

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

FILED

NOV 26 1996

Phil Lombardi, Clerk  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

GREGORY DALE RHINES,

Defendant.

Case No. 96-CR-128-H

CLERK OF COURT

NOV 26 1996

**ORDER**

Now on this 25<sup>TH</sup> day of November, 1996, this cause comes on to be heard on the motion of the defendant to dismiss the indictment for failure to state an offense and the agreement to dismiss filed by the plaintiff. From those pleadings, arguments of counsel, and other matters and things, the Court finds as follows:

1. The specification of the indictment herein does not recite that the defendant committed the offense set forth therein "with intent to defraud." The statute in question, 18 U.S.C. § 471, contains that language. Intent to defraud, therefore is an element of the offense.
2. Plaintiff has agreed in an Agreement to Dismiss Without Prejudice filed herein that the indictment in this case is deficient, in that the statutory language "with intent to defraud" is omitted from the specification.
3. Under the circumstances, the Court believes that dismissal without prejudice is proper.

It is therefore ordered, adjudged, and decreed that the indictment herein is dismissed, without prejudice.

IT IS SO ORDERED.

This 25<sup>TH</sup> day of November, 1996.



Sven Erik Holmes  
United States District Judge

**F I L E D**

**UNITED STATES DISTRICT COURT  
Northern District of Oklahoma**

NOV 21 1996

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA

v.

Case Number 96-CR-045-001-B

ARLAND DEON GAINES aka Arland Deon Williamson  
Defendant.

ENTERED ON DOCKET  
NOV 22 1996  
DATE \_\_\_\_\_

**JUDGMENT IN A CRIMINAL CASE  
(For Offenses Committed On or After November 1, 1987)**

The defendant, ARLAND DEON GAINES aka Arland Deon Williamson, was represented by C. Rabon Martin.

The defendant was found guilty on count(s) 1, 2, and 3 of the Indictment on August 22, 1996 after a plea of not guilty. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
21 USC 841(a)(1), 841(b)(1)(A)(iii), and 851(a)(1)	Possession of Controlled Dangerous Substance with Intent to Distribute	11/09/95	1
18 USC 922(g)(1), and 924(a)(2)	Possession of Firearm After Prior Felony Conviction	11/09/95	2
18 USC 922(g)(1), and 924(a)(2)	Possession of a Firearm After Prior Felony Conviction	05/13/94	3

As pronounced on November 15, 1996, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 150.00, for count(s) 1, 2, and 3 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 20<sup>th</sup> day of Nov., 1996.



The Honorable Thomas R. Brett  
Senior United States District Judge

Defendant's SSN: 447-86-6412  
Defendant's Date of Birth: 11/30/69  
Defendant's residence and mailing address: 3215 N. Garrison Ave., Tulsa, Oklahoma 74106

United States District Court )  
Northern District of Oklahoma )  
I hereby certify that the foregoing )  
is a true copy of the original on file )  
in this court. Phil Lombardi, Clerk

By   
Deputy

Defendant: ARLAND DEON GAINES aka Arland Deon Williamson  
Case Number: 96-CR-045-001-B

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 240 months as to Count 1, and 120 months as to each of Counts 2 and 3, all counts to be served concurrently, each with the other, for a total sentence as to all counts of 240 months.

The Court makes the following recommendations to the Bureau of Prisons: The Bureau of Prisons designates the facility at El Reno, Oklahoma, for the defendant to serve his term, provided such placement meets all classification requirements. The Court further recommends that the defendant receive chemical dependency treatment through the Bureau of Prisons Substance Abuse Programs.

The defendant is remanded to the custody of the United States Marshal.

**RETURN**

I have executed this Judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this Judgment.

\_\_\_\_\_  
United States Marshal

Defendant: **ARLAND DEON GAINES** aka Arland Deon Williamson  
Case Number: 96-CR-045-001-B

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 10 years as to Count 1, and 3 years as to each of Counts 2 and 3, all counts to run concurrently, each with the other.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm or destructive device.
4. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
5. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.

### STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.



Defendant: ARLAND DEON GAINES aka Arland Deon Williamson  
Case Number: 96-CR-045-001-B

**STATEMENT OF REASONS**

The court adopts the factual findings and guideline application in the presentence report.

**Guideline Range Determined by the Court:**

Total Offense Level:	34
Criminal History Category:	III
Imprisonment Range:	240 months - Ct. 1 120 months - Ct. 2 120 months - Ct. 3
Supervised Release Range:	10 years - Ct. 1 2 to 3 years - Cts. 2 & 3
Fine Range:	\$ 17,500 to \$ 8,000,000 - Cts. 1, 2, & 3
Restitution:	N/A

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

UNITED STATES DISTRICT COURT  
Northern District of Oklahoma

FILED

NOV 22 1996

Phil Lombardi, Clerk  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA

v.

Case Number 96-CR-046-001-BU

PAUL J. MAYS, JR.  
Defendant.

ENTERED ON DOCKET  
DATE 11-22-96

JUDGMENT IN A CRIMINAL CASE  
(For Offenses Committed On or After November 1, 1987)

The defendant, PAUL J. MAYS, JR., was represented by Mack K. Martin.

On motion of the United States the court has dismissed count(s) 1 of the Indictment.

The defendant pleaded guilty to count(s) 1 of the Information on August 19, 1996. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 USC 1363, 1151, and 1152	Destruction of Property Within Territorial Jurisdiction of United States, Committing a Crime in Indian Country	09/22/95	1

As pronounced on November 18, 1996, the defendant is sentenced as provided in pages 2 through 4 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 50.00, for count(s) 1 of the Information, which shall be due immediately.

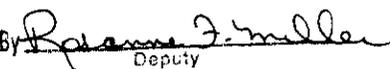
It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 21<sup>st</sup> day of November, 1996.

  
The Honorable Michael Burrage  
Chief United States District Judge

Defendant's SSN: 440-50-7859  
Defendant's Date of Birth: 10-15-50  
Defendant's residence and mailing address: Box 237, Pawhuska, Oklahoma 74056

United States District Court )  
Northern District of Oklahoma ) SS  
I hereby certify that the foregoing  
is a true copy of the original on file  
in this court. Phil Lombardi, Clerk

By   
Deputy

Defendant: PAUL J. MAYS, JR.  
Case Number: 96-CR-046-001-BU

### PROBATION

The defendant is hereby placed on probation for a term of 3 year(s).

While on probation, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. If this judgment imposes a fine, special assessment, costs or restitution obligation, it shall be a condition of probation that the defendant pay any such fine, assessment, costs and restitution.
2. The defendant shall not own or possess a firearm or destructive device.

### STANDARD CONDITIONS OF PROBATION

While the defendant is on probation pursuant to this judgment, the defendant shall not commit another federal, state or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: PAUL J. MAYS, JR.  
Case Number: 96-CR-046-001-BU

**FINE**

The defendant shall pay a fine of \$ 5,000.00. This fine shall be paid in full immediately. Any amount not paid during the period of probation.

The defendant shall pay the cost of supervision consecutive to Northern District of Oklahoma, Case No. 96-CR-067-001-H. Specifically, the defendant shall pay \$195.30 monthly for three months, totalling \$585.90 in addition to the cost of supervision previously imposed in Case No. 96-CR-067-001-H.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Defendant: PAUL J. MAYS, JR.  
Case Number: 96-CR-046-001-BU

**STATEMENT OF REASONS**

The court adopts the factual findings and guideline application in the presentence report.

**Guideline Range Determined by the Court:**

Total Offense Level:	7
Criminal History Category:	I
Imprisonment Range:	0 months to 6 months - Ct. 1
Supervised Release Range:	2 to 3 years - Ct. 1
Fine Range:	\$ 500 to \$ 5,000 - Ct. 1
Restitution:	N/A

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

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

**FILED**

NOV 21 1996

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 BILLY D. TRAMMEL, )  
 )  
 Defendant. )

No. 95-CR-92-K ✓  
(96-CV-928-K)

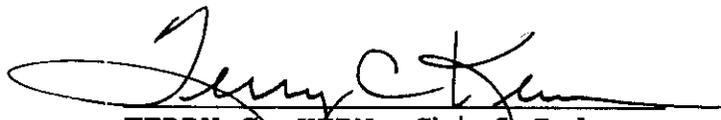
ENTERED ON DOCKET  
DATE 11-22-96

**ORDER**

This matter comes before the Court on Defendant's motion to withdraw his motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255.

Having considered the motion, the Court concludes that it should be granted. ACCORDINGLY, IT IS HEREBY ORDERED that Defendant's motion to withdraw (Docket #22) is GRANTED and Defendant's 2255 motion is hereby DISMISSED WITHOUT PREJUDICE. The Clerk shall MAIL a copy of Defendant's 2255 motion to the Government.

SO ORDERED THIS 19<sup>th</sup> day of November, 1996.

  
TERRY C. KERN, Chief Judge  
UNITED STATES DISTRICT COURT

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

FILED

NOV 21 1996

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BILLY D. TRAMMEL,

Defendant.

No. 95-CR-92-K ✓  
(96-CV-928-K)

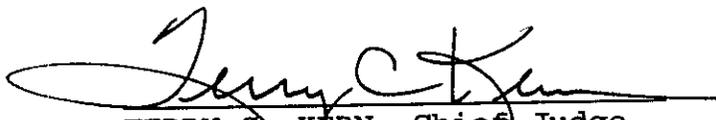
ENTERED ON DOCKET  
DATE 11-22-96

ORDER

This matter comes before the Court on Defendant's motion to withdraw his motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255.

Having considered the motion, the Court concludes that it should be granted. ACCORDINGLY, IT IS HEREBY ORDERED that Defendant's motion to withdraw (Docket #22) is GRANTED and Defendant's 2255 motion is hereby DISMISSED WITHOUT PREJUDICE. The Clerk shall MAIL a copy of Defendant's 2255 motion to the Government.

SO ORDERED THIS 19<sup>th</sup> day of November, 1996.



TERRY C. KERN, Chief Judge  
UNITED STATES DISTRICT COURT

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

~~FILED~~

~~NOV 19~~

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA, )  
)  
Plaintiff, )  
)  
vs. )  
)  
STEVEN WILLIAM VANLUE, )  
)  
Defendant. )

No. 89-CR-77-C

ENTERED ON BOOKET

DATE NOV 21 1996

~~FILED~~

NOV 20 1996

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

**ORDER**

Currently pending before the Court is the motion filed by defendant, Steven Vanlue, seeking to vacate, set aside, or correct his sentence, pursuant to 28 U.S.C. § 2255.

On November 30, 1989, Vanlue plead guilty to Counts Three and Seven of a Superseding Indictment. More specifically, Vanlue plead guilty to Count Three, possession with intent to distribute amphetamine, in violation of 21 U.S.C. § 841(a)(1), and Count Seven, using or carrying a firearm during the commission of a drug trafficking felony, in violation of 18 U.S.C § 924(c). On January 18, 1990, Vanlue was sentenced to 60 months imprisonment on Count Three and 60 months imprisonment on Count Seven, to run consecutive to the sentence imposed in Count Three. Vanlue did not file a direct appeal. However, Vanlue previously submitted a § 2255 motion, which was denied by the Court. The Court's order was affirmed by the Tenth Circuit in U.S. v. Vanlue, 982 F.2d 530 (10th Cir.1992).

In his present motion, Vanlue argues that his conviction under 18 U.S.C. § 924(c) should be vacated in light of the recent Supreme Court decision in Bailey v. U.S., 116 S.Ct. 501 (1995). The record reveals that Vanlue carried a pistol on his person to protect illicit drugs and to protect himself during the sale of illicit drugs. In his change of plea hearing, Vanlue admitted that he acted as an

“armed guard” with respect to the sale of illicit drugs. Vanlue further admitted that he was armed with a 9 millimeter Helwan semi-automatic pistol while committing drug trafficking crimes. Based upon Vanlue’s statements to the Court under oath and based upon Vanlue’s sworn petition to enter a plea of guilty, the Court found that Vanlue admitted the essential elements of the crimes charged and that there was a factual basis for each plea of guilty. The Court thus accepted Vanlue’s plea of guilty and found Vanlue guilty as to Counts Three and Seven.

The Supreme Court in Bailey held that the word “use” in § 924(c)(1) requires evidence showing the active employment of a firearm in relation to a drug trafficking offense. That is, evidence showing mere proximity and accessibility of the firearm to drugs is insufficient to support a conviction for “use” under § 924(c)(1). This Court notes, however, that § 924(c)(1) criminalizes either the “using” or “carrying” of a firearm during and in relation to a drug trafficking felony. Bailey focused primarily on the “use” prong and gave little attention to the “carry” prong of § 924(c)(1). Bailey did note that a “defendant cannot be charged under § 924(c)(1) merely for storing a weapon near drugs or drug proceeds.” Id. at 508. However, Bailey does recognize the distinction between the “use” and “carry” prongs of the statute, noting that a firearm can be “carried” without being “used.” Id. at 507. Hence, the “‘carry’ prong of § 924(c)(1) . . . brings some offenders who would not satisfy the ‘use’ prong within the reach of the statute.” Id. at 509. The “carry” prong therefore has a broader reach than the “use” prong.

In interpreting the “carry” prong of § 924(c), the Tenth Circuit held that carrying involves “two elements: possession of the weapon through the exercise of dominion or control; and transportation or movement of the weapon.” U.S. v. Martinez, 912 F.2d 419, 420 (10th Cir.1990). Further, the Tenth Circuit noted that “Congress used two terms because it intended each term to have

a particular, nonsuperfluous meaning. . . . [A] firearm can be carried without being used, e.g., when an offender keeps a gun hidden in his clothing throughout a drug transaction.” U.S. v. Miller, 84 F.3d 1244, 1259 (10th Cir.1996). The “carry” prong “applies in a great many situations in which the post-Bailey definition of the ‘use’ prong would not.” Id. at 1260. In addition to simply determining that a weapon was “carried”, however, § 924(c) also requires a showing that the defendant carried a firearm during and in relation to a drug trafficking crime. “To establish this nexus, there must be evidence that defendant ‘intended the weapon to be available for use during [a] drug transaction.’” Id. (quoting, U.S. v. Nicholson, 983 F.2d 983 (10th Cir.1993)). That is, the government must show that “the defendant availed himself of the firearm and that the firearm ‘played an integral role’ in a drug trafficking offense.” Id.

When a defendant pleads guilty, it is necessary only that the Court make such inquiry as shall satisfy it that there is a factual basis for the plea. Fed.R.Crim.P. 11(f). As such, Vanlue’s § 2255 motion stands or falls on whether the Court finds, in light of the admitted facts, there is a factual basis for his guilty plea. In the present case, Count Seven of the Superseding Indictment charges Vanlue with using or carrying a firearm. Hence, Vanlue’s conviction under § 924(c) will be upheld if the Court finds that Vanlue’s sworn admissions establish that he either used *or* carried a firearm in relation to a drug trafficking crime. The Court finds that Vanlue admitted sufficient facts under oath to support his conviction under the “carry” prong of § 924(c). Whether Vanlue “used” the firearm under the test enunciated in Bailey is not determinative as to whether Vanlue’s § 924(c) conviction may stand. Vanlue may be found guilty under § 924(c) if the Court finds that the “carry” prong is established, regardless of whether the weapon was “used” or not. In the instant case, the Court is satisfied that in Vanlue’s sworn admission before the Court during his change of plea hearing, Vanlue

admitted facts which establish that he "carried" a firearm during and in relation to a drug trafficking crime. Indeed, Vanlue admitted that he was acting as an "armed guard" in order to protect drugs and himself. The Court finds that the firearm was readily accessible to Vanlue and that there was a close proximity between the firearm, the drugs, and Vanlue during the sale of illicit drugs. See, U.S. v. Barnhardt, 93 F.3d 706, 711 (10th Cir. 1996) (although weapon was not used, i.e., actively employed, defendant admitted at his plea hearing that he "carried" weapon tucked into back of his pants during drug transaction, handy in the event it might be needed; this is exactly the type of situation envisioned by Bailey to distinguish "use" from "carry").

Accordingly, Vanlue's motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255 is hereby DENIED.

IT IS SO ORDERED this 19<sup>th</sup> day of November, 1996.



H. DALE COOK  
United States District Judge

cw

UNITED STATES DISTRICT COURT  
Northern District of Oklahoma

ENTERED ON DOCKET  
DATE 11-21-96

UNITED STATES OF AMERICA

v.

Case Number 96-CR-086-001-K

CHARLES R. CAMPBELL  
Defendant.

**FILED**

NOV 18 1996

Phil Lombardi, Clerk  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

**JUDGMENT IN A CRIMINAL CASE**  
(For Offenses Committed On or After November 1, 1987)

The defendant, CHARLES R. CAMPBELL, was represented by Patrick Williams.

The defendant pleaded guilty to count(s) 1 of the Information on August 12, 1996. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

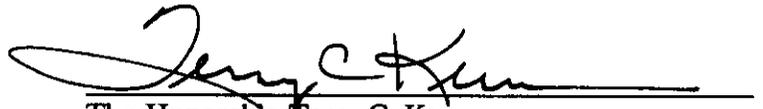
<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 1341	Mail Fraud	07/95	1

As pronounced on November 12, 1996, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 50.00, for count(s) 1 of the Information, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 15<sup>th</sup> day of November, 1996.

  
The Honorable Terry C. Kern  
Chief United States District Judge

Defendant's SSN: 438-74-0775

Defendant's Date of Birth: 07-30-48

Defendant's residence and mailing address: 10900 W. 65th Street, Shawnee Mission, Kansas 66203

4

Defendant: CHARLES R. CAMPBELL  
Case Number: 96-CR-086-001-K

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 36 months.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons before 12:00 p.m. on January 6, 1997.

**RETURN**

I have executed this Judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this Judgment.

\_\_\_\_\_  
United States Marshal  
By \_\_\_\_\_  
Deputy Marshal

Defendant: CHARLES R. CAMPBELL  
Case Number: 96-CR-086-001-K

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm or destructive device.
4. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

The Court suspends the requirements for mandatory urine screening as dictated by 18 U.S.C. § 3608, but specifically retains the probation officer's authority to administer such tests for cause as permitted by the standard conditions of supervision.

### STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: CHARLES R. CAMPBELL  
Case Number: 96-CR-086-001-K

**RESTITUTION AND FORFEITURE**

**RESTITUTION**

The defendant shall make restitution in the total amount of \$50,000.00.

The defendant shall make restitution to the following persons in the following amounts:

<b><u>Name of Payee</u></b>	<b><u>Amount of Restitution</u></b>
Regent Finance Corporation/Liberty Bank C/O Kevin M. Webb 2504 A. East 21st St. Tulsa, Oklahoma 74114	\$50,000.00

Payments of restitution are to be made to the United States Attorney for transfer to the payee(s).

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid as a condition of supervised release.

Any payment shall be divided proportionately among the payees named unless otherwise specified here.

Defendant: CHARLES R. CAMPBELL  
Case Number: 96-CR-086-001-K

**STATEMENT OF REASONS**

The court adopts the factual findings and guideline application in the presentence report.

**Guideline Range Determined by the Court:**

Total Offense Level:	20
Criminal History Category:	I
Imprisonment Range:	33 months to 41 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 7,500 to \$ 7,782,136.20
Restitution:	\$ 3,371,068.10

The fine is waived or is below the guideline range because of the defendant's inability to pay.

Full restitution is not ordered for the following reason(s): Because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

UNITED STATES DISTRICT COURT  
Northern District of Oklahoma

ENTERED ON DOCKET  
DATE 11-21-96

UNITED STATES OF AMERICA

v.

Case Number 96-CR-071-001-K

MELISSA GAIL BELL  
Defendant.

**FILED**

NOV 21 1996

**JUDGMENT IN A CRIMINAL CASE**  
(For Offenses Committed On or After November 1, 1987)

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

The defendant, MELISSA GAIL BELL, was represented by Stephen J, Knorr.

The defendant pleaded guilty to count(s) 1 of the Information on July 10, 1996. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 656	Theft of Bank Money	02/14/95	1

As pronounced on November 12, 1996, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 50.00, for count(s) 1 of the Information, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 18<sup>th</sup> day of November, 1996.

  
The Honorable Terry C. Kern  
Chief United States District Judge

Defendant's SSN: 443-86-3128

Defendant's Date of Birth: 06/19/72

Defendant's residence and mailing address: P.O. Box 35, Delaware, OK 74027

Defendant: MELISSA GAIL BELL  
Case Number: 96-CR-071-001-K

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 7 months.

The Court makes the following recommendations to the Bureau of Prisons: That the Bureau of Prisons designate the Freedom Ranch CCC as the place of confinement.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons before 2:00 p.m. on January 6, 1997.

**RETURN**

I have executed this Judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this Judgment.

\_\_\_\_\_  
United States Marshal  
By \_\_\_\_\_  
Deputy Marshal

Defendant: MELISSA GAIL BELL

Case Number: 96-CR-071-001-K

**SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of 5 years.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm or destructive device.
4. The defendant shall be placed on home detention to include electronic monitoring at the discretion of the U. S. Probation Office for a period of 7 months, to commence within 72 hours of release from confinement. During this time, the defendant shall remain at place of residence except for employment and other activities approved in advance by the probation office. The defendant shall maintain a telephone at place of residence without any special services, modems, answering machines, or cordless telephones for the above period. The defendant shall wear an electronic device and shall observe the rules specified by the Probation Office. The entire cost of this program shall be paid by the defendant.
5. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

**STANDARD CONDITIONS OF SUPERVISION**

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: MELISSA GAIL BELL  
Case Number: 96-CR-071-001-K

**RESTITUTION AND FORFEITURE**

**RESTITUTION**

The defendant shall make restitution in the total amount of \$30,000.

Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid as a condition of supervised release.

The defendant shall make restitution to the following persons in the following amounts:

<b><u>Name of Payee</u></b>	<b><u>Amount of Restitution</u></b>
Superior Federal Bank Attn: Deposit Administrator P.O. Box 17012 Fort Smith, Arkansas 72917-7012	\$30,000

Payments of restitution are to be made to the United States Attorney for transfer to the payee(s).

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid as a condition of supervised release.

Any payment shall be divided proportionately among the payees named unless otherwise specified here.

Defendant: MELISSA GAIL BELL  
Case Number: 96-CR-071-001-K

**STATEMENT OF REASONS**

The court adopts the factual findings and guideline application in the presentence report.

**Guideline Range Determined by the Court:**

Total Offense Level:	12
Criminal History Category:	I
Imprisonment Range:	10 months to 16 months - Ct. 1
Supervised Release Range:	3 to 5 years - Ct. 1
Fine Range:	\$ 3,000 to \$ 1,000,000 - Ct. 1
Restitution:	\$ 52,317.66

The fine is waived or is below the guideline range because of the defendant's inability to pay.

Full restitution is not ordered for the following reason(s): Because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

UNITED STATES DISTRICT COURT  
Northern District of Oklahoma

**FILED**

NOV 19 1996

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA

v.

Case Number 95-CR-148-001-C

ENTERED ON DOCKET

RAUL FERRER  
Defendant.

DATE 11/19/96

**JUDGMENT IN A CRIMINAL CASE**  
(For Offenses Committed On or After November 1, 1987)

The defendant, RAUL FERRER, was represented by Charles W. Hack.

On motion of the United States the court has dismissed count(s) 1 of the Second Superseding Indictment.

The defendant pleaded guilty to count(s) 1 of the Information on June 18, 1996. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 371	Conspiracy to Travel Interstate to Facilitate a Narcotics Enterprise	02/93	1

As pronounced on November 13, 1996, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 50.00, for count(s) 1 of the Information, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 19 day of Nov., 1996.

  
The Honorable H. Dale Cook  
United States District Judge

Defendant's SSN: 464-51-3404  
Defendant's Date of Birth: 09/01/67  
Defendant's residence and mailing address: 9935 Fall Harvest, San Antonio, Texas 78250

United States District Court )  
Northern District of Oklahoma ) SS  
I hereby certify that the foregoing  
is a true copy of the original on file  
in this court.  
Phil Lombardi, Clerk

By B. J. Cullough  
Deputy

Defendant: RAUL FERRER  
Case Number: 95-CR-148-001-C

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 30 months.

The Court makes the following recommendations to the Bureau of Prisons: Intensive Drug Treatment Program Boot Camp - Intensive Confinement Center Program.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons before 9:00 a.m. on January 6, 1997.

**RETURN**

I have executed this Judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this Judgment.

\_\_\_\_\_  
United States Marshal

By \_\_\_\_\_  
Deputy Marshal

Defendant: RAUL FERRER  
Case Number: 95-CR-148-001-C

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 2 years.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm or destructive device.
4. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
5. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.

### STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: RAUL FERRER  
Case Number: 95-CR-148-001-C

**FINE**

The Court has determined that the defendant does not have the ability to pay interest, and it is accordingly ordered that the interest requirement is waived.

The defendant shall pay a fine of \$ 1,000.00. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid during the term of supervised release.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Defendant: RAUL FERRER  
Case Number: 95-CR-148-001-C

**STATEMENT OF REASONS**

The court adopts the factual findings and guideline application in the presentence report.

**Guideline Range Determined by the Court:**

Total Offense Level:	28
Criminal History Category:	I
Imprisonment Range:	78 months to 97 months - Ct. 1
Supervised Release Range:	2 to 3 years - Ct. 1
Fine Range:	\$ 12,500 to \$ 125,000 - Ct. 1
Restitution:	N/A

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence departs from the guideline range for the following reason(s): Upon motion of the government, as a result of defendant's substantial assistance.

*RF*

**FILED**

**UNITED STATES DISTRICT COURT  
Northern District of Oklahoma**

**NOV 18 1996**

**Phil Lombardi, Clerk  
U.S. DISTRICT COURT**

UNITED STATES OF AMERICA

v.

Case Number 93-CR-163-001-E

DAVID BRUCE McDERMOTT II  
Defendant.

ENTERED ON DOCKET

DATE 11/18/96

**AMENDED JUDGMENT IN A CRIMINAL CASE  
(For Offenses Committed On or After November 1, 1987)  
CORRECTION OF SENTENCE ON REMAND (FED. R. CRIM. P. 35(a))**

The defendant, DAVID BRUCE McDERMOTT II, was represented by Pro Se, assisted by Keith Ward.

On motion of the United States the court has dismissed count(s) 1, 2, and 5 of the Indictment.

The defendant pleaded guilty to count(s) 3 & 4 of the Indictment on September 4, 1996. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

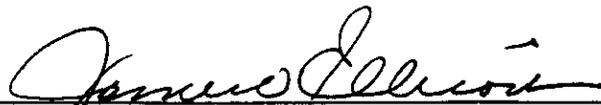
<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 1952	Interstate Travel in Aid of Unlawful Activity	09/30/92	3 & 4

As pronounced on November 8, 1996, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 100.00, for count(s) 3 & 4 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 15<sup>th</sup> day of November, 1996.

  
The Honorable James O. Ellison  
United States District Judge

Defendant's SSN: 448-86-0200  
Defendant's Date of Birth: 07-25-70  
Defendant's residence and mailing address: C/O Tulsa County Jail, 500 S. Denver, Tulsa, OK 74103

United States District Court )  
Northern District of Oklahoma ) SS  
I hereby certify that the foregoing is a true copy of the original on file in this Court.  
Phil Lombardi, Clerk

By J M Callaway  
Deputy

Defendant: DAVID BRUCE McDERMOTT II  
Case Number: 93-CR-163-001-E

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 70 months; 60 months as to Count 3, 10 months as to Count 4, to run consecutively to the custody term in Count 3, for a total sentence of 70 months.

The Court makes the following recommendations to the Bureau of Prisons: The Court recommends that the Bureau or Prisons consider granting a furlough in the near future to McDermott for the purpose of visiting his father who has been diagnosed with cancer.

The defendant is remanded to the custody of the United States Marshal.

**RETURN**

I have executed this Judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this Judgment.

\_\_\_\_\_  
United States Marshal

By \_\_\_\_\_  
Deputy Marshal

Defendant: DAVID BRUCE McDERMOTT II

Case Number: 93-CR-163-001-E

**SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years as to Counts 3 & 4, said counts to run concurrently, each with the other.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm or destructive device.
4. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
5. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.
6. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

**STANDARD CONDITIONS OF SUPERVISION**

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: DAVID BRUCE McDERMOTT II  
Case Number: 93-CR-163-001-E

**FINE**

The Court has determined that the defendant does not have the ability to pay interest, and it is accordingly ordered that the interest requirement is waived.

The defendant shall pay a fine of \$ 5,000.00 on Count 3. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid during the term of supervised release.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Defendant: DAVID BRUCE McDERMOTT II  
Case Number: 93-CR-163-001-E

**STATEMENT OF REASONS**

The court adopts the factual findings and guideline application in the presentence report except: The Court finds that the offense involved 835 pounds of marijuana, resulting in a total offense level of 27 instead of 29.

**Guideline Range Determined by the Court:**

Total Offense Level:	27
Criminal History Category:	I
Imprisonment Range:	70 months to 87 months Cts. 3 & 4
Supervised Release Range:	2 to 3 years - Cts. 3 & 4
Fine Range:	\$ 12,500 to \$ 125,000 - Cts. 3 & 4
Restitution:	N/A

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

UNITED STATES DISTRICT COURT  
Northern District of Oklahoma

**FILED**

NOV 15 1996

Phil Lombardi, Clerk  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA

v.

Case Number 96-CR-070-001-B

CARL ARDESE  
Defendant.

FILED ON DOCKET  
DATE 11/18/96

**JUDGMENT IN A CRIMINAL CASE**  
(For Offenses Committed On or After November 1, 1987)

The defendant, CARL ARDESE, was represented by Alan Core.

On motion of the United States the court has dismissed count(s) 2 of the Information.

The defendant pleaded guilty to count(s) 1 of the Information on June 28, 1996. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 666(a)(1)(B)	Bribery Concerning Programs Receiving Federal Funds	07/28/93	1

As pronounced on November 8, 1996, the defendant is sentenced as provided in pages 2 through 6 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 50.00, for count(s) 1 of the Information, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

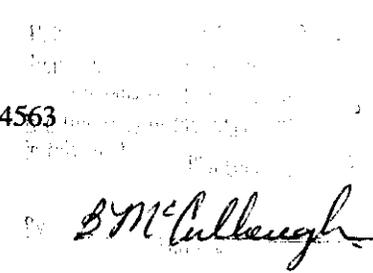
Signed this the 15<sup>th</sup> day of Nov., 1996.

  
The Honorable Thomas R. Brett  
Senior United States District Judge

Defendant's SSN: 442-56-8349

Defendant's Date of Birth: 09/29/51

Defendant's residence and mailing address: Route 1, Box 509, Red Oak, Oklahoma 74563



Defendant: CARL ARDESE  
Case Number: 96-CR-070-001-B

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 30 days.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons before noon on November 22, 1996.

**RETURN**

I have executed this Judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this Judgment.

\_\_\_\_\_  
United States Marshal

By \_\_\_\_\_  
Deputy Marshal

Defendant: CARL ARDESE  
Case Number: 96-CR-070-001-B

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm or destructive device.
4. The defendant shall be placed on home detention to include electronic monitoring at the discretion of the U. S. Probation Office for a period of 5 months, to commence within 72 hours upon release from confinement. During this time, the defendant shall remain at his place of residence except for employment and other activities approved in advance by the probation office. The defendant shall maintain a telephone at his place of residence without any special services, modems, answering machines, or cordless telephones for the above period. The defendant shall wear an electronic device and shall observe the rules specified by the Probation Office. The cost of this program shall be paid by the defendant according to his ability to pay as determined by the U.S. Probation Office.
5. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
6. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

Should the Court find at some future date that the defendant has violated the terms of supervised release, the term could be revoked and as a result, the Court could impose an additional two-year term of imprisonment for Count One.

### STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: CARL ARDESE  
Case Number: 96-CR-070-001-B

**FINE**

The Court has determined that the defendant does not have the ability to pay interest, and it is accordingly ordered that the interest requirement is waived.

The defendant shall pay a fine of \$ 2,000.00. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid during the term of supervised release.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Defendant: CARL ARDESE  
Case Number: 96-CR-070-001-B

**RESTITUTION AND FORFEITURE**

**RESTITUTION**

The defendant shall make restitution in the total amount of \$5,000.00.

The defendant shall make restitution to the following persons in the following amounts:

<b><u>Name of Payee</u></b>	<b><u>Amount of Restitution</u></b>
United States	\$5,000.00

Payments of restitution are to be made to the United States Attorney for transfer to the payee(s).

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid as a condition of supervised release. Any unpaid balance of restitution shall not be subject to interest.

Any payment shall be divided proportionately among the payees named unless otherwise specified here.

Defendant: CARL ARDESE  
Case Number: 96-CR-070-001-B

**STATEMENT OF REASONS**

The court adopts the factual findings and guideline application in the presentence report except: The U.S. Probation Office's determination of the applicable offense level. The Court accepts the Rule 11 Plea Agreement and is satisfied that the elements of the agreement do not undermine the statutory intent of the guidelines. The Court finds that the appropriate guideline for this offense, as stipulated in the agreement, is USSG § 2C1.2. The corresponding total Offense Level is 9 and the fine range is \$1,000 to \$10,000. In addition, in accordance with the terms of the plea agreement, the Court accepts the stipulation that the defendant shall pay \$5,000.00 restitution to the United States.

**Guideline Range Determined by the Court:**

Total Offense Level:	9
Criminal History Category:	I
Imprisonment Range:	4 months to 10 months - Ct. 1
Supervised Release Range:	2 to 3 years - Ct. 1
Fine Range:	\$ 1,000 to \$ 10,000 - Ct. 1
Restitution:	\$ 5,000 - Ct. 1

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

**FILED**

**UNITED STATES DISTRICT COURT  
Northern District of Oklahoma**

**NOV 15 1996**

**Phil Lombardi, Clerk  
U.S. DISTRICT COURT**

UNITED STATES OF AMERICA

v.

Case Number 96-CR-095-001-B

PAUL ALLEN PARISH  
Defendant.

ENTERED ON DOCKET

DATE 11/18/96

**JUDGMENT IN A CRIMINAL CASE  
(For Offenses Committed On or After November 1, 1987)**

The defendant, PAUL ALLEN PARISH, was represented by Regina Stephenson.

The defendant pleaded guilty to count(s) 1 of the Indictment on August 9, 1996. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
21 USC 841(a)(1)	Possession of Methamphetamine With Intent to Distribute	07/05/96	1

As pronounced on November 8, 1996, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 100.00, for count(s) 1 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 15<sup>th</sup> day of Nov., 1996.

  
The Honorable Thomas R. Brett  
United States District Judge

Defendant's SSN: 526-65-6532

Defendant's Date of Birth: 02/02/63

Defendant's residence and mailing address: C/O Goldie and Billy Reeves, P.O. Box 271, Pineville, MO 64836

By Phil Lombardi  
Deputy  
I hereby certify that the foregoing is a true copy of the original on file in this court.

Defendant: PAUL ALLEN PARISH  
Case Number: 96-CR-095-001-B

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 121 months.

The Court makes the following recommendations to the Bureau of Prisons: It is the Court's recommendation that the Bureau of Prisons designate the defendant to a facility that will permit him access to an intensive substance abuse treatment program.

The defendant is remanded to the custody of the United States Marshal.

**RETURN**

I have executed this Judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this Judgment.

\_\_\_\_\_  
United States Marshal

By \_\_\_\_\_  
Deputy Marshal

Defendant: PAUL ALLEN PARISH  
Case Number: 96-CR-095-001-B

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 5 years.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm or destructive device.
4. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
5. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.

### STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: PAUL ALLEN PARISH  
Case Number: 96-CR-095-001-B

**FINE**

The Court has determined that the defendant does not have the ability to pay interest, and it is accordingly ordered that the interest requirement is waived.

The defendant shall pay a fine of \$ 2,500.00. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid during the term of supervised release.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Defendant: PAUL ALLEN PARISH  
Case Number: 96-CR-095-001-B

**STATEMENT OF REASONS**

The court adopts the factual findings and guideline application in the presentence report except: That the paragraph concerning his arrest for the offense of Contribution to the Delinquency of a Minor should be stricken from the report.

**Guideline Range Determined by the Court:**

Total Offense Level:	31
Criminal History Category:	II
Imprisonment Range:	121 months to 151 months - Ct. 1
Supervised Release Range:	5 years - Ct. 1
Fine Range:	\$ 15,000 to \$ 4,000,000 - Ct. 1
Restitution:	N/A

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence is within the guideline range, that range exceeds 24 months, and the sentence is imposed for the following reason(s): The defendant's previous incarceration record is minimal and the low end of the range provides a sufficient punishment for this offense.

1575

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

11-15-96

UNITED STATES OF AMERICA, )  
)  
Plaintiff, )  
)  
vs. )  
)  
LINDA GULLICK, )  
)  
Defendant. )

No. 94-CR-178-K ✓  
96-CV-375-K

**F I L E D**

NOV 14 1996

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

ORDER

Before the Court is the motion of Defendant Gullick pursuant to 28 U.S.C. § 2255. Defendant was charged by indictment with one violation of 18 U.S.C. § 924(c). On April 25, 1995, Defendant pled guilty to Count I of the Indictment (18 U.S.C. § 924(c)) and was sentenced to the mandatory sixty months. On May 3, 1996, Defendant filed the motion, asserting her guilty plea should be vacated in light of *Bailey v. United States*, 116 S.Ct. 501 (1995). *Bailey* restricted the factual circumstances under which a § 924(c) conviction is appropriate.

In response, the government filed a Motion to Dismiss the Indictment based upon the ruling in *Bailey v. United States, supra*, and this Court's prior order vacating the co-defendant Burkett's sentence.

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It is the Order of the Court that the Motion to Dismiss without prejudice the Indictment is hereby granted and the defendant's guilty plea, conviction and sentence are hereby VACATED.

ORDERED this 14<sup>th</sup> day of November, 1996.

  
TERRY C. KERN  
United States District Judge

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

FILED

NOV 13 1996

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 JERRY STEVEN THURMAN, )  
 )  
 Defendant. )

No. 90-CR-74-C  
(96-CV-1028-C)

ENTERED ON DOCKET  
DATE NOV 14 1996

**ORDER**

Before the Court for consideration is Defendant Jerry Steven Thurman's second or successive motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. For the reasons set forth below, Defendant's motion is transferred to the Tenth Circuit Court of Appeals.

On February 20, 1992, Defendant filed a 2255 motion. On September 3, 1992, the Court denied the 2255 motion and Defendant appealed. While the appeal was pending, Defendant filed a motion for leave to file a 2255 motion although an appeal was pending. On August 26, 1993, the Tenth Circuit Court of Appeals affirmed the order denying Defendant's 2255 motion. Thereafter, Defendant filed an amended section 2255 motion which the Court denied on January 31, 1994. On December 23, 1994, the Tenth Circuit Court of Appeals affirmed Defendant's second 2255 motion.

On November 6, 1996, Petitioner filed the instant section 2255 motion. He challenges his sentence under the Sentencing Guidelines and Federal Rules of Criminal Procedure 32 and 52.

On April 24, 1996, the Antiterrorism and Effective Death

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Penalty Act (AEDPA) was enacted into law. P.L. 104-132, 110 Stat. 1214 (1996). Section 105 of the AEDPA added a gatekeeping mechanism for the filing of second or successive habeas petitions pursuant to 28 U.S.C. § 2255, requiring that such second or successive motion be approved by a three-judge panel of the applicable circuit court. See Section 2255 as amended.

Therefore, before filing the present section 2255 motion, Defendant should have obtained leave to do so from the Tenth Circuit Court of Appeals.

In Liriano v. United States, 95 F.3d 119 (2nd Cir. 1996), amended and superseded in part by Liriano v. United States, 1996 WL 580079 (2nd Cir. Aug. 28, 1996), the Second Circuit held that when a second or successive petition is erroneously filed in the district court without the permission of the requisite three-judge panel, the petition should be transferred to the Circuit Court if it is in the interest of justice to do so. Id. at 122. The Second Circuit relied upon 28 U.S.C. § 1631 for the authority to accomplish this result. Section 1631 states:

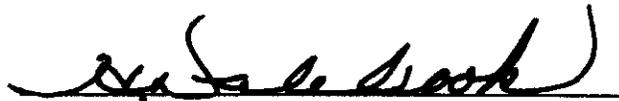
Whenever a civil action is filed in a court . . . and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action . . . to any other such court in which the action . . . could have been brought at the time it was filed . . ., and the action . . . shall proceed as if it had been filed in . . . the court to which it is transferred on the date upon which it was actually filed in . . . the court from which it is transferred.

As noted by the Second Circuit, most situations in which a second or successive petition is filed in a district court will reflect ignorance of the new statute rather than an attempt to evade its terms. Liriano, 95 F.3d at 122.

Although the Tenth Circuit has not had an opportunity to address the above situation, this Court believes the Tenth Circuit would adopt the approach set out in Liriano.

IT IS THEREFORE ORDERED that Defendant's second or successive motion pursuant to 28 U.S.C. § 2255 is TRANSFERRED to the Tenth Circuit Court of Appeals. The Clerk shall MAIL to Petitioner a copy of his 2255 motion.

IT IS SO ORDERED this 13<sup>th</sup> day of November, 1996.



H. DALE COOK, Senior Judge  
UNITED STATES DISTRICT COURT

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

**FILED**

NOV 12 1996 *lw*

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 ANITA LOUISE MAXEY, )  
 )  
 Defendant. )

No. 91-CR-59-B  
~~96-CV-729-B~~

ENTERED ON DOCKET  
DATE NOV 14 1996

**ORDER**

This matter comes before the Court on Defendant's "Motion to Review" the order and judgment denying her section 2255 motion. Defendant contends the government and this Court overlooked her request for a downward departure under U.S.S.G. § 5K2.0 and 18 U.S.C. § 3553 on the basis of Defendant's considerable efforts at rehabilitation since incarceration.

The Court has liberally construed Defendant's "Motion to Review" as a motion for reconsideration. Whether to grant or deny a motion for reconsideration is committed to the Court's discretion. Hancock v. Oklahoma City, 857 F.2d 1394, 1395 (10th Cir. 1988). Generally, courts recognize three major grounds for reconsideration: (1) an intervening change in controlling law; (2) availability of new evidence; or (3) the need to correct clear error or prevent manifest injustice. Hammer v. BMY Combat Systems, 874 F.Supp. 322 (D.Ks. 1985).

Having reviewed Defendant's 2255 motion and her motion for reconsideration, the Court concludes that it lacks jurisdiction to reduce her sentence on the basis of rehabilitation accomplishments

under either 18 U.S.C. § 3553 or U.S.S.G. § 5K2.0

ACCORDINGLY, IT IS HEREBY ORDERED that Defendant's Motion to Review or for reconsideration (Docket #49) is DENIED.

SO ORDERED THIS 12<sup>th</sup> day of Nov., 1996.



THOMAS R. BRETT, Senior Judge  
UNITED STATES DISTRICT JUDGE COURT

**FILED**

**UNITED STATES DISTRICT COURT  
Northern District of Oklahoma**

NOV 13 1996

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA

v.

Case Number 96-CR-100-001-C

CHAD ADMIRE  
Defendant.

ENTERED ON DOCKET

DATE 11/14/96

**JUDGMENT IN A CRIMINAL CASE  
(For Offenses Committed On or After November 1, 1987)**

The defendant, CHAD ADMIRE, was represented by Craig Bryant.

On motion of the United States the court has dismissed count(s) 1 of the Indictment.

The defendant pleaded guilty to count(s) 2 of the Indictment on August 22, 1996. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 1702	Obstruction of Correspondence	05/31/95	2

As pronounced on November 6, 1996, the defendant is sentenced as provided in pages 2 through 4 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 50.00, for count(s) 2 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 13 day of November, 1996.

  
The Honorable H. Dale Cook  
United States District Judge

Defendant's SSN: 442-86-9277  
Defendant's Date of Birth: 10-29-74  
Defendant's residence and mailing address: 4880 E. 68th St., Tulsa, OK 74136

United States District Court )  
Northern District of Oklahoma ) ss  
I hereby certify that the foregoing )  
is a true copy of the original on file )  
in this court. Phil Lombardi, Clerk

By Ben McLaughlin  
Deputy

Defendant: CHAD ADMIRE  
Case Number: 96-CR-100-001-C

### PROBATION

The defendant is hereby placed on probation for a term of 3 year(s).

While on probation, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. If this judgment imposes a fine, special assessment, costs or restitution obligation, it shall be a condition of probation that the defendant pay any such fine, assessment, costs and restitution.
2. The defendant shall not own or possess a firearm or destructive device.
3. You shall successfully participate in an inpatient program of intensive testing and treatment for drug abuse, to be followed by an outpatient program of intensive testing and treatment for drug abuse, as directed by the probation officer, until such time as released from the program by the probation officer.
4. The defendant shall participate in a program of mental health treatment (to include inpatient), as directed by the Probation Officer, until such time as the defendant is released from the program by the Probation Officer.
5. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.

### STANDARD CONDITIONS OF PROBATION

While the defendant is on probation pursuant to this judgment, the defendant shall not commit another federal, state or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: CHAD ADMIRE  
Case Number: 96-CR-100-001-C

**FINE**

The Court has determined that the defendant does not have the ability to pay interest, and it is accordingly ordered that the interest requirement is waived.

The defendant shall pay a fine of \$ 750.00. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid during the period of probation.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Defendant: CHAD ADMIRE  
Case Number: 96-CR-100-001-C

**STATEMENT OF REASONS**

The court adopts the factual findings and guideline application in the presentence report.

**Guideline Range Determined by the Court:**

Total Offense Level:	4
Criminal History Category:	I
Imprisonment Range:	0 months to 6 months - Ct. 2
Supervised Release Range:	2 to 3 years - Ct. 2
Fine Range:	\$ 250 to \$ 5,000 - Ct. 2
Restitution:	N/A

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

**FILED**

NOV 12 1996

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

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

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 ROBERT DENNIS BUNNER, )  
 )  
 Defendant. )

No. 94-CR-122-B  
(96-CV-451-B)

ENTERED ON DOCKET  
DATE NOV 13 1996

**ORDER**

Before the Court for consideration is the motion of Defendant Robert Dennis Bunner to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. The government has objected. On October 18, 1996, the Court held a telephone hearing to determine whether Defendant understood the consequences of his motion to vacate. On October 31, 1996, Defendant advised the Court that he did not wish to withdraw the instant motion.

On September 8, 1994, a grand jury indicted Defendant of four Counts. On December 19, 1994, Defendant pled guilty to Count Two of the Indictment that he knowingly used and carried firearms during a drug trafficking offense, in violation of 18 U.S.C. § 924(c). The Court sentenced Defendant to 60 months imprisonment and granted the government's motion to dismiss Counts One, Three, and Four of the Indictment which charged respectively Possession with Intent to Distribute Methamphetamine, Possession of a Firearm by a Convicted Felon, and Controlling a House Where Controlled Substances are Kept; all in accordance with the written plea agreement.

66

11-2-96 Govt moved  
+ advised  
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In the present motion, Defendant asserts his conviction should be vacated in light of Bailey v. United States, 116 S.Ct. 501 (1995). Defendant contends he did not "use" a firearm within the meaning of section 924(c)(1) as set out in Bailey and, thus, that his conviction should be vacated. The government responds that Defendant pled guilty to carrying a firearm. The government simply relies on the Petition to Enter Plea of Guilty in which Defendant represented under oath that "[o]n August 18, 1993, in Tulsa, Oklahoma, I knowingly carried a Smith & Wesson .357 Magnum revolver, serial number N275560 during and in relation to a drug trafficking crime: possession of methamphetamine with intent to distribute."<sup>1</sup> Defendant replies that at the time of his guilty plea he and his counsel mistakenly understood the law to be that mere possession of a firearm in connection with a drug trafficking crime would support a conviction under section 924(c)(1). He states that at the time of his arrest he was not using or carrying any firearm and that no firearm was in his vicinity.<sup>2</sup>

In United States v. Barnhardt, 93 F.3d 706, 708 (10th Cir. 1996), the Tenth Circuit Court of Appeals held that a defendant who pled guilty to using and carrying a firearm during a drug trafficking crime did not waive his right to challenge his

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<sup>1</sup> Defendant's contention that the Petition to Enter Plea of Guilty is neither signed nor verified is patently frivolous. The Plea hearing transcript reveals that Defendant was under oath when he pled guilty and signed the above document.

<sup>2</sup> The Court notes that the plea agreement refers only to "use" of a firearm.

conviction under section 2255.<sup>3</sup> The Court noted that "a plea of guilty does not bar a claim that the defendant's conviction is unconstitutional 'no matter how validly his factual guilt is established' if the facts he pled guilty to are subsequently determined not to be criminal." Id. at 708. The Tenth Circuit further held that Bailey applied retroactively to cases on collateral review and that "[w]hen a defendant pleads guilty, it is necessary only that the court 'mak[e] such inquiry as shall satisfy it that there is a factual basis for the plea.'" Id. at 709-710 (quoting Fed.R.Crim.P. 11(f)). Therefore, the determination of the instant motion depends on whether there is an adequate factual basis for Defendant's guilty plea. Id. In determining the factual basis for a plea of guilty, a district court may consider anything in the record, including the petition to enter a plea of guilty, the plea agreement, and the prosecutor's statements, if any. United States v. Grant, 1996 WL 223920 (D. Kan. April 5, 1996) (unpublished opinion).<sup>4</sup>

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<sup>3</sup> But see Bousley v. Brooks, 97 F.3d 284, 287-88 (8th Cir. 1996) (holding that court of appeals was not required to reopen guilty plea to allow otherwise procedurally defaulted challenge to conviction for use of firearm in relation to drug offense, notwithstanding United State Supreme Court's ruling in light of Bailey).

<sup>4</sup> A plea "cannot be truly voluntary unless the defendant possesses an understanding of the law in relation to the facts." McCarthy v. United States, 394 U.S. 459, 466 (1969). Both Defendant and his counsel misunderstood the law. Indeed the government and this Court labored under the same misconception regarding the scope of the statute. The involuntary nature of Defendant's plea "constitutes a 'fundamental defect' in his conviction which 'inherently results in a complete miscarriage of justice.'" Abreau v. United States, 911 F.Supp. 203, 208 (E.D. Va. 1996) (quoting Hill v. United States, 368 U.S. 424, 428

At the change of plea hearing, the following colloquy occurred:

THE COURT: Referring you to the middle of page 2 [of the Petition to Enter Plea of Guilty], wherein you state what you did that make you guilty of this offense, you state and I quote, "On August 18, 1993, in Tulsa, Oklahoma I knowingly carried a Smith and Wesson .357 magnum revolver, serial number N-275560, during and in relation to a drug trafficking crime, possession of methamphetamine with intent to distribute."

The DEFENDANT: Yes, sir.

THE COURT: Where did that occur?

THE COURT: At my home.

THE COURT: Is that here in the Northern District of Oklahoma?

THE COURT: Yes, sir.

THE COURT: It says in relation to a drug trafficking crime that you possessed this Smith and Wesson .357 magnum revolver, serial number N-275560. Is that true?

THE DEFENDANT: Yes, sir.

THE COURT: Tell me about it. How did you possess that weapon in reference to a drug trafficking crime, having to do, as said by the indictment, with possession of methamphetamine with the intent to distribute. Just tell me about that. What did you do that make you guilty of that crime on that date?

THE DEFENDANT: Well, it was in the house during said -- what went on.

THE COURT: What went on?

THE DEFENDANT: Possession.

THE COURT: Possession of what?

THE DEFENDANT: Methamphetamines.

THE COURT: For what purpose?

THE DEFENDANT: For distribution.

THE COURT: Did you possess that for the purposes of distributing it?

THE DEFENDANT: Yes, sir, I guess so.

THE COURT: And did you knowingly use and carry the firearm or at least have it available for you for your use during that drug trafficking crime?

THE DEFENDANT: Yes, sir.

(Tr. Guilty Plea at 20-21.) On the basis of the above facts, this

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(1962).

Court concluded that a factual basis for Defendant's guilty plea existed and that the plea was made voluntarily, with a full understanding of the charges and consequences. (Tr. Guilty Plea at 22-23.)

In light of the testimony at the guilty plea hearing, the Presentence Report, and the Plea Agreement, it is unreasonable to conclude that Defendant "used" the firearm as defined under Bailey. (Guilty plea tr. at 20-21.) Defendant's admission at the plea colloquy does not establish that he was actively employing the gun. As the Supreme Court noted in Bailey, "[p]lacement [of a gun] for later active use does not constitute 'use'." Bailey, 116 S.Ct 501, 509. Therefore, there is an insufficient factual basis to support Defendant's plea as to the "use" prong of section 924(c)(1).

The question then is whether Defendant can be convicted under the "carry" prong. As the Supreme Court found, "[t]he 'carry' prong of section 924(c)(1) . . . brings some offenders who would not satisfy the "use" prong within the reach of the statute." Id. Although the Bailey Court did not specifically define the "carry" prong of section 924(c)(1), it provided some guidance regarding the correct application of "carry."

Under the interpretation we enunciate today, a firearm can be used without being carried, e.g., when an offender has a gun on display during a transaction, or barter with a firearm without handling it; and a firearm can be carried without being used, e.g., when an offender keeps a gun hidden in his clothing throughout a drug transaction.

Id. at 507. Since Bailey, Courts have held that "carrying" a gun in violation of section 924(c)(1) requires evidence that the

firearm was "immediately available for use--on the defendant or within his or her reach." United States v. Riascos-Suarez, 73 F.3d 616, 623 (6th Cir.), cert. denied, 117 S.Ct. 136 (1996); see also United States v. Miller, 84 F.3d 1244, 1259-60 (10th Cir. 1996), pet. for cert. filed (Sept. 30, 1996) (No. 96-6259).

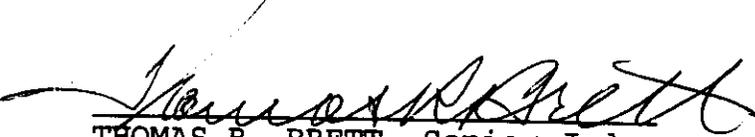
Defendant did not admit and the government did not adduce any evidence that Defendant actually physically carried the firearm in his clothing or in a bag, or that the firearm was within his immediate reach. See Miller, 84 F.3d at 1260. The record reveals the subject .357 Magnum revolver was located in an adjoining bedroom on the North side of the bed. (Supplemental Offense Report of the Tulsa Police Department at 3, ex. B to Defendant's Reply, Docket #60.) Therefore, the Court finds there is an insufficient factual basis to support Defendant's guilty plea as to "carrying" a firearm in connection with a drug trafficking crime. Cf. United States v. Bolling, 937 F.Supp. 198 (W.D.N.Y. 1996) (at plea hearing the government stated, and the defendant admitted, that at the time of arrest he had a .32 caliber pistol on his person along with fifty-four "nickel" bags of cocaine thus justifying a conviction for "carrying" under § 924(c)).

ACCORDINGLY, IT IS HEREBY ORDERED that defendant's motion to vacate, set aside, or correct sentence in reference to Count Two is GRANTED.

IT IS FURTHER ORDERED that the government is GRANTED eleven (11) days, from the date of entry of this order, to file a motion to reinstate Counts One, Three and Four. If the government timely

files such a motion, Defendant shall remain detained until further order of this Court.

SO ORDERED THIS 17<sup>th</sup> day of Nov., 1996.

  
THOMAS R. BRETT, Senior Judge  
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT  
Northern District of Oklahoma

ENTERED ON DOCKET  
DATE 11-13-96

UNITED STATES OF AMERICA

v.

Case Number 96-CR-025-008-K

BARTLEY JAMES BEVILL  
Defendant.

**F I L E D**

NOV 13 1996

**JUDGMENT IN A CRIMINAL CASE**  
(For Offenses Committed On or After November 1, 1987)

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

The defendant, BARTLEY JAMES BEVILL, was represented by William E. Hughes.

On motion of the United States the court has dismissed count(s) 1 of the Superseding Indictment.

The defendant pleaded guilty to count(s) 1 of the Information on August 13, 1996. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
1 USC 843(b)	Use of a Communication facility in Furtherance of a Narcotics Felony	12/95	1

As pronounced on November 5, 1996, the defendant is sentenced as provided in pages 2 through 4 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 50.00, for count(s) 1 of the Information, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 12<sup>th</sup> day of November, 1996.

  
The Honorable Terry C. Kern  
Chief United States District Judge

Defendant's SSN: 445-92-9223  
Defendant's Date of Birth: 11/15/72  
Defendant's residence and mailing address: 5262 S. Lewis, No. 1123, Tulsa, OK 74105

Defendant: BARTLEY JAMES BEVILL  
Case Number: 96-CR-025-008-K

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 30 months.

The Court makes the following recommendations to the Bureau of Prisons: That the defendant be designated to serve this term at the Intensive Confinement Center in Lewisburg, Pennsylvania, and that he participate in the Shock Incarceration Program.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons before 12:00 p.m. on January 27, 1997.

**RETURN**

I have executed this Judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this Judgment.

\_\_\_\_\_  
United States Marshal

By \_\_\_\_\_  
Deputy Marshal

Defendant: BARTLEY JAMES BEVILL  
Case Number: 96-CR-025-008-K

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 1 year.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm or destructive device.
4. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
5. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.

### STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 3) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: BARTLEY JAMES BEVILL  
Case Number: 96-CR-025-008-K

**STATEMENT OF REASONS**

The court adopts the factual findings and guideline application in the presentence report.

**Guideline Range Determined by the Court:**

Total Offense Level:	23
Criminal History Category:	I
Imprisonment Range:	46 months to 48 months - Ct. 1
Supervised Release Range:	1 year - Ct. 1
Fine Range:	\$ 10,000 to \$ 100,000 - Ct. 1
Restitution:	N/A

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence departs from the guideline range for the following reason(s): Upon motion of the government, as a result of defendant's substantial assistance.

UNITED STATES DISTRICT COURT  
Northern District of Oklahoma

ENTERED ON DOCKET  
DATE 11-13-96

UNITED STATES OF AMERICA

v.

Case Number 96-CR-025-006-K

MICHAEL PAUL HARMON  
Defendant.

**F I L E D**

NOV 13 1996

**JUDGMENT IN A CRIMINAL CASE**  
(For Offenses Committed On or After November 1, 1987)

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

The defendant, MICHAEL PAUL HARMON, was represented by Curtis Parks.

On motion of the United States the court has dismissed count(s) 1 of the Indictment.

The defendant pleaded guilty to count(s) 1 of the Information on May 14, 1996. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
.1 USC 843(b)	Use of a Communication Facility in Furtherance of a Narcotics Transaction	01/11/95	1

As pronounced on November 5, 1996, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 50.00, for count(s) 1 of the Information, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 12<sup>th</sup> day of November, 1996.

  
The Honorable Terry C. Kern  
Chief United States District Judge

Defendant's SSN: 442-80-3959

Defendant's Date of Birth: 09/30/69

Defendant's residence and mailing address: 9111 S. Urbana, Tulsa, OK 74136

Defendant: MICHAEL PAUL HARMON  
Case Number: 96-CR-025-006-K

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 36 months.

The Court makes the following recommendations to the Bureau of Prisons: 1) That the defendant be incarcerated at a facility specializing in comprehensive drug treatment; 2) when eligible, the defendant be transferred to the Intensive Confinement Center Program in Lewisburg, PA.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons before 2:00 p.m. on on January 6, 1997.

**RETURN**

I have executed this Judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this Judgment.

\_\_\_\_\_  
United States Marshal

By \_\_\_\_\_  
Deputy Marshal

Defendant: MICHAEL PAUL HARMON

Case Number: 96-CR-025-006-K

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 1 year.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm or destructive device.
4. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
5. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.

### STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: MICHAEL PAUL HARMON  
Case Number: 96-CR-025-006-K

**FINE**

The Court has determined that the defendant does not have the ability to pay interest, and it is accordingly ordered that the interest requirement is waived.

The defendant shall pay a fine of \$ 1,500. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid during the term of supervised release.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Defendant: MICHAEL PAUL HARMON  
Case Number: 96-CR-025-006-K

**STATEMENT OF REASONS**

The court adopts the factual findings and guideline application in the presentence report.

**Guideline Range Determined by the Court:**

Total Offense Level:	23
Criminal History Category:	I
Imprisonment Range:	46 months to 48 months - Ct. 1
Supervised Release Range:	1 year - Ct. 1
Fine Range:	\$ 10,000 to \$ 100,000 - Ct. 1
Restitution:	N/A

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence departs from the guideline range for the following reason(s): Upon motion of the government, as a result of defendant's substantial assistance, and the defendant's mitigating role in the offense and pursuant to 5K2.0, the Court's finding that characteristics and circumstances are outside the heartland of guideline cases.

UNITED STATES DISTRICT COURT

Northern District of Oklahoma ENTERED ON DOCKET

UNITED STATES OF AMERICA

NOV 11-7-96

v.

Case Number 96-CR-063-001-K

LARRY ARTHUR HARPER  
Defendant.

FILED

NOV 07 1996

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987) Phil Lombardi, Clerk  
U.S. DISTRICT COURT

The defendant, LARRY ARTHUR HARPER, was represented by James Brandon.

The defendant pleaded guilty to count(s) 1 of the Indictment on July 23, 1996. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

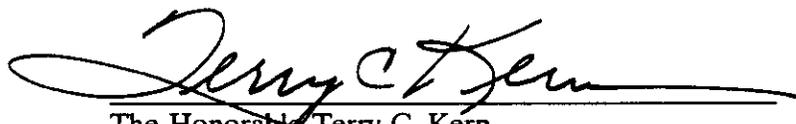
<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 2252(a)(2)	Receipt of Material Involving the Sexual Exploitation of Minors	09/07/95	1

As pronounced on November 4, 1996, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 50.00, for count(s) 1 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 6<sup>th</sup> day of November, 1996.

  
The Honorable Terry C. Kern  
Chief United States District Judge

Defendant's SSN: 444-48-1568  
Defendant's Date of Birth: 04/29/51  
Defendant's residence and mailing address: 3011 W. 69th Street, Tulsa, Oklahoma 74132

Defendant: LARRY ARTHUR HARPER  
Case Number: 96-CR-063-001-K

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 5 months.

The Court makes the following recommendations to the Bureau of Prisons: That the defendant serve his sentence of imprisonment at the Freedom Ranch CCC in Tulsa, Oklahoma, or at another available CCC.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons before 2:00 p.m. on January 6, 1997.

**RETURN**

I have executed this Judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this Judgment.

\_\_\_\_\_  
United States Marshal  
By \_\_\_\_\_  
Deputy Marshal

Defendant: LARRY ARTHUR HARPER

Case Number: 96-CR-063-001-K

**SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm or destructive device.
4. The defendant shall participate in a program of mental health treatment (to include inpatient), as directed by the Probation Officer, until such time as the defendant is released from the program by the Probation Officer.
5. The defendant shall be placed on home detention to include electronic monitoring at the discretion of the U. S. Probation Office for a period of 5 months, to commence within 72 hours of release from confinement. During this time, the defendant shall remain at place of residence except for employment and other activities approved in advance by the probation office. The defendant shall maintain a telephone at place of residence without any special services, modems, answering machines, or cordless telephones for the above period. The defendant shall wear an electronic device and shall observe the rules specified by the Probation Office. The entire cost of this program shall be paid by the defendant.
6. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.
7. The defendant is prohibited from involvement in youth groups, clubs, organizations, or activities, with the exception of activities involving his children. At all activities, there will be adult supervision.
8. The defendant shall have no interaction with minor children with the exception of his own children, without adult supervision.
9. The defendant is prohibited from trafficking in receiving, shipping, advertising, or possessing material involving the sexual exploitation of a minor.

**STANDARD CONDITIONS OF SUPERVISION**

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: LARRY ARTHUR HARPER  
Case Number: 96-CR-063-001-K

**FINE**

The Court has determined that the defendant does not have the ability to pay interest, and it is accordingly ordered that the interest requirement is waived.

The defendant shall pay a fine of \$ 4,000.00. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid during the term of supervised release.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Defendant: LARRY ARTHUR HARPER  
Case Number: 96-CR-063-001-K

**STATEMENT OF REASONS**

The court adopts the factual findings and guideline application in the presentence report.

**Guideline Range Determined by the Court:**

Total Offense Level:	14
Criminal History Category:	I
Imprisonment Range:	15 months to 21 months - Ct. 1
Supervised Release Range:	2 to 3 years - Ct. 1
Fine Range:	\$ 4,000 to \$ 40,000 - Ct. 1
Restitution:	N/A

The sentence departs from the guideline range for the following reason(s): The Court has chosen to downward depart from the sentencing guidelines pursuant to United States Sentencing Guidelines Chapter 5, Parts H and K, and specifically, §5K2.0. The Court has found there is a combination of characteristics and circumstances that warrant a departure in this case. These factors are: 1) the defendant's emotional condition; 2) the defendant's stable employment record; 3) family ties and responsibilities; and, 4) no known incident of sexual abuse or exploitation of children, and a single act of receipt of child pornographic material. The Court departs two points to offense level 12, for a guideline departure range of 10 to 16 months.

*u*

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

**FILED**

NOV -4 1996

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
JERRY CRAIG COLEMAN, )  
 )  
Defendant. )

No. 91-CR-158-C

ENTERED ON DOCKET

NOV 05 1996  
DATE \_\_\_\_\_

**ORDER**

Before the Court for consideration is Defendant Jerry Craig Coleman's second motion pursuant to 28 U.S.C. § 2255. For the reasons set forth below, Defendant's motion is transferred to the Tenth Circuit Court of Appeals.

On August 2, 1994, Defendant filed a 2255 motion which the Court denied on April 4, 1995. Defendant appealed and on January 8, 1996, the Tenth Circuit Court of Appeals reversed and remanded for further proceeding. Following an evidentiary hearing, this Court again denied Defendant's 2255 motion. On May 31, 1996, Petitioner appealed this decision to the Tenth Circuit Court of Appeals where the appeal is still pending. Subsequently, on October 16, 1996, Petitioner filed the instant section 2255 motion, challenging his conviction for using and carrying a firearm during a crime of violence under Bailey v. United States, 116 S.Ct. 501 (1995).

On April 24, 1996, the Antiterrorism and Effective Death Penalty Act (AEDPA) was enacted into law. P.L. 104-132, 110 Stat. 1214 (1996). Section 105 of the AEDPA added a gatekeeping

mechanism for the filing of second or successive habeas petitions pursuant to 28 U.S.C. § 2255, requiring that such second or successive motion be approved by a three-judge panel of the applicable circuit court. See Section 2255 as amended. Therefore, before filing the present section 2255 motion, Defendant should have obtained leave to do so from the Tenth Circuit Court of Appeals.

In Liriano v. United States, 95 F.3d 119 (2nd Cir. 1996), amended and superseded in part by Liriano v. United States, 1996 WL 580079 (2nd Cir. Aug. 28, 1996), the Second Circuit held that when a second or successive petition is erroneously filed in the district court without the permission of the requisite three-judge panel, the petition should be transferred to the Circuit Court if it is in the interest of justice to do so. Id. at 122. The Second Circuit relied upon 28 U.S.C. § 1631 for the authority to accomplish this result, § 1631 states:

Whenever a civil action is filed in a court . . . and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action . . . to any other such court in which the action . . . could have been brought at the time it was filed . . ., and the action . . . shall proceed as if it had been filed in . . . the court to which it is transferred on the date upon which it was actually filed in . . . the court from which it is transferred.

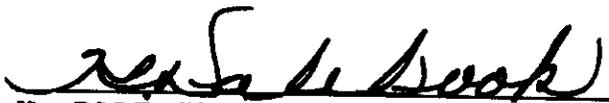
As noted by the Second Circuit, most situations in which a second or successive petition is filed in a district court will reflect ignorance of the new statute rather than an attempt to evade its terms. Liriano, 95 F.3d at 122.

Although the Tenth Circuit has not had an opportunity to address the above situation, this Court believes the Tenth

Circuit would adopt the approach set out in Liriano.

IT IS THEREFORE ORDERED that Defendant's motion pursuant to 28 U.S.C. § 2255 is TRANSFERRED to the Tenth Circuit Court of Appeals. The Clerk shall MAIL to Petitioner a copy of his 2255 motion.

IT IS SO ORDERED this 4<sup>th</sup> day of November, 1996.



H. DALE COOK  
United States District Judge

UNITED STATES DISTRICT COURT  
Northern District of Oklahoma

ENTERED ON DOCKET  
DATE 11-4-96

UNITED STATES OF AMERICA

v.

Case Number 96-CR-040-001-K

**FILED**

JACK WESLEY SMITH  
Defendant.

NOV 04 1996

**JUDGMENT IN A CRIMINAL CASE**  
(For Offenses Committed On or After November 1, 1987)

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

The defendant, JACK WESLEY SMITH, was represented by Craig Bryant.

On motion of the United States the court has dismissed count(s) 1 of the Indictment.

The defendant pleaded guilty to count(s) 2 of the Indictment on July 8, 1996. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 1720	Reuse of Canceled Stamps	10/18/95	2

As pronounced on October 23, 1996, the defendant is sentenced as provided in pages 2 through 4 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 50.00, for count(s) 2 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 1 day of November, 1996.

  
The Honorable Terry C. Kern  
Chief United States District Judge

Defendant's SSN: 442-40-0422

Defendant's Date of Birth: 12/18/38

Defendant's residence and mailing address: 411 E. Detroit Street, Broken Arrow, OK 74012

Defendant: JACK WESLEY SMITH  
Case Number: 96-CR-040-001-K

### PROBATION

The defendant is hereby placed on probation for a term of 3 year(s).

While on probation, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. If this judgment imposes a fine, special assessment, costs or restitution obligation, it shall be a condition of probation that the defendant pay any such fine, assessment, costs and restitution.
2. The defendant shall not own or possess a firearm or destructive device.

### STANDARD CONDITIONS OF PROBATION

While the defendant is on probation pursuant to this judgment, the defendant shall not commit another federal, state or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: JACK WESLEY SMITH  
Case Number: 96-CR-040-001-K

**FINE**

The Court has determined that the defendant does not have the ability to pay interest, and it is accordingly ordered that the interest requirement is waived.

The defendant shall pay a fine of \$ 3,000.00. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid during the period of probation.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Defendant: JACK WESLEY SMITH  
Case Number: 96-CR-040-001-K

**STATEMENT OF REASONS**

The court adopts the factual findings and guideline application in the presentence report.

**Guideline Range Determined by the Court:**

Total Offense Level:	7
Criminal History Category:	I
Imprisonment Range:	0 months to 6 months - Ct. 2
Supervised Release Range:	1 year - Ct. 2
Fine Range:	\$ 500 to \$ 5,000 - Ct. 2
Restitution:	N/A

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.



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

**F I L E D**

NOV 01 1996

Phil Lombardi, Clerk  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )

Plaintiff, )

vs. )

LEROY MERRITT, )

Defendant. )

No. 91-CR-39-C



DATE NOV 04 1996

**ORDER**

Currently pending before the Court is the motion filed by defendant, Leroy Merritt, seeking a free copy of the transcripts prepared during his September 18, 1991, hearing. Merritt alleges that he has attempted to acquire said transcripts on several occasions and that said transcripts are needed for use in filing an application for habeas corpus relief.

In order to obtain a copy of said transcripts free of charge, Merritt must first satisfy the requirements of 28 U.S.C. § 753(f). Section 753(f) provides, in part, that an indigent defendant is entitled to have the government pay the fees for a copy of his transcript only if he demonstrates that his suit is not frivolous and that the transcript is needed to decide the issue presented by the suit. The fact that these transcripts may already exist is immaterial in determining whether Merritt is entitled to a copy of such transcripts. See, Sistrunk v. U.S., 992 F.2d 258 (10th Cir.1993). The requirements of § 753(f) obtain irrespective of whether Merritt merely seeks a copy of pre-existing transcripts or whether Merritt seeks the preparation of transcripts at government expense. Id. at 260. Section 753(f) is "the exclusive provision governing requests by indigent prisoners for free transcripts, whether or not the transcripts already exist." Id.

In the present case, Merritt merely alleges that the requested transcripts are essential and invaluable in determining whether Merritt's substantive and/or procedural rights were violated. Clearly, such a bald allegation is insufficient to support Merritt's request for transcripts in light of Sistrunk's holding that a defendant "must make the particularized showing required by" § 753(f). Merritt has simply failed to demonstrate that the requested transcripts are necessary in order to mount a collateral attack on his conviction and sentence. Merritt does not allege with any specificity which rights were violated, how his rights were violated, or how the requested transcripts are relevant to his anticipated habeas motion.

Accordingly, Merritt's motion to obtain transcripts at government expense is hereby DENIED.

IT IS SO ORDERED this 1<sup>st</sup> day of November, 1996.



H. DALE COOK  
United States District Judge

**FILED**

NOV - 1 1996

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA )  
Plaintiff )  
VS )  
Phillip Wayne O'Dell )  
Defendant )

Case Number: 90-CR-136-001-E

ENTERED ON DOCKET  
NOV 0 1 1996  
DATE \_\_\_\_\_

AMENDED

JUDGMENT AND COMMITMENT ORDER ON  
REVOCAION OF SUPERVISED RELEASE

Now on this 10th day of September 1996, this matter comes on for show cause hearing concerning allegations that the defendant violated the conditions of supervised release as set out in the Petition on Supervised Release filed on August 29, 1996. The defendant is present in person and represented by counsel, Rick Couch. The Government is represented by Assistant U.S. Attorney Gordon Cecil, and the United States Probation Office is represented by Robert E. Boston.

On the 17th day of May, 1991, the defendant was committed to the custody of the U. S. Bureau Prisons for a term of twenty-six months after his plea of guilty to Count One of a four count Indictment charging Bank Fraud, in violation of 18 USC § 1344. In addition, the defendant was ordered to pay a \$50.00 Special Monetary Assessment, and to complete a three year term of supervised release. As special conditions of supervised release, O'Dell was ordered to pay \$5,250 restitution. On January 31, 1994, the Court modified the

conditions of release requiring O'Dell to participate in substance abuse treatment as directed by the probation officer. On July 31, 1996, the Court modified the conditions of release requiring O'Dell to reside in the Halfway House for Adults in Wichita, Kansas, until November 30, 1996.

On December 1, 1993, O'Dell was released from the custody of the U.S. Bureau of Prisons to serve his term of supervised release.

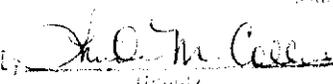
On August 29, 1996, a Petition on Supervised Release was filed alleging that O'Dell had violated the conditions of supervised release in that he left the jurisdiction of supervision without approval of the probation officer, associated with a convicted felon without the approval of the probation officer, violated state and/or local laws by driving a vehicle without a valid drivers license, without valid insurance, and while speeding. Additionally, the defendant violated the conditions of release by failing to participate in substance abuse treatment as directed by the probation office, failed participate in a halfway house program as ordered by the Court, and failed to notify his probation officer of a change of address when he left the halfway house without permission.

On this date, the defendant admitted to the Court that the allegations contained in the Petition on Supervised Release filed August 29, 1996, are true. The defendant requested immediate sentencing.

As a result of this hearing, and the defendant's admission that the allegations of violations of supervised release are true, the Court finds that the violations occurred after November 1, 1987, and that Chapter 7 of the U. S. Sentencing Guidelines is applicable. Further, the Court finds that the violations of supervised release constitute Grade C violations. The Court finds that, pursuant to 18 U. S. C. § 3583(e)(3), since the original offense of conviction was a class C felony, the defendant could not be required to serve more than two years imprisonment. In consideration of these findings and pursuant to U.S. vs. Lee, 957 F2d. 770 (10th Cir. 1992), in which the Circuit determined that the policy statements in Chapter 7 were not mandatory, but must be considered by the Court, the following was ordered:

The defendant shall be committed to the custody of the U. S. Bureau of Prisons for a term of ten months. The defendant is ordered to pay the outstanding \$3,600.00 balance on the restitution ordered at the original sentencing.

  
The Honorable James O. Ellison  
United States District Judge

United States District Court  
District of Colorado  
Denver, Colorado  
1987  
  
Secretary

NOV - 1 1996

**UNITED STATES DISTRICT COURT  
Northern District of Oklahoma**

**Phil Lombardi, Clerk  
U.S. DISTRICT COURT**

UNITED STATES OF AMERICA

v.

Case Number 96-CR-028-001-C

ENTERED ON DOCKET

ROSE STEVENS  
Defendant.

DATE 11-1-96

**JUDGMENT IN A CRIMINAL CASE  
(For Offenses Committed On or After November 1, 1987)**

The defendant, ROSE STEVENS, was represented by Gordon S. Harman.

On motion of the United States the court has dismissed count(s) 1 and 2 of the Indictment.

The defendant pleaded guilty to count(s) 1 of the Superseding Information on July 31, 1996. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
26 USC 7206(1)	False and Fraudulent Tax Return	04/15/95	1

As pronounced on October 30, 1996, the defendant is sentenced as provided in pages 2 through 4 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 50.00, for count(s) 1 of the Superseding Information, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 1st day of November, 1996.

  
The Honorable H. Dale Cook  
United States District Judge

Defendant's SSN: 447-50-1428  
Defendant's Date of Birth: 03/22/49  
Defendant's residence and mailing address: 62500 East 30 Rd., Quapaw, OK 74363

United States District Court )  
Northern District of Oklahoma ) SS  
I hereby certify that the foregoing  
is a true copy of the original on file  
in this court. Phil Lombardi, Clerk

By B.M. Cullough  
Deputy

Defendant: ROSE STEVENS  
Case Number: 96-CR-028-001-C

### PROBATION

The defendant is hereby placed on probation for a term of 3 year(s).

While on probation, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. If this judgment imposes a fine, special assessment, costs or restitution obligation, it shall be a condition of probation that the defendant pay any such fine, assessment, costs and restitution.
2. The defendant shall not own or possess a firearm or destructive device.
3. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

### STANDARD CONDITIONS OF PROBATION

While the defendant is on probation pursuant to this judgment, the defendant shall not commit another federal, state or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: ROSE STEVENS  
Case Number: 96-CR-028-001-C

**FINE**

The Court has determined that the defendant does not have the ability to pay interest, and it is accordingly ordered that the interest requirement is waived.

The defendant shall pay a fine of \$ 1,500.00. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid during the period of probation.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Defendant: ROSE STEVENS  
Case Number: 96-CR-028-001-C

**STATEMENT OF REASONS**

The court adopts the factual findings and guideline application in the presentence report.

**Guideline Range Determined by the Court:**

Total Offense Level:	4
Criminal History Category:	I
Imprisonment Range:	0 months to 6 months - Ct. 1
Supervised Release Range:	1 year - Ct. 1
Fine Range:	\$ 250 to \$ 5,000 - Ct. 1
Restitution:	N/A

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.