

UNITED STATES DISTRICT COURT

Northern District of Oklahoma

United States of America
vs.
CURTIS LEE JAMERSON

Criminal No. 79-CR-86-C

FILED
IN COURT

JUL 20 1979 *fm*

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 I of the Indictment against (indictment, information, complaint) Curtis Lee Jamerson, defendant.

HUBERT H. BRYANT
United States Attorney

Joseph C. ...
Asst. United States Attorney

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

W. J. ...
United States District Judge

Date: *July 20, 1979*

DEFENDANT

CURTIS LEE JAMERSON

DOCKET NO.

79-CR-86-C

JUDGMENT AND PROBATION/COMMITMENT 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
7	20	79

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

O. B. Graham, 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., 5495, as charged in Count 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

Count 2 - Three (3) Years

IT IS FURTHER ORDERED that the execution of sentence is suspended and the defendant is placed on probation for a period of Three (3) Years from this date.

On the motion of the Assistant U. S. Attorney, Count 1 is hereby 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.

CERTIFIED AS A TRUE COPY ON

THIS DATE

SIGNED BY

U.S. District Judge

H. DALE COOK

By

CLERK

U.S. Magistrate

Date 7-20-79

DEPUTY

ho

DEFENDANT RODOLFO GUILLERMO BONILLA-GOMEZ

DOCKET NO. 79-CR-97-C

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 7 DAY 18 YEAR 79

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)

FILED

PLEA

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

JUL 18 1979

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

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 8, U.S.C., §1326, as charged in 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 hereby committed to the custody of the Attorney General...

The imposition of sentence is hereby suspended and the defendant is placed on probation for a period of Three (3) Years from this date, on the condition that the defendant return to El Salvador, his native country, and that he not illegally re-enter the United States.

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

SIGNED BY

U.S. District Judge

H. DALE COOK

THIS DATE

By

() CLERK

U.S. Magistrate

Date 7-18-79

() DEPUTY

DEFENDANT JOSE FRANCISCO AGUILAR-HERNANDEZ

DOCKET NO. 79-CR-96-C

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 7 DAY 18 YEAR 79

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 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. § 1326, as charged in the Indictment.

JUL 18 1979 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 imposition of sentence is hereby suspended and the defendant is placed on probation for a period of Five (5) Years from this date, on the condition that he return to his native country, El Salvador, and that he not re-enter the United States again illegally.

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

SIGNED BY

U.S. District Judge

H. DALE COOK

H. DALE COOK

U.S. Magistrate

Date 7-18-79

THIS DATE

By

CLERK DEPUTY

DEFENDANT JACK R. SOWLES

DOCKET NO. 79-CR-47-C

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 7 DAY 17 YEAR 79

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 Norman Sepenuk, Retained (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 verdict of NOT GUILTY. Defendant is discharged, his bond is exonerated and the Indictment is dismissed. GUILTY.

FILED JUL 17 1979 Jack C. Stone 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

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

SIGNED BY U.S. District Judge U.S. Magistrate

H. DALE COOK

THIS DATE

By () CLERK () DEPUTY

Date 7-17-79

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

DANNY ALEX MACIAS,

Defendant.

No. 77-CR-37

JUL 17 1979

JAMES S. ...
U. S. DISTRICT COURT

O R D E R

The Court now considers the Motion of defendant Danny Alex Macias for Modification of Sentence pursuant to Rule 35, Federal Rules of Criminal Procedure.

Defendant was found guilty by a jury of having violated Title 21, U.S.C. §§ 841(a)(1) and 846, and Title 18, U.S.C. § 2, as charged in Counts 1, 4, and 6 of the indictment. On June 10, 1977, defendant was sentenced to three twenty-five year prison terms to run concurrently; however, the terms were to run consecutive to two prior terms received by defendant in federal courts in California: a ten year sentence for conspiracy to distribute narcotics rendered on June 3, 1974 by the U. S. District Court for the Central District of California, and a five year sentence for conspiracy to distribute marijuana rendered on December 22, 1975 by the U. S. District Court for the Southern District of California; the California sentences were to run concurrently.

Defendant now requests that this Court's sentence of June 10, 1977, be modified to run concurrent to the California sentences. The conviction in this Court was appealed, and judgment was rendered in that appeal on March 9, 1979 by the United States Court of Appeals for the Tenth Circuit. Defendant filed this Motion on July 6, 1979, and is thus within the 120 day time limit for Rule 35 motions.

Having considered the arguments put forth by defendant in the instant motion, and having reviewed the record, it is the decision of this Court that defendant's Motion to Modify should be, and the same hereby is, overruled.

It is so Ordered this 17th day of July, 1979.


H. DALE COOK, CHIEF JUDGE
UNITED STATES DISTRICT COURT

DEFENDANT

LARRY E. FOLEY

DOCKET NO. 79-CR-52-C

JUDGMENT AND PROBATION/COMMITMENT 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
7	16	79

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 Bob Pezold, Retained (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 USC 1014, as charged in 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

Two (2) Years, and on the condition that the defendant shall be confined to a jail-type or treatment center for a period of Five (5) Months, the execution of the remainder of the sentence is suspended and the defendant is placed on probation for a period of Nineteen (19) Months, to commence upon release from confinement.

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

By

U.S. Magistrate

Date 7-16-79

() CLERK

() DEPUTY

DEFENDANT

GEORGE L. GRAYSON

DOCKET NO.

79-CR-48-C

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 7 DAY 16 YEAR 79

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

Paul D. Brunton, Retained

(Name of counsel)

PLEA

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

NOLO CONTENDERE,

NOT GUILTY

FILED

JUL 16 1979

Jack C. Silver, Clerk

U. S. DISTRICT COURT

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., §1014, as charged in the indictment.

SENTENCE OR PROBATION ORDER

The imposition of sentence is hereby suspended and the defendant is placed on probation for a period of Three (3) Years 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.

CERTIFIED AS A TRUE COPY ON

THIS DATE

SIGNED BY

U.S. District Judge

H. DALE COOK

Date 7-16-79

By

() CLERK

() DEPUTY

U.S. Magistrate

h0

UNITED STATES DISTRICT COURT

Northern District of Oklahoma

United States of America

vs.

JACK R. SOWLES

Criminal No. 79-CR-47-C

FILED
IN OPEN COURT

JUL 13 1979

Jack O. Miller, 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 through XI of Indictment against (indictment, information, complaint) Jack R. Sowles, defendant.

HUBERT H. BRYANT
United States Attorney

Asst. United States Attorney

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

United States District Judge

Date: July , 1979

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 LARRY DEAN TURNER,)
)
 Movant.)

No. 73-CR-113-D ✓

FILED

JUL 16 1979

OPINION AND ORDER

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

On May 6, 1977, the court entered an Order disposing of two legal issues raised pursuant to movant's Motion to Vacate under Title 28, U.S.C. § 2255. As to the remaining three mixed fact and law issues, counsel was appointed to represent the movant, a complete evidentiary record has been developed through interrogatories, and counsel has submitted said three issues for final decision based on the record extant herein. The movant is presently in custody under the sentence attacked herein because of alleged violation of parole arising, in part, from a judgment of conviction in the Western District of Oklahoma of a new offense (United States v. Larry Dean Turner, Case No. CR-79-13, Tenth Circuit Court of Appeals No. 79-1468). The court upon review of this record finds and concludes as follows:

I.

As to the ground for relief No. 3, based upon the assertion the movant was not advised of his right to grand jury indictment, the supplemented record includes the testimony of John Street, court-appointed counsel for movant, which is summarized as follows:

Street states that he represented Turner at a hearing before the late Chief Judge Allen E. Barrow on September 18, 1973 where the government was granted the right to dismiss the indictment (Case No. 73-CR-97) and was granted leave to file and proceed upon a superseding Information (Case No. 73-CR-113); that he told Turner that he had an absolute

right to be proceeded against by grand jury indictment if he desired; that he believes Judge Barrow also informed him of this right; that Turner said that he understood this right and wished to waive it since a grand jury indictment would only delay the proceeding; that he believes that Turner also acknowledged this right and waived it in open court; that no written waiver of indictment was executed by Turner because no one ever asked him to sign one; and that he can state beyond a reasonable doubt to a moral certainty that he advised Turner of his constitutional rights.

It is apparent that the right of grand jury indictment accruing to the movant through the Fifth Amendment was knowingly, voluntarily, and understandingly waived in the interest of an expeditious jury trial. The court notes that the superseding information was virtually identical to the superseded indictment. The fact that movant did not formally sign or waive indictment in open court is not fatal under these circumstances, where he was competently informed of this constitutional right by his counsel and informally waived the same. The court has heretofore quoted from the case of Bartlett v. United States, 354 F.2d 745 (8th Cir. 1966) in its Order of May 6, 1977, which case recognizes a non-ritualized waiver of indictment and a review of this record reflects substantial compliance with the Bartlett test. Also see Beardslee v. United States, 541 F.2d 705, 706 (8th Cir. 1976); Williams v. United States, 410 F.2d 370 (3rd Cir. 1969). Collateral relief is not available where all that is shown is a failure to comply with the formal requirements of a rule of criminal procedure and absent any indication the movant was prejudiced thereby. United States v. Hamilton, 553 F.2d 63, 66 (10th Cir. 1977), cert. denied, 434 U.S. 834 (1977); United States v. White, 572 F.2d 1007, 1009 (4th Cir. 1978); Lepera v. United States, 587 F.2d 433, 435 (9th Cir. 1978). Movant has simply not sustained his burden of establishing this ground for relief by a

preponderance of the evidence. United States v. DeCarlo, 575 F.2d 952, 954-955 (5th Cir. 1978), cert. denied, ___ U.S. ___.

II.

As to grounds for relief Nos. 4 and 5, the movant urges that the use of prior unaccepted and void state (Hughes County, Oklahoma) guilty pleas is violative of constitutional due process herein at two levels: (a) during jury trial for the purpose of impeachment, and (b) at sentencing since it may have enhanced the sentence imposed by four years. In its Order of May 6, 1977, the court also ordered an evidentiary record on movant's allegations of threats and coercion perpetrated on him to enter said state guilty pleas. The evidentiary record pertinent to these grounds includes the testimony of James C. Daugherty, movant's privately retained counsel on the Hughes County charges, Jim Baker, undersheriff of Hughes County and Elma Mae Medler, mother of the movant. Their testimony is summarized as follows:

(a) James C. Daugherty - Daugherty states that Turner was arraigned in each of the Hughes County criminal cases; that no preliminary hearings were held and explains why; the investigation he made of the charges; that he advised Turner of the alternatives involved in accepting or denying the Hughes County District Attorney's offer to recommend a deferred sentence if Turner pleaded guilty; the reasons for giving such advice to Turner; that he had no knowledge of any remarks the Hughes County District Attorney made to Turner regarding deferred sentences and their effects; that when he appeared with Turner for arraignment, he noted that Turner's right eye was black and that his nose appeared to be swollen, and that he dictated this observation into the record; that he did not recall specifically the explanation for Turner's appearance at that time but recalled that it involved some type of altercation in the jail between Turner and the Hughes County

sheriff and/or deputies; that he knew of no threats by the Hughes County sheriff upon Turner's life; that he could state with certainty that Turner's plea to the state charges was voluntarily made and was made because Turner was guilty and not because of promises made by the District Attorney's office; that during the time in which he represented Turner, he discussed with Turner his right to a jury trial, not to incriminate himself, to have the government carry the burden of proving his guilt beyond a reasonable doubt, and to require the government to prove every element of the offenses; and that Turner had told him that Turner and the Hughes County sheriff were having some problems involving a woman they were both supposedly interested in.

(b) Jim Baker - Baker states that Turner was subjected to physical force or violence while in the custody of the Hughes County sheriff's office when Turner, upon being arrested, refused to surrender keys he had in his pocket; that the injuries complained of by Turner possibly resulted when it was necessary for Baker and the sheriff to forcibly remove the keys from Turner; that Turner was never threatened by any member of the Hughes County sheriff's department; and that Turner was never threatened, coerced or encouraged by any member of the Hughes County sheriff's department to plead guilty to any crime.

(c) Elma Mae Medler - Mrs. Medler relates events surrounding the 1969 state criminal charges against Turner and the events up to Turner's guilty pleas in those cases, and states that the Hughes County sheriff communicated threats to her to induce Turner to plead guilty to the state charges; that these threats were that the sheriff would see to it that Turner never got out of jail if he didn't

cooperate and that he, the sheriff, would kill Turner if he didn't plead guilty to the charges; and that in 1973 Judge Bob Reeves called her and threatened to put Turner in the penitentiary for the rest of his life if Turner tried to have his records expunged.

The transcript of testimony in the Hughes County District Court and other evidentiary materials reflect that the Hughes County charges included the following:

- CRF-69-52, Grand Larceny;
- CRF-69-53, Burglary;
- CRF-69-55, Grand Larceny;
- CRF-69-56, Burglary;
- CRF-69-57, Burglary;
- CRF-69-58, Burglary;
- CRF-69-59, Burglary;
- CRF-69-60, Grand Larceny;
- CRF-69-62, Grand Larceny;
- CRF-69-63, Grand Larceny.

On August 5, 1971 the movant entered pleas of guilty to said charges and upon the recommendation of the District Attorney, he was placed on probation for a period of two years with actual sentence being deferred. On August 21, 1975, subsequent to the trial and sentence attacked herein, the deferred sentences were expunged from the record and dismissed with prejudice.

In the appeal of the judgment under attack herein, the movant contended, as he has also urged herein, that the use of the Hughes County pleas of guilty for impeachment purposes was improper since there was no judgment of guilt. In reviewing the Oklahoma "Deferred Sentence Procedure", 22 O.S. § 991c, the Court of Appeals affirmed and stated that although a deferred sentence is not a "conviction" under Oklahoma law, the admissibility of evidence in a federal criminal trial is not controlled thereby. "Federal cases interpret the common law as allowing evidence of other convictions

for impeachment purposes . . . and hold that a guilty plea is a confession of guilt and amounts to a conviction". (citations omitted). United States v. Turner, 497 F.2d 406, 407 (10th Cir. 1974), cert. denied, 423 U.S. 848 (1975). Also see United States v. Place, 561 F.2d 213, 215 (10th Cir. 1977), cert. denied, 434 U.S. 1000 (1977); Braswell v. United States, 224 F.2d 706, 707-710 (10th Cir. 1955), cert. denied, 350 U.S. 845 (1955). Vacating this sentence because of the use of the Hughes County pleas at trial would violate the rule that normally, evidentiary rulings are not properly cognizable in § 2255 proceedings. Carrillo v. United States, 332 F.2d 202 (10th Cir. 1964); Nick v. United States, 406 F.Supp. 1 (E.D. Mo. 1975), affmd, 531 F.2d 936 (8th Cir. 1976).

In the sentencing of the movant, the transcript reflects that the court's only reference to the Hughes County pleas was as follows:

"In connection with this sentencing, the only consideration that is being made by the Court is the prior record of this defendant involving those State Court convictions brought out during the trial. I am giving no consideration to any other items on the defendant's prior record." (page 16.)

Thus, no tainted prior sentences were ever considered during the trial, or to enhance the sentence in violation of Gideon v. Wainwright, 372 U.S. 335 (1963) and Tucker v. United States, 404 U.S. 443 (1972), and the state pleas, even when dismissed in 1975, were never held to be invalid on constitutional grounds. Moreover, the law of this case was established in United States v. Turner, supra, and, both at the time of trial and sentencing, the prior state pleas of guilty were deemed convictions without evidence of constitutional infirmity. Bromley v. Crisp, 561 F.2d 1351, 1363 (10th Cir. 1977), cert. denied, 435 U.S. 908 (1978); Schwartz v. N.M.S. Industries, Inc., 575 F.2d 553 (5th Cir. 1978).

In an anomalous contention to the court's purported illegal use of valid Hughes County pleas, the movant asserts the pleas were

invalid because of threats and coercion by the Hughes County Sheriff's department. In this regard, the testimony of movant's privately retained counsel is particularly significant in view of his professional competence and the lengthy and deliberate consideration of the Hughes County charges (from October 1969 to August 1971) before the pleas were entered. Reiterating, movant's counsel stated that the pleas were voluntarily made with full awareness of constitutional rights to jury trial, to confrontation, not to incriminate himself, and of the state's burden of proof. Movant's counsel further stated he knew of no threats by the Hughes County Sheriff's department. The undersheriff unequivocally stated that the movant was never threatened nor coerced by himself or any member of the Hughes County Sheriff's department and that the only physical contact with the movant was when it was necessary to forcibly remove keys from him before he was incarcerated. The testimony of movant's mother is incredulous in view of her relationship to the movant, that the threats by the sheriff and district judge were communicated to her rather than directly to movant, and movant has not shown by competent evidence that the pleas were unconstitutionally entered by reason of the alleged threats. The evidentiary record in this case satisfies the court that the Hughes County pleas were not taken in violation of Boykin v. Alabama, 395 U.S. 238 (1969), and were intelligently and voluntarily entered. Stinson v. Turner, 473 F.2d 913 (10th Cir. 1973); Lansinger v. Crisps, 403 F.Supp. 928 (W.D. Okla. 1975). The full panoply of Rule 11, Federal Rules of Criminal Procedure, 18 U.S.C.A., does not apply to state court procedures. Beavers v. Anderson, 474 U.S. 1114, 1117 (10th Cir. 1973). Accordingly, it is the court's view that the movant has not shown by a preponderance of the evidence that there was any unconstitutional threats or coercion in connection with the Hughes County pleas.

Therefore, the movant's Motion to Vacate, Set Aside, or

Correct Sentence pursuant to 28 U.S.C. § 2255 is denied.

Dated this 16th day of July, 1979.

Fred Daugherty
FRED DAUGHERTY
UNITED STATES DISTRICT JUDGE

DEFENDANT

GEORGE E. BEAMS

DOCKET NO. 79-CR-53-C

JUDGMENT AND PROBATION/COMMITMENT 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 7 13 79

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 Tom Mason, Retained (Name of counsel)

PLEA

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

FILED

JUL 13 1979

W. C. SIMON, Clerk U.S. DISTRICT COURT

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., §7201, 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 be committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

The imposition of sentence is hereby suspended in Counts 1 and 2 and the defendant is placed on probation for a period of Two (2) Years from this date as to each Count; said probation imposed in Count 2 to run concurrently with the probation imposed in Count 1.

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

SIGNED BY

U.S. District Judge

H. DALE COOK

H. DALE COOK

Date 7-13-79

THIS DATE

By

() CLERK

() DEPUTY

UNITED STATES DISTRICT COURT

Northern District of Oklahoma

United States of America)
vs.)
Daniel Guereca-Arreola,)

Criminal No. 79-CR-81-C

FILED

12 JUL 10 1979

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 indictment against
(indictment, information, complaint)

Daniel Guereca-Arreola, defendant.

Eleanor Darden Thompson
Assistant United States Attorney

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

W. Dale Cook
United States District Judge

Date: July 10, 1979

FORM OBD-113

DOJ

8-27-74

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

DARRELL WAYNE CONDIT,)
)
 Movant,) 79-C-385-C
)
 vs.) No 74-CR-48
)
 UNITED STATES OF AMERICA,)
)
 Respondent.)

FILED

APR 10 1979

ORDER

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

The movant herein is presently a prisoner in the Englewood Federal Correctional Institution, Englewood, Colorado. On November 18, 1974, the movant entered pleas of guilty to Counts One and Two of an Indictment charging him with violations of 18 U.S.C. § 1708, and 18 U.S.C. § 495, respectively. On November 26, 1974, Judge Allen E. Barrow suspended the imposition of sentence on both Counts, and placed the movant on probation for a period of four years as to each Count, the two periods of probation to run concurrently. The imposition of probation was made pursuant to the Youth Corrections Act, 18 U.S.C. § 5010(a). On January 9, 1976, movant's probation was revoked, and he was sentenced by Judge Barrow to eighteen months imprisonment on Count One. On Count Two, the imposition of sentence was suspended, and he was placed on two years probation. The movant served the eighteen-month sentence. On January 10, 1978, the United States District Court for the Eastern District of California assumed jurisdiction of movant's probation, as the movant intended to reside within that judicial district. On April 2, 1979, movant's probation was revoked and the California court sentenced him to two years imprisonment. The movant herein challenges the sentences imposed by Judge Barrow on January 9, 1976, and by the California court on April 2, 1979, pursuant to 28 U.S.C. § 2255.

Under the literal terms of Section 2255, this Court would lack jurisdiction to consider the movant's challenge to the sentence of the California court for that Section provides that the motion be made to the "court which imposed the sentence". However, movant has referred the Court to the case of Napoles v. United States, 536 F.2d 722 (7th Cir. 1976), and the Court finds the reasoning of that case to be persuasive.

In Napoles, the court held that a Section 2255 motion should be heard in the "'court whose proceedings are being attacked'". 536 F.2d at p.726. Jurisdiction over Napoles' probation had been transferred, and the transferee court had subsequently revoked probation and imposed an institutional sentence. Napoles filed a Section 2255 motion with the transferor court which was dismissed for lack of jurisdiction. The appellate court held that the transferor court did have jurisdiction because it was the proceedings there that were being attacked by Napoles.

In the case at bar, the movant is serving a sentence imposed by the California court. However, as in Napoles, the movant is only attacking proceedings in this Court. The movant alleges that the sentence of the California court is illegal because the sentence imposed on January 6, 1976 by Judge Barrow is illegal.

In support of its holding, the Napoles court noted that one of the purposes of Section 2255 "'was to effect a change in the law whereby the Judge whose proceedings were being attacked would in the first instance hear and determine the validity of the attack . . .'" 536 F.2d at p.725. See also Martin v. United States, 248 F.2d 554 (8th Cir. 1957); Woods v. Rodgers, 275 F.Supp. 559 (D.D.C. 1967). Because Judge Barrow is now deceased, this purpose could not be achieved in the instant case. On the other hand, the California court had absolutely no connection with the proceedings

presently being attacked. The Court therefore holds that it may properly hear the present motion in its entirety.

The movant contends that the January 9, 1976 sentence was illegal because it changed his original sentence under the Youth Corrections Act to an adult sentence, and because the sentences on the two counts were made to run consecutively, when they were originally to run concurrently. He further contends that the California court did not have jurisdiction to impose the two year sentence on him because that sentence stemmed from the allegedly illegal sentence imposed by Judge Barrow.

An examination of the court file herein demonstrates that the movant was approximately twenty-four years old on January 9, 1976. The movant was therefore eligible for treatment under the Youth Corrections Act, but as a "young adult offender", not as a "youth offender". 18 U.S.C. §§ 4216, 5006. If the movant had been a "youth offender", sentencing under the Youth Corrections Act would have been mandatory absent a finding that he would not derive any benefit therefrom. 18 U.S.C. § 5010(d). See Dorszynski v. United States, 418 U.S. 424, 94 S.Ct. 3042, 41 L.Ed.2d 855 (1974). But as a "young adult offender", the movant could not have been sentenced under the Youth Corrections Act unless there was a finding that there were reasonable grounds to believe that he would benefit from treatment thereunder. 18 U.S.C. § 4216. See Dorzynski v. United States, supra. No such finding was made.

Furthermore, the fact that the movant was originally sentenced under the Youth Corrections Act does not require his re-sentencing under the same upon the revocation of his probation. Nor was Judge Barrow required to impose concurrent sentences on both counts such as were originally imposed.

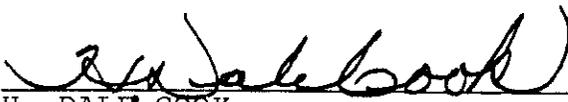
"When a court places a youth offender on probation under section 5010(a) of the Youth

Corrections Act, it is exercising an option in lieu of sentencing and not imposing a 'sentence' within the strict meaning of the word. . . . Thereafter, when the terms of probation are violated the court may impose any sentence that might originally have been adjudged. . . ." (Citations omitted) Dunn v. United States, 561 F.2d 259, 261 (D.C.Cir. 1977). See also United States v. Evers, 534 F.2d 1186 (5th Cir. 1976).

The January 9, 1976 sentence was certainly one that could have originally been adjudged and the movant's contention that such sentence was illegal is without merit. The movant proposes no further ground to support his claim that the California sentence is illegal. That claim must therefore fall as well.

For the foregoing reasons, it is therefore ordered that the present motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 is hereby overruled.

It is so Ordered this 10th day of July, 1979.



H. DALE COOK
Chief Judge, U. S. District Court

DEFENDANT

LISANDRO AGUSTO SOTO-SOTO

DOCKET NO.

79-CR-80-C

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 7 DAY 6 YEAR 79

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 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

NOT GUILTY. Defendant is discharged

GUILTY.

Defendant has been convicted as charged of the offense(s) of having violated Title 18, U.S.C., §1426(b), as charged in 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 imposition of sentence is hereby suspended and the defendant is placed on probation for a period of Two (2) Years from this date.

SPECIAL CONDITIONS OF PROBATION

Conditions of probation are that the defendant return or be returned to Guatemala by the Immigration and Naturalization Service and that he is not to re-enter the United States illegally.

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

SIGNED BY

U.S. District Judge

H. DALE COOK

U.S. Magistrate

Date 7-6-79

THIS DATE

By

() CLERK

() DEPUTY

DEFENDANT

LONNELL FOSTER

DOCKET NO.

79-CR-75-C

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 7 3 79

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

Randolph P. Stainer, Court Appointed

(Name of counsel)

FILED

PLEA

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

NOLO CONTENDERE,

NOT GUILTY

JUL 8 1979

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

FINDING & JUDGMENT

There being a finding of guilty 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., §495, as charged in Counts 1 and 2 of the Information.

The Court finds that the defendant was 19 years of age at the time of conviction, but finds that the defendant does not need to be committed for treatment.

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 for the purpose of probation.

The imposition of sentence in Counts 1 and 2 is hereby suspended and the defendant is placed on probation for a period of Four (4) Years from this date; the probation imposed in Count 2 to run concurrently with the probation imposed in Count 1.

SPECIAL CONDITIONS OF PROBATION

In addition to the usual conditions of probation, the defendant shall find and maintain lawful and useful employment, or attend a training or vocational school to learn a trade.

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

By

() CLERK

U.S. Magistrate

Date 7-3-79

() DEPUTY

DEFENDANT

DEBORAH LYNN COBB

DOCKET NO. 79-CR-72-C

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 7 DAY 3 YEAR 79

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

Robert H. Tips, Retained

(Name of counsel)

FILED

PLEA

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

NOLO CONTENDERE,

NOT GUILTY

JUL 3 1979

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

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 18, U.S.C., 5656, as charged in Counts 1, 2, 3, 4, 5 and 6 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

Count 1 - Three (3) Years, and on the condition that the defendant be confined in a jail-type or treatment institution for a period of Four (4) Months, the execution of the remainder of the sentence is hereby suspended and the defendant is placed on probation for a period of Two and one-half (2 1/2) Years, to commence upon release of defendant from confinement.

SPECIAL CONDITIONS OF PROBATION

Counts 2,3,4,5 and 6 - The imposition of sentence is hereby suspended and the defendant is placed on probation for a period of Two and one-half (2 1/2) Years, to commence at such time as the defendant is released from confinement.

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

SIGNED BY

U.S. District Judge

H. DALE COOK

THIS DATE

By

U.S. Magistrate

Date 7-3-79

() CLERK

() DEPUTY