis Edward Parnell, be picked up in this case and new bail set and bond made thereon, or fine imposed, the restitution having been provided for and insured under this Order, the new bond if forfeited or fine if imposed would be paid to the United States Treasury.

This Court is fully cognizant of the rules and regulations that bond forfeitures shall be deposited in the general fund of the Treasury.

Further, the Court is familiar with the cases holding that bail bonds are contracts to be strictly construed in accordance with the terms of the contract, and that the surety may not be made liable for any greater undertaking than he has agreed too. United States v. Jackson, 465 F.2d 964 (10th Cir. 1972); United States v. Kelley, 38 F.R.D. 320 (D.C.Colo. 1965); United States v. Miller, 539 F.2d 445 (5th Cir. 1976). Also see, United States v. Werner, 47 F.2d 351 (10th Cir. 1931); Rudd v. United States, 138 F.2d 745 (7th Cir. 1943), which cases deal with cash deposit in lieu of bond where the depositor is a stranger to the record. Nevertheless, limited and strictly applied to the facts and intent of the Court herein, restitution to be withheld from the forfeited bond is deemed proper.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the United States of America have Judgment against Dennis Edward Parnell and Allied Fidelity Insurance Company in the amount of \$15,000.00, which sum shall be paid into the Registry of the United States District Court for the Northern District of Oklahoma, \$12,439.00 of said sum to be held by the Court Clerk to be disbursed in accordance with and under Order of this Court, and the balance of \$2,561.00 to be promptly deposited in the general fund of the Treasury.

Done in Open Court at Tulsa, Oklahoma.



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

DEFENDANT

GLENN O. YOUNG

DOCKET NO.

78-CR-61

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO-245 (5/75)

COUNSEL

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

MONTH	DAY	YEAR
10	20	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

Glenn O. Young (pro se), & Wesley R. Thompson, Retained

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.

OCT 20 1978

Defendant has been convicted as charged of the offense(s) of having violated Title 18, U.S. District Court C., Section 111, as charged in 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 is to pay a fine unto the United States of America in the amount of \$3,000.00, and he is to stand committed until the fine is paid in full, or he is otherwise discharged under due process of law. IT IS FURTHER ADJUDGED that the order that the defendant stand committed is stayed until October 27, 1978, at 10:00 a.m.

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.

CERTIFIED AS A TRUE COPY ON

THIS DATE

SIGNED BY

U.S. District Judge

H. DALE COOK

Date

10-20-78

By

( ) CLERK

( ) DEPUTY

U.S. Magistrate

FILED

UNITED STATES DISTRICT COURT

OCT 13 1978

NORTHERN District of OKLAHOMA

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

United States of America )  
vs. ) Criminal No. 78-CR-96-B  
MITCHELL STARK, a/k/a )  
Bill Kennedy, )

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 Counts 1, 2, 3 & 4 ONLY of Indictment against  
(indictment, information, complaint)  
Mitchell Stark, a/k/a /Bill Kennedy,  
defendant.

*W. Kenneth P. Snook*  
Asst. United States Attorney

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

(Signed) ALLEN E. BARROW

United States District Judge

Date: October 13, 1978

DOJ

FORM OBD-113

8-27-74



4. The Judgment and Commitment Order was improper imposing two sentences for one crime, thus exposing the Defendant to double jeopardy.
5. The Court's rehabilitation requirement that Defendant be given vocational training preferably in veterinarian technology has not been and could not be obeyed.
6. The probationary-parole period commenced on imposition of sentence and Defendant should not now be incarcerated.
7. The Court sentenced in a vacuum and the intent of the sentence has been undermined by the Parole Commission.

Movant's first contention is without merit. A sentence within statutory limits, as was the sentence in the instant case, is not subject to attack on the ground of severity or that codefendant, or co-participant, received a less severe sentence. Randall v. United States, 324 F.2d 726 (10th Cir. 1963); Martin v. United States, 364 F.2d 894 (10th Cir. 1966).

Movant's second contention that his plea of guilty was part of a plea agreement and the Government did not keep its bargain is clearly belied by the record. He entered his plea of guilty January 14, 1975. The requirements of Rule 11, Federal Rules of Criminal Procedure, at the time of the plea were that before the Court accepted a guilty plea, it determine that the plea was given voluntarily, with an understanding of the nature of the charge and the consequences of the plea, and that the Judge be satisfied that a factual basis existed for the plea. McCarthy v. United States, 394 U. S. 459, 467 (1969); Guthrie v. United States, 517 F.2d 416 (9th Cir. 1975); United States v. Thomas, 468 F.2d 422 (10th Cir. 1972) cert. denied 410 U. S. 935 (1973); United States v. Birchfield, No. 75-1967 unreported (10th Cir. filed Aug. 25, 1976). In the instant case the Rule 11 requirements and constitutional safeguards were fully met. Further, prior to accepting the plea, the Court determined whether there was a plea agreement, and upon being assured by the Movant, his counsel, and counsel for the Government, that there was no agreement of any kind, carefully explained to Movant that even if there were an agreement the Court had not participated and was not bound by any such agreement. The following is quoted from pages Nos. 5 and 6 of the plea transcript:

"THE COURT: I now ask both defense and government counsel to disclose any agreement, if any, that has been made, within your knowledge,

as to any possible sentence the defendant might receive or as to any dismissal of any charges.

"MR. BRYANT: Been no agreement, Your Honor.

"MR. BROCK: None.

"THE COURT: Do you concur with statements of the counsel, Mr. Madewell, as to no agreement?

"DEFENDANT MADEWELL: Yes, sir.

"THE COURT: The Court has not participated in it, and has no knowledge of it, nor is the Court bound by any recommendation of sentence made to the Court. The Court is only bound by the maximum the Court could give you, as I enunciated to you earlier. Do you understand that?

"DEFENDANT MADEWELL: Yes, sir."

Further, from the sentencing transcript of February 3, 1975, appearing at page No. 7, the prosecuting attorney stated:

"MR BRYANT: Your Honor, may I make just one statement. Even though the defendant has a very extensive criminal background, I would like to bring to Your Honor's attention that he did give a full and complete statement in regards to his activity in this particular case, as well as the case of a co-defendant, a separate charge, who was tried and convicted before Your Honor last week -- but he changed his plea, and I think the reason that he changed his plea in the middle of the trial was the fact that he was aware that Mr. Madewell was about ready to testify in that case.

"THE COURT: I see.

"MR BRYANT: And I would like to bring that to Your Honor's attention, even though there was no plea bargaining and no promises or anything were made to him."

The Court finds on the basis of the record that the Movant's claim is unfounded and clearly refuted by the record, and the Rule 11 proceedings should be treated in the ordinary way with no evidentiary hearing required. Ordinarily, the truth and accuracy of statements made by a defendant during Rule 11 proceedings are regarded as conclusive. Hedman v. United States, 527 F.2d 20 (10th Cir. 1975); Blackledge v. Allison, 431 U. S. 63 (1977). A guilty plea is a solemn act which should not be disregarded because of belated misgivings or dissatisfaction with the sentence.

Movant's third contention that the pre-sentence report contained inadequate, incomplete, erroneous and prejudicial statements is also without merit. See, Dukes v. United States, 492 F.2d 1187 (9th Cir. 1974). At the sentencing proceedings held February 3, 1975, the Movant stated to the Court that he had read the presentence report. Further, the Court informed him, "And I'm not considering anything of your past record where it doesn't show you were represented by an attorney . . . I do not consider that at all. But those where you were represented by an attorney, on any of those matters, do you have anything that you differ with?"

"DEFENDANT MADEWELL: No, sir, they are right." Thereafter, Movant was given the maximum sentence for study, report, and recommendation pursuant to 18 U.S.C. § 4208. At definitive sentence on April 29, 1975, the Court relied on the § 4208 study and report and discussed the matter fully with the Movant who was unreservedly loquacious at each of the proceedings as the Court remembers and as supported by the transcripts.

Movant's fourth contention, that two sentences for one crime were imposed exposing him to double jeopardy, and his sixth contention, that the probationary-parole period commenced on imposition of sentence and that he should no longer be incarcerated, are without merit and unsupported by fact or law. The indictment charged that Count One occurred on or about June 11, 1974, with a 1974 automobile, VIN 1H57R4R452929; and that Count Two occurred on or about May 20, 1974, with a 1973 automobile, VIN 1H57K3K-501548. It is ludicrous to suggest that under such indictment only one crime was committed. Further, the Court imposed no probationary sentence. The sentence provided that parole would be in the discretion of the Parole Commission. The sentence was to two four-year terms, imposed so that the four-year period on Count Two would run consecutively to the four-year period on Count One, or a total sentence of eight years. Under the sentence, parole commences when in the determination of the Parole Commission Movant has earned parole.

The fifth contention that the rehabilitation requirement of the sentence was not met is meritless. At definitive sentence, the Court at all times used the words "recommend" and "request" in regard to the Movant's claim that he would like to study to be a veterinarian. On page No. 8 of the transcript the Court stated, ". . . and I'll . . . request they send you to an institution where you may learn a trade, and if they have the

possibilities in their facilities, to study veterinarian medicine, which is your choice." The Court did not attempt to "require" such rehabilitative program for the Movant, as Movant well knew, however, the Court was willing to and did recommend that the Movant be given the opportunity to study to be a veterinarian if such a program were available.

Movant's seventh contention that the Court sentenced in a vacuum, under the circumstances herein, is frivolous. The Court had not only a pre-sentence report, but obtained a § 4208 study and report prior to sentencing, and listened carefully to the allocution of the Defendant, his counsel, and the Government. There was more than ample information before the Court for determination of the proper sentence. Movant continues this claim with the complaint, and major thrust of his entire § 2255 motion, that the intent of the sentence has been undermined by the Parole Commission's failure to give proper consideration to and failure to make proper application of its guidelines to his case. That allegation involves an administrative responsibility unrelated to the sentencing process. His appropriate remedy on such claim 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 although they deal with a different factual claim than here presented.

Being fully advised in the premises after having carefully reviewed the motion, supplements, response, and memory refreshed from examination of the files and transcripts in the criminal case, the Court finds that the motion is without merit and should be overruled.

IT IS, THEREFORE, ORDERED that the motion pursuant to 28 U.S.C. § 2255 of Jackie E. Madewell be and it is hereby overruled, denied and dismissed.

Dated this 13<sup>th</sup> day of October, 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

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. ) No. 77-CR-51-C  
 )  
STEVE LAVADA NICHOLSON, )  
 )  
Defendant. )

**FILED**

OCT 12 1978

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

ORDER

The Court has before it for consideration the motion of the defendant, Steve Lavada Nicholson, for a reduction of sentence pursuant to Rule 35 of the Federal Rules of Criminal Procedure. The defendant pleaded guilty to the indictment in the above entitled case charging him with a violation of Title 18, U.S.C. § 2314. On June 10, 1977, the defendant was sentenced by the Court to serve a five year term of imprisonment, not to run concurrently with a sentence he was then serving on a State charge. In his motion the defendant asks that the time served on the State charge be credited to his federal sentence.

Under Rule 35, the Court retains jurisdiction to reduce a sentence for only 120 days after it is imposed. Rule 35 states: "The Court may reduce a sentence within 120 days after the sentence is imposed, . . ." The defendant's motion to reduce was filed with the Court on September 8, 1978. Clearly this is beyond the 120 day period provided by Rule 35 for the reduction of a sentence.

For the foregoing reason, it is therefore ordered that the defendant's motion for reduction of sentence be and the same is hereby overruled.

It is so Ordered this 12<sup>th</sup> day of October, 1978.

  
H. DALE COOK  
United States District Court



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

**FILED**

**OCT 6 1978**

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

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
VS )  
 )  
JERRY ALAN BROWN, )  
 )  
Defendant. )

77-CR-45-C

O R D E R

On April 29, 1977, came the attorney for the Government, Kenneth P. Snoke, and the defendant appeared in person and by counsel, David L. Peterson.

IT WAS ADJUDGED that the defendant, upon his plea of guilty to Count II of the Indictment, Count I having been previously dismissed, was convicted of having violated Title 18, U.S.C., §2313, as charged in Count II of the Indictment.

IT WAS ADJUDGED that the imposition of sentence was deferred and the defendant was placed on probation for a period of Three (3) Years from April 29, 1977, as to Count II of the Indictment.

Thereafter, on October 2, 1978, there having been filed an application by the Probation Officer, Steve J. Martin, 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 6th day of October, 1978, pursuant to said Warrant, the defendant appeared before the Court with his attorney and counsel, David L. Peterson. The Government was present and represented by its attorney, George Carrasquillo. Thereafter, the Court directed that the Probation Officer, James E. Keeter, 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 April 29, 1977, be revoked and set aside. IT IS ADJUDGED that the defendant JERRY ALAN BROWN is hereby committed to the custody of the Attorney General.

his authorized representative for imprisonment for a period of Three (3) Years as to Count II. IT IS FURTHER ADJUDGED that the sentence imposed herein shall run concurrently with the term of imprisonment heretofore imposed by the Oklahoma State Court in Case Number CRF 78-2175 and Case Number CRF 78-2316.

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 6th day of October, 1978.

  
H. DALE COOK  
UNITED STATES DISTRICT JUDGE

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

UNITED STATES OF AMERICA, )  
)  
Plaintiff, )  
)  
-VS- )  
)  
JAMES ROY WHITBY, )  
)  
Defendant. )

NO. 78-CR-66-C

**FILED**

OCT - 5 1978

ORDER SUSTAINING DIRECTED VERDICT Jack C. Silver, Clerk U.S. District Court

On this 5<sup>th</sup> day of October, 1978, there came on for hearing the Motion of the Defendant, James Roy Whitby, for a directed verdict in this trial, with defendant being represented by his attorney of record, Ronald H. Mook.

The Court having heard the arguments of counsel and being fully advised, upon consideration thereof, finds that the said Motion for a Directed Verdict should be sustained as to count I of the Indictment filed in this case.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Motion of the Defendant for a directed verdict be, and the same is hereby, sustained as to Count I of the Indictment filed in this case.

  
HONORABLE JUDGE OF THE  
UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT  
OF OKLAHOMA

DEFENDANT

HORACE CLARK FLOWERS

DOCKET NO.

78-CR-101

JUDGMENT AND PROBATION/ORDER

AO 245 (5/75)

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

MONTH 10 DAY 03 YEAR 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

Charles Froeb, Appointed Counsel

(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., Section 656, as charged in Count 1 of the indictment.

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 committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of~~

SENTENCE OR PROBATION ORDER

Count One - The imposition of sentence is suspended and the defendant is hereby placed on probation for a period of Three (3) Years from this date, under the Federal Youth Correction Act, pursuant to T. 18, U.S.C., Section 5010(a).

SPECIAL CONDITIONS OF PROBATION

The special conditions of probation are that the defendant avoid any known criminals and make restitution to Fourth National Bank, Tulsa, Oklahoma, payable to the U.S. Court Clerk, U.S. District Court, Northern District of Oklahoma, in the amount of Five Hundred Dollars (\$500.00), to be paid in monthly payments of \$35.00.

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.

CERTIFIED AS A TRUE COPY ON

THIS DATE 10-4-78

BY [Signature]

( ) CLERK (X) DEPUTY

SIGNED BY

U.S. District Judge

ALLEN E. BARROW, CHIEF U.S. DISTRICT JUDGE

Date 10-3-78

U.S. Magistrate

DEFENDANT

JO ANN SMITH

DOCKET NO.

78-CR-97

JUDGMENT AND PROBATION/ORDER

AO-245 (5/75)

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

MONTH DAY YEAR 10 03 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

Ainslie Parrault, Jr., Appointed Counsel (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., Section 495, as charged in Counts 1 and 2 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 imprisonment for a period of

Counts 1 and 2 - The imposition of sentence is suspended and the defendant is placed on supervised probation for a period of Thirty (30) Months as to each count. Counts 1 and 2 are to run concurrently.

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.

CERTIFIED AS A TRUE COPY ON

THIS DATE 10-4-78

By W. W. W. Clerk

( ) CLERK ( ) DEPUTY

SIGNED BY

U.S. District Judge

ALLEN E. BARROW, CHIEF U.S. DISTRICT JUDGE

Date 10-3-78

U.S. Magistrate