

DATE FEB 28 1997

UNITED STATES DISTRICT COURT  
Northern District of Oklahoma

UNITED STATES OF AMERICA

v.

Case Number 96-CR-073-001-H ✓

WILLIE GENE DAWSON  
Defendant.

**FILED**

FEB 27 1997 *OK*

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

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

The defendant, WILLIE GENE DAWSON, was represented by Craig Bryant.

The defendant was found guilty on count(s) 1 through 5 of the Superseding Indictment after a plea of not guilty. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

Title & Section	Nature of Offense	Date Offense	Count
		Concluded	Number(s)
18 USC 1951	Interference With Commerce by Threats or Violence	04/26/96	1
		04/26/96	2
		04/27/96	3
		04/27/96	4
		04/29/96	5

As pronounced on February 27, 1997, 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 \$ 500.00, for count(s) 1 through 5 of the Superseding 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 27<sup>TH</sup> day of FEBRUARY, 1997.

  
The Honorable Sven Erik Holmes  
United States District Judge

Defendant's SSN: 455-53-4616  
Defendant's Date of Birth: 09/26/65  
Defendant's residence and mailing address: 1405 S. Walnut, Sherman, Texas 75090

Defendant: WILLIE GENE DAWSON  
Case Number: 96-CR-073-001-H

**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 each count, all counts to run concurrently, each with the other.

The Court makes the following recommendations to the Bureau of Prisons: 1) Defendant be incarcerated at a facility specializing in comprehensive drug treatment; 2) Defendant be incarcerated at a facility near his home; and 3) Defendant be incarcerated at a facility that can provide proper psychiatric care.

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: WILLIE GENE DAWSON

Case Number: 96-CR-073-001-H

**SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years as to each count, all counts to run concurrently.

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 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.
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.

**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: WILLIE GENE DAWSON  
Case Number: 96-CR-073-001-H

**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 1. 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: WILLIE GENE DAWSON  
 Case Number: 96-CR-073-001-H

**RESTITUTION AND FORFEITURE**

**RESTITUTION**

The defendant shall make restitution in the total amount of \$729.00 on Counts 1 through 5.

This amount is the total of the restitution imposed on individual counts, as follows: On Count One, \$130.00; Count 2, \$ 285.00; Count 3, \$50.00; Count 4, \$39.00; and on Count 5, \$225.00.

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>
Total Petroleum Station 3205 South Garnett Road Tulsa, OK 74122	\$130.00
Fox Run Liquor Store 1613 South Memorial Drive Tulsa, OK 74112	\$285.00
Fast Lane 5002 East Admiral Place Tulsa, OK 74115	\$ 50.00
Payless Food Store 1020 North Sheridan Tulsa, OK 74115	\$ 39.00
Linda's Flowers 11113 East 41st Street Tulsa, OK 74146	\$225.00

Payments of restitution are to be made to the Clerk of the Court for the Northern District of Oklahoma 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: WILLIE GENE DAWSON  
Case Number: 96-CR-073-001-H

**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:	32
Criminal History Category:	VI
Imprisonment Range:	210 months to 262 months - Cts. 1-5
Supervised Release Range:	2 to 3 years - Cts. 1-5
Fine Range:	\$ 17,500 to \$ 175,000 - Cts. 1-5
Restitution:	\$ 729

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 nature of the instant offenses and the defendant's lengthy criminal history.

*145*

ENTERED ON DOCKET  
DATE 2-27-97

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

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 GARRY DUANE MCCALL, )  
 )  
 Defendant. )

No. 94-CR-146-K

**FILED**

FEB 26 1997

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

O R D E R

Before the Court is the objection of the defendant to the Report and Recommendation of the United States Magistrate Judge. Defendant filed a motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. §2255, and the Court referred one aspect to the Magistrate Judge for evidentiary hearing. An indictment was filed October 7, 1994, which charged defendant and others with twenty-three counts involving an alleged scheme to defraud banks and elderly victims through telephone solicitations. On December 8, 1994 defendant entered guilty pleas to Count 8 (wire fraud) and Count 23 (bank fraud). On April 24, 1995, by and through his appointed counsel Richard Couch, defendant filed objections to the Presentence Report (PSI) prepared by the probation officer.

The matter came on for sentencing May 19, 1995. An evidentiary hearing was held regarding defendant's objections. The Court overruled the objections and imposed a total sentence of 71 months. The remaining counts of the indictment were dismissed as to defendant. Defendant filed no appeal.

Defendant filed the present motion, asserting ineffective

assistance of counsel on two grounds: (1) failure at sentencing to object and challenge a four-level enhancement for a supervisory role in the offense and (2) failure to file an appeal. By Order filed September 25, 1996 the Court denied the motion as to the sentencing proceeding and referred the second issue to the Magistrate Judge.

The government had placed primary reliance upon "Exhibit F" attached to its response, which bears the title "Notice to Defense Counsel". Above the signatures of defense attorney Couch and defendant McCall, which are dated "5-23-95" (i.e., four days after sentencing) is the following statement:

I, Garry Duane McCall, after having been advised by my attorney, Richard W. Couch, of my right to appeal the judgment and sentence of the United States District Court for the Northern District of Oklahoma rendered on May 19, 1995 to the United States Court of Appeals for the Tenth Circuit, do hereby notify my attorney that:

An "X" has been placed next to the statement "I do not wish to appeal to the United States Court of Appeals for the Tenth Circuit." No mark has been placed next to the statement "I wish to appeal to the United States Court of Appeals for the Tenth Circuit." Defendant admits reading and signing the document.

The government initially argued this "apparent waiver" should foreclose defendant's assertion of ineffective counsel. The government stated "The Defendant has failed to articulate any reason that this 'Notice' should not be recognized by the Court as being representative of his wishes at the time." (Response at 9). However, in his "traverse" to the government's response, defendant

stated:

Because the movant believes, he therefore avers, that when signing this document, he was under the impression that this waiver only applied to the appeal of his conviction and not his sentence. Counsel never informed movant that this waiver applied to his sentencing. Movant had informed counsel that he wanted to appeal his sentence for the four level increase for the role in the offense. . . Because the movant believes, he therefore avers, that counsel misled [sic] him into signing a waiver of direct appeal, thus this document should not be relied on. (Traverse at 4).

In the Court's view, this allegation created a factual issue, which required an evidentiary hearing.

The hearing was conducted October 28, 1996, and the Magistrate Judge entered his Report and Recommendation on December 13, 1996. The Magistrate Judge recommended denial of the motion. This Court's review is de novo. Gee v. Estes, 829 F.2d 1005, 1008-09 (10th Cir.1987). The Court has carefully reviewed a transcript of the evidentiary hearing, as required. Id. at 1009.

The linchpin of defendant's argument is his asserted belief that, in marking and signing the "notice to defense counsel" document, he was only waiving his right to appeal his conviction and not his right to appeal the sentence imposed. The distinction is untenable, because defendant entered a plea of guilty. There is no general right to appeal from a guilty plea, and the Court and counsel have no duty to advise on the matter. Cf. Laycock v. State of New Mexico, 880 F.2d 1184, 1187-88 (10th Cir.1989). In the case of a defendant who has pleaded guilty, Rule 32(c)(5) F.R.Crim.P.

requires only that he be advised of "any right to appeal the sentence" which may exist. (emphasis added).

The record in this case establishes with great clarity that defendant was advised at every step the nature of the appellate right which was available to him. In the Petition to Enter Plea of Guilty which defendant signed in this case, the following statement appears: "I have been advised and do understand that I have the right of appeal of any sentence imposed by the Court to the 10th Circuit Court of Appeals. Also, that any appeal must be filed no more than 10 days from date of sentence" (emphasis added). At the change of plea hearing in this case, defendant was asked if he had read the Petition to Enter Plea of Guilty, and if the representations were true, correct and complete. Under oath, before signing the document, defendant replied "Yes, sir." (Change of Plea Transcript, p.16).

At the same hearing, the Court asked defendant if he understood that under some circumstances defendant "may have the right to appeal any sentence that I impose" (emphasis added). The defendant responded affirmatively. Id. at p. 11. At the conclusion of the sentencing hearing, the Court advised defendant "you are given notice that you have 10 days in which to appeal this sentence" (emphasis added) (Sentencing Transcript at p. 63). Defendant was asked if he understood his right to appeal the sentence, and he responded affirmatively. Id. at p.64.

At the evidentiary hearing before the Magistrate Judge, the defendant denied under oath having read the reference to his right

to appeal the sentence contained in the Petition to Enter Plea of Guilty (Magistrate Hearing at p.12). This contradicts his statement, also under oath, given at the Change of Plea hearing. Upon further questioning by his counsel, defendant stated he did understand he had a right to appeal from the sentence. Id. at p.13. Defendant testified that, immediately after the sentencing proceeding, he advised his counsel at the time, Richard Couch, that defendant wished to appeal the sentence. Id. at 20, 21-22. Couch responded that "We'll talk about it later." Id. at 22.

Defendant and Couch had one subsequent meeting, on May 23, 1995, when Couch brought the "notice to defense counsel" document. Defendant admitted reading the document, Id. at 25, but asserted he believed it to be a waiver of his right to appeal the conviction. This belief existed despite the fact the document plainly states defendant has been advised of his right to appeal the "judgment and sentence" of the Court (emphasis added). Defendant asserted "I really didn't understand what I was reading" Id. at 26. At one point, defendant testified the document accurately reflected his intention as to appealing the sentence, id. at 27, but upon further questioning he reverted to his conviction/sentence dichotomy. Id. at 28.

On cross-examination, defendant admitted he understands the English language, and is able to read and write in it. Id. at 36. Further, that he knew the word "sentence" in the "notice to defense counsel" document meant the sentence defendant had just received. Id. at 39.

On redirect examination, defendant stated Couch never advised him of the specific advantages or disadvantages of an appeal, the specific grounds which might be meritorious, or the probabilities of success on appeal. Id. at 50-51. Further, Couch did not "appear to understand" the distinction between appealing from the conviction and appealing from the sentence. Id. at 51. Couch told him any appeal on the sentencing would just be "spinning your wheels." Id. at 52.

Richard Couch testified that "[i]t's possible" defendant initially indicated a desire to appeal his sentence. Id. at 69. Couch stated the purpose of his "notice to defense counsel" was to obtain in writing what defendant's desires were, id. at 71, and defendant was only asked to sign it "after he advised me he didn't want to appeal his sentence. . ." id. at 73. The defendant's decision, Couch testified, was made after a discussion in which Couch pointed out that an appeal by defendant might prompt the government to cross-appeal on certain other issues. Id. Couch testified he would have had no reservations about pursuing an appeal if defendant had requested, and had left the decision up to defendant. Id. at 75. Couch had no concerns defendant had clearly and knowingly waived his right to appeal. Id. at 76. See also id. at 93 ("There was no doubt.")

In his objection to the Report and Recommendation, the defendant argues that the Magistrate Judge's focus upon "reasonableness" from Couch's point of view was incorrect. On the contrary, in Romero v. Tansy, 46 F.3d 1024, 1031 (10th Cir.), cert.

denied, 115 S.Ct. 2591 (1995), the court stated in reviewing a similar claim "the only issue we must address in resolving appellant's claim is whether [counsel]'s failure to perfect defendant's appeal was objectively unreasonable." The Court agrees with the Magistrate Judge that Couch's actions did not fall below an objective standard of reasonableness, and therefore defendant has failed to establish ineffective assistance of counsel under Strickland v. Washington, 466 U.S. 668 (1984). Couch received no information after May 23, 1995 that defendant wished to appeal his sentence. Defendant notes a call from defendant to Couch on June 5, 1995, which Couch did not return. Defendant notes this was "within the time authorized to perfect an appeal." However, defendant did not testify at the evidentiary hearing that this call related to appeal. From other testimony at the hearing, the inference is strong that the call related to recovery of defendant's bond money.

Defendant asserts he could not have fully appreciated the consequences of executing the notice since he purportedly inquired about his appellate rights immediately after executing the notice. The testimony relied upon is somewhat ambiguous. Id. at 44-45. It is unclear whether defendant was testifying that he stated, after signing the waiver, he still wished to appeal and Couch responded negatively, or whether he was testifying only that, after defendant had signed the waiver, Couch reiterated that an appeal would have only been "spinning our wheels." Under defendant's interpretation, the Court finds the testimony not credible. If defendant had

indicated a desire to pursue an appeal only to have his attorney refuse and leave, the record would reflect an immediate effort by defendant to contact his attorney or the Court. No such evidence has been presented.

Defendant also protests that Couch should have advised defendant the precise date the judgment was filed, triggering the ten-day time limit for appeal. The record reflects numerous occasions upon which defendant was personally advised that his right to appeal the sentence was subject to a ten-day limit, albeit from the date of sentencing. Rule 4(b) of the Federal Rules of Appellate Procedure provides in part that a notice of appeal filed between the time of sentencing and the time the judgment is entered "is treated as filed on the date of and after the entry." In other words, a notice filed prematurely is not invalid. Defendant's contention is without merit.

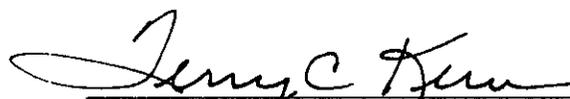
To the extent to which the evidence in this case raises the issue of whether defendant executed a "voluntary, knowing and intelligent" waiver of his right to appeal, the Court again agrees with the Magistrate Judge that defendant did so. The Court is not persuaded that defendant was in any way misled by Couch's advice, as defendant alleged in his "traverse" to the government's response to his motion. Defendant has the ability to read and write English and has thirty-six hours of junior college credit. His testimony, after the fact, that he "didn't understand" what he was reading and signing is not credible, in the absence of any sort of corroboration. While some legal terms are technical and abstruse,

a criminal "sentence" is not one of them.

Defendant has noted a few minor factual errors in the Report and Recommendation, but none which affect the conclusions set forth herein. On February 24, 1997, defendant filed a reply brief in support of his objection, which the Court has also reviewed.

It is the Order of the Court that the objection (#69) of defendant Garry Duane McCall to the Report and Recommendation of the United States Magistrate Judge, as supplemented on January 2, 1997 (#73), is hereby DENIED. The motion of the defendant pursuant to 28 U.S.C. §2255 (#43) is hereby DENIED in its entirety. The motion of the defendant for hearing (#74) is also DENIED. This Order shall constitute a final order in 96-C-417-K, the civil case number assigned to the motion.

ORDERED this 25 day of February, 1997.



TERRY C. KERN, Chief  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
Northern District of Oklahoma

*Entered  
on docket  
2-26-97*

UNITED STATES OF AMERICA

v.

Case Number 96-CR-142-001-K ✓

AUDREY REBECCA LORENE DEAN  
Defendant.

**FILED**  
IN OPEN COURT

FEB 21 1997

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, AUDREY REBECCA LORENE DEAN, was represented by Stephen Knorr.

On motion of the United States the court has dismissed count(s) 1, 2, and 3 of the Indictment.

The defendant pleaded guilty to count(s) 1 and 2 of the Information on November 14, 1996. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

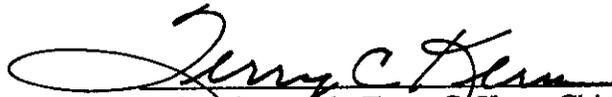
<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 1029 (a)(2) and 2	Fraud and Related Activity in Connection With Access Device and Causing a Criminal Act	06/26/96	1
18 USC 659	Theft From Interstate Shipment	09/03/96	2

As pronounced on February 13, 1997, 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 \$ 200.00, for count(s) 1 and 2 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 20 day of February, 1997.

  
The Honorable Terry C. Kern, Chief  
United States District Judge

Defendant's SSN: 446-72-2687

Defendant's Date of Birth: 09/22/76

Defendant's residence and mailing address: 2055 East 51st St., No. B, Tulsa, OK 74105

Defendant: AUDREY REBECCA LORENE DEAN  
Case Number: 96-CR-142-001-K

### PROBATION

The defendant is hereby placed on probation for a term of 5 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 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.
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 4 months, to commence within 72 hours of sentencing date. 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 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: AUDREY REBECCA LORENE DEAN  
Case Number: 96-CR-142-001-K

**RESTITUTION AND FORFEITURE**

**RESTITUTION**

The defendant shall make restitution in the total amount of \$13,500.00 on Count 1.

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>
Boatmen's Bancharas, Inc. Attn: Marvin Janssen 100 North Broadway Wichita, KS 67201	\$13,500.00

Payments of restitution are to be made to the Clerk of the Court for the Northern District of Oklahoma for transfer to the payee(s).

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid during the period of probation.

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

Defendant: AUDREY REBECCA LORENE DEAN  
Case Number: 96-CR-142-001-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:	9
Criminal History Category:	I
Imprisonment Range:	4 months to 10 months - Cts. 1 and 2
Supervised Release Range:	2 to 3 years - Cts. 1 and 2
Fine Range:	\$ 1,000 to \$ 10,000 - Cts. 1 and 2
Restitution:	\$ 13,500

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.

FILED

UNITED STATES DISTRICT COURT  
Northern District of Oklahoma

FEB 25 1997

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

UNITED STATES OF AMERICA

v.

Case Number 96-CR-087-002-BU

CONNIE MARIE KERR  
Defendant.

ENTERED ON DOCKET  
DATE 2-26-97

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

The defendant, CONNIE MARIE KERR, was represented by Earnest Bedford.

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 November 21, 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 4	Misprison of a Felony	01/07/96	1

As pronounced on February 20, 1997, 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 25<sup>th</sup> day of FEBRUARY, 1997.

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 R. Miller  
Deputy

Michael Burrage  
The Honorable Michael Burrage  
United States District Judge

Defendant's SSN: 441-76-2814  
Defendant's Date of Birth: 09/14/66  
Defendant's residence and mailing address: Eddie Warrior Correctional Center, 400 North Oak St., Taft, OK 74463

Defendant: CONNIE MARIE KERR  
Case Number: 96-CR-087-002-BU

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 1 month, concurrent with Tulsa County District Court Case CRF 95-4652 and CRF 96-119.

The Court makes the following recommendations to the Bureau of Prisons: Designate the Oklahoma Department of Corrections as the place to serve the sentence.

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: CONNIE MARIE KERR  
Case Number: 96-CR-087-002-BU

### 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 participate in a program of mental health treatment as directed by the Probation Officer, until such time as the defendant is released from the program by the Probation Officer.
6. The defendant shall submit to a search conducted by a United States Probation Officer of her 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: CONNIE MARIE KERR  
Case Number: 96-CR-087-002-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:	18
Criminal History Category:	III
Imprisonment Range:	33 months to 36 months - Ct. 1
Supervised Release Range:	1 year - Ct. 1
Fine Range:	\$ 6,000 to \$ 60,000 - 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.

*RFU*

ENTERED ON DOCKET

DATE 2/24/97

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

~~XXXXXXXXXXXXXXXXXXXX~~  
~~XXXXXXXXXXXXXXXXXXXX~~  
~~XXXXXXXXXXXXXXXXXXXX~~

**UNITED STATES OF AMERICA,** )  
 )  
 ) **Plaintiff,** )  
 )  
 **v.** )  
 )  
 **BRIAN DeWAYNE COFFEY,** )  
 )  
 ) **Defendant.** )

96  
No. **95-CR-107-H** ✓ *DL*

**FILED**

FEB 24 1997

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

**ORDER OF DISMISSAL**

Upon the application of the United States Attorney, the Court finds that as to defendant **BRIAN DeWAYNE COFFEY**, Count Two of the Indictment filed in the above styled and numbered cause should be and the same is hereby ordered dismissed without prejudice to the refiling thereof.

  
\_\_\_\_\_  
SVEN ERIK HOLMES  
United States District Judge

14  
x cell

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

**F I L E D**

FEB 21 1997

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA, )  
)  
Plaintiff, )  
)  
vs. )  
)  
CLARENCE E. REED, )  
)  
Defendant. )

No. 89-CR-31-C

FEB 24 1997

**ORDER**

Currently pending before the Court is the motion filed by defendant, Clarence Reed, seeking to vacate, set aside, or correct his sentence, pursuant to 28 U.S.C. § 2255. Reed filed his present § 2255 motion on September 3, 1996. On January 16, 1997, the government filed its first response to Reed's motion, in which the government agreed that, under Bailey v. U.S., 116 S.Ct. 501 (1995), there is insufficient evidence to sustain a conviction under 18 U.S.C. § 924(c)(1) for using a firearm during and in relation to a drug trafficking crime. The government requested that Count Four of Reed's conviction be vacated.

In examining the record, the Court found that Reed previously filed a § 2255 motion on April 28, 1993. The Court therefore directed the parties to file supplemental briefs addressing the effect of Section 2255, as amended, which requires that a "second or successive motion . . . be certified as provided in section 2244 by a panel of the appropriate court of appeals . . ." In its supplemental brief, which was filed on January 29, the government now contends that Reed's present motion must be certified by the Tenth Circuit, since it is a second or successive § 2255 petition. In his supplemental brief, Reed argues that the "second or successive motion" requirement of § 2255 does not apply to him since to do so would constitute impermissible retroactivity under Landgraf v. U.S.I.

Film Products, 511 U.S. 244 (1994), by attaching a new legal consequence to events completed before § 2255 was amended.

The Court has been unable to find Tenth Circuit precedent directly addressing the issue of whether it is impermissible to apply the “second or successive motion” requirement of § 2255 to existing cases. However, the Court notes that the Tenth Circuit has decided the parallel issue in the context of habeas corpus motions. In Hatch v. State of Okl, 92 F.3d 1012, 1014 (10th Cir.1996), the Circuit held that the successive motion provisions of § 2244 apply to a second or successive petition for writ of habeas corpus filed after the effective date of the Antiterrorism and Effective Death Penalty Act of 1996, which the President signed into law on April 24, 1996. The Hatch court noted that because “the 1996 Act was already in place at the time of Hatch’s filing . . . , the application of the 1996 Act to his case is not retroactive . . . .” Id. Additionally, in Nunez v. U.S., 96 F.3d 990 (7th Cir.1996), the defendant’s second § 2255 motion was filed on June 27, 1996, without seeking approval from the Seventh Circuit. The district court denied the defendant’s second § 2255 motion for failing to seek certification from the appropriate court of appeals. In affirming the district court’s order, the Seventh Circuit held that the district court had no option other than to deny the defendant’s petition since the Circuit is the only court that may authorize the commencement of a second or successive petition. Id. at 991. Similarly, the Seventh Circuit in Roldan v. U.S., 96 F.3d 1013, 1014 (7th Cir.1996), held that the prior certification requirement applies only to proceedings commenced on or after April 24, 1996.

As noted, Reed’s second § 2255 motion was filed on September 3, 1996, which is after the date on which the 1996 amendments to § 2255 went into effect. This Court concludes that, in accord with the above-cited authorities, the “second or successive” requirements of § 2255 apply to Reed’s

present motion, since it was filed after the amendments to § 2255 went into effect. See also, U.S. v. Carlos, 1996 WL 769664 (D.Kan. 1996) (§ 2255, as amended, requires defendant who filed second § 2255 motion on September 20, 1996, to seek certification from Tenth Circuit).

Accordingly, based upon the 1996 amendments to § 2255, this Court lacks authority to entertain Reed's second § 2255 motion. As such, Reed must seek certification from the Circuit. When "a second or successive . . . § 2255 motion is filed in the district court without the required authorization by [the Circuit], the district court should transfer the . . . motion to [the Circuit] in the interest of justice pursuant to [28 U.S.C.] § 1631." Coleman v. U.S., 1997 WL 53488 (10th Cir.1997). Reed's present § 2255 motion is therefore transferred to the Tenth Circuit for certification.

IT IS SO ORDERED this 21<sup>st</sup> day of February, 1997.

  
H. DALE COOK  
United States District Judge

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

**F I L E D**

FEB 20 1997

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA )  
Plaintiff, )  
 )  
vs. )  
 )  
RALPH E. BAILEY )  
Defendant. )

Docket No. 94-CR-066-001-B ✓

ENTERED ON DOCKET

DATE 2-20-97

ORDER ON REVOCATION  
OF PROBATION

Now on this 19th day of February 1997, this cause comes on for a hearing on Revocation of Probation as set out in the Petition on Probation filed on December 3, 1996. The defendant is present in person and with his attorney, Bill Patterson. The Government is represented by Assistant United States Attorney Neal Kirkpatrick, and the United States Probation Office is represented by Bradford Stewart.

The defendant was heretofore, on July 20, 1994, convicted by Jury in Counts One and Two which charged Obstruction of Justice by Interfering with the Administration of Internal Revenue Laws and Aiding and Abetting, in violation of 26 U.S.C. § 7212(a) and 18 U.S.C. § 2. On November 4, 1994, Bailey was sentenced to a five year term of probation as to each count, to run concurrently.

On January 27, 1997, the Court found Bailey in violation of his conditions of probation as alleged in the Petition filed on December 3, 1996, by failing to file a federal income tax return for tax year 1995, by failing to provide documentation of his income for 1994 and 1995, and by failing to make monthly installment payments as ordered in Northern District of Oklahoma case 93-C-100-B. Sentencing was set for February 12,

1997. On February 12, 1997, at the defendant's request, sentencing was set for February 19, 1997.

The Court finds, for the reasons stated at the Revocation Hearing of January 27, 1997, that Bailey has violated his conditions of probation, and that probation should be revoked as to Count One. Accordingly, pursuant to 18 USC § 3563(b)(21) and (c), the following is ordered.

Consistent with the 10th Circuit decision in U.S. v. Lee, the Court has considered the provisions of Chapter Seven of the Sentencing Guidelines, but finds that they are not mandatory.

It is the judgment of the Court that the term of probation shall be revoked as to Count One, and that the defendant, Ralph Eugene Bailey, be committed to the custody of the Bureau of Prisons for a term of one month. The first seven days shall be served in the Tulsa County Jail. It is recommended to the Bureau of Prisons that the Freedom Ranch in Tulsa, Oklahoma, be designated as the place of confinement for the remainder of the one month custody term. The Court reimposes the remaining fine amount of \$1,325. The fine shall be due immediately, and any amount not paid immediately shall be paid during the term of supervised release.

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of 12 months. Within 72 hours of release from the custody of the Bureau of Prisons, the defendant shall report in person to the probation office in the district to which the defendant is released.

While on supervised release, you shall not commit another federal, state, or local crime. You are prohibited, during the period of supervised release, or afterward, from possessing a firearm or other dangerous devices, unless you have received express written permission of the appropriate federal and state agency. Further, while on supervised release you shall not illegally possess a controlled substance. You shall comply with the standard conditions that have been adopted by this court, and shall also comply with the following additional special conditions:

1. The defendant shall be placed on home detention for a period of three months, with electronic monitoring at the discretion of the U.S. Probation Officer, to commence within 72 hours of release from custody. During this time, the defendant shall remain at his place of residence except for employment and other activities approved in advance by the probation officer. 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 Department. Should electronic monitoring be imposed, the defendant shall pay the entire cost of the electronic monitoring.

2. The defendant shall sign release forms no later than April 1, 1997, authorizing the Internal Revenue Service to release information to the U.S. Probation Office regarding his federal income tax returns for tax years 1994, 1995, and 1996.

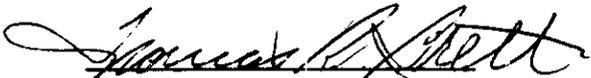
3. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 19, 1992.

4. While on supervised release, should the Internal Revenue Service determine the amount of any delinquent tax and applicable penalties owed by the defendant, such amount shall be paid by the defendant immediately. Any amount not paid immediately shall be paid in accordance with any schedule established by the Internal Revenue Service.

5. The defendant shall make monthly installment payments to the Court Clerk for the Northern District of Oklahoma, or designated recipient, pursuant to the order in Northern District of Oklahoma case 93-C-100-B.

As to Count Two, the term of probation remains as previously imposed.

The defendant is remanded to the custody of the U.S. Marshals Service to commence service of the sentence.

  
Thomas R. Brett 2-20-97  
Senior United States District Judge

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 Lomhardt, Clerk  
By   
Deputy

UNITED STATES DISTRICT COURT  
Northern District of Oklahoma

**F I L E D**

FEB 20 1997

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA

v.

Case Number 93-CR-074-001-E  
ENTERED ON DOCKET

RONALD E. ELDRIDGE  
Defendant.

DATE 2/20/97

JUDGMENT AND COMMITMENT ORDER ON  
REVOCATION OF SUPERVISED RELEASE

Now on this 4th day of February, 1997, this cause comes on for sentencing after a stipulation that the defendant violated conditions of supervised release set out in the Petition on Supervised Release filed January 15, 1997. The defendant is present in person and with his attorney, Craig Bryant. The Government is represented by Assistant United States Attorney Kevin Leitch, and the United States Probation Office is represented by Tony Budzinsky.

The defendant was heretofore, on May 17, 1993, convicted on his plea of guilty to both counts of the Indictment which charged Embezzlement of Union Funds in violation of Title 29, United States Code, Section 501(c) and False Entries to Labor Union Records in violation of Title 29, United States Code, Section 439(c). He was subsequently sentenced on September 3, 1993, to a four month custody sentence on each count, with each count concurrent with the other, to be followed by three (3) years supervised release. The standard conditions of supervised release recommended by the Sentencing Commission were imposed with additional conditions which included \$14,460.00 restitution, not own or possess a firearm or destructive device, four (4) months home confinement with electronic monitoring, and the "Special Financial Conditions."

On February 4, 1997, the defendant stipulated to the first allegation in the petition concerning a new law violation. Based upon the evidence presented regarding failure to pay restitution, failure to answer truthfully all inquiries by the probation officer and follow instructions of the probation officer, failure to abide by the "Special Financial Conditions," and failure to pay electronic monitoring costs, the Court made a finding that the defendant violated his conditions of supervised release and sentenced the defendant on the same date.

As a result of the sentencing hearing, the Court finds that the violations occurred after November 1, 1987, and that Chapter Seven of the U.S. Sentencing Commission Guidelines is applicable. Further, the Court finds that the violations of supervised release include a Grade B violation in accordance with Section 7B1.1(a)(2), and that the defendant's original Criminal History Category of I is now applicable for determining the imprisonment range. In addition, the Court finds that a Grade B violation and a Criminal History Category of I establish a revocation imprisonment range of four (4) to ten (10) months, in accordance with Section 7B1.4(a)(b)(3) and Title 18, United States Code, Section 3583(e)(3). Further, pursuant to Title 18, United State Code, Section 3583(h), when a term of supervised release is revoked and the defendant is required to serve a term of imprisonment that is less than the maximum term of imprisonment authorized under subsection (e)(3), the Court may include a requirement that the defendant be placed on a term of supervised release after imprisonment, provided the length of such a term of supervised release shall not exceed the term of supervised release authorized by statute for the offense that resulted in the original term of supervised release, less any term of imprisonment that was imposed upon revocation of supervised release. The original authorized term of supervised release was three (3) years, therefore, this length of sentence is available upon revocation. In consideration of these findings and pursuant to U.S. v. Lee, 957 F.2d 770 (Tenth Circuit, 1992), in which the Circuit determined that the policy statements in Chapter Seven were not mandatory, but must be considered by the Court, the following sentence is ordered:

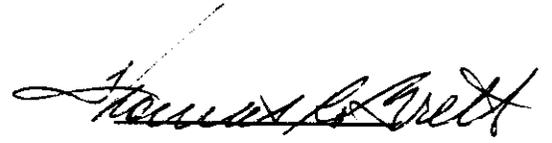
It is adjudged by the Court that the defendant shall be sentenced to the custody of the Bureau of Prisons for a term of zero (0) months. Upon release from imprisonment, the defendant shall be placed on supervised release for a term of three (3) years.

Payment of \$591.43 in electronic monitoring fees related to the home confinement portion of the original sentence prior to revocation shall be paid during the term of supervised release.

While on supervised release, you shall not commit another federal, state, or local crime. Further, while on supervised release you shall not illegally possess a controlled substance. In addition, you shall comply with the standard conditions that have been adopted by this Court and the following special conditions:

1. The defendant shall make restitution in the amount of \$13,710.00 to Big Four Foundries, as directed by the U.S. Probation Office. Payments of restitution are to be made to the United States Attorney for transfer to the payee.
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.



for

James O. Ellison

United States District Judge

U.S. District Court )  
District of Columbia ) SS  
I hereby certify that the foregoing  
is a true and correct copy of the  
original as filed in this court. Paul Lombardi, Clerk

By Doreen M. Callaghan  
Deputy

**FILED**

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

FEB 14 1997

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 JOHN MICHAEL GRIFFIN, )  
 )  
 Defendant. )

Civil Case No. 96-CV-529-B  
Crim. Case No. 89-CR-97-B

ENTERED ON DOCKET

DATE FEB 19 1997

**ORDER**

Before the Court for consideration are Defendant John Griffin's ("Griffin") Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255, the Government's Response thereto, and Griffin's Consolidated Amended Motion to Vacate, Set Aside, or Correct Sentence or Supplemental Motion on Other Grounds for Consideration of Issues pursuant to 36 F.R.Cr.P. and Traverse to Government's Response to the Defendant Griffin's 28 U.S.C. § 2255 ("Reply"). After careful review of the record and applicable legal authorities, the Court hereby **DENIES** Griffin's Motion, as supplemented by the Reply.

**BACKGROUND FACTS**

On August 1, 1989, Griffin and co-defendants Michael Roper Jr. and Robert Edward Burke were charged in a one-count Indictment with Possession with Intent to Distribute a Schedule II Controlled Substance (cocaine) in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(B)(ii). The Indictment stemmed from a traffic stop in Creek

65

County, Oklahoma by Oklahoma Highway Patrol Trooper Bill Jackson of a Nissan Maxima being driven by Michael Roper Jr. The vehicle had been rented by Jessica Johnson, Griffin's common law wife, in Los Angeles, California. Roper was cited for traveling 74 miles per hour in a 65 mile per hour zone.

Trooper Jackson inquired of Roper whether any guns or drugs were present in the vehicle. After Roper responded in the negative, Trooper Jackson requested and obtained from Roper verbal and written consent to search the vehicle for such contraband. Verbal consent to search the vehicle was also given by Griffin and Burke. Trooper Jackson uncovered two bags of cocaine, total weight approximately one kilogram, when he removed the cloth-covered panel from the rear of each front seat.

Griffin entered a conditional plea of guilty to Count I, reserving the right to move to suppress the evidence garnered from Trooper Jackson's search of the vehicle. This Court heard Griffin's *Motion to Suppress* and overruled same finding Griffin did not have standing to assert such a claim. See Order Overruling Defendants Griffin's and Roper's Motion to Suppress Evidence, Docket # 37. Griffin's *Motion to Reconsider his Motion to Suppress* was overruled. The Court accepted griffin's plea of guilty sentenced him to, *inter alia*, an 84 month term of imprisonment.

After serving approximately six months of his term, Griffin escaped from the minimum security Federal prison in Boron,

California. At the time of his escape, Griffin's direct appeal was pending before the Tenth Circuit Court of Appeals. Upon motion of the Government, the Tenth Circuit dismissed Griffin's appeal due to his fugitive status. See Order, Docket # 56.

### GRIFFIN'S PRESENT MOTIONS

In his initial *Motion*, Griffin raises four issues of error. Specifically, Griffin claims his "attorney did not attack the plea agreement" and the plea agreement was not sufficiently explained to him. Next, Griffin contends the Probation Officer misconstrued statements made by Griffin, to his detriment. Third, Griffin alleges his past criminal record should not have been an issue in the sentencing phase. Finally, Griffin asserts his counsel failed to submit a supportive letter from Griffin's father directed to the undersigned. None of these issues were raised on direct appeal.

The Government's argues the first issue of Griffin's *Motion* (lawyer not attacking plea agreement) is redundant. As to the second issue (Probation Officer misconstruing statements), the Government raise the procedural bar. The third claim (prior criminal record used at sentencing) is classified as moot, while the fourth issue (letter from father) is described as an ineffective assistance of counsel claim.

Apparently cognizant of the possibility his claims are procedurally barred, Griffin's *Reply* seeks to recast his initial

four grounds of error in terms of ineffective assistance of counsel claims. Further, Griffin seeks leave to amend his original *Motion* by adding three claims. The Court notes all three additional claims appear to be based on ineffective assistance of counsel.

The Court will analyze the first and fourth issues raised by the *Motion* (lawyer not attacking plea agreement and letter from father, respectively) as ineffective assistance of counsel claims. The second and third issues of the *Motion* (Probation Officer misconstruing statements and prior criminal record used at sentencing, respectively) shall be analyzed as issues which could have been brought on direct appeal not involving ineffective assistance of counsel.

## DISCUSSION

### A. Motion to Amend Petition

Generally, this Court will not address issues raised for the first time in a reply brief. See Boone v. Carlsbad Bancorporation, 972 F.2d 1545 (10th Cir. 1992). The Court is of the opinion Griffin's reliance on Fed.R.Civ.P. 15 (c), which allows amendments to a pleading to relate back to the original date of filing, to be misplaced. The additional claims Griffin seeks to raise by his *Reply* could have been proposed in his original *Motion*. To allow such an amendment as a matter of course in the context of a § 2255 motion would circumvent the well-established abuse of the writ

doctrine, not to mention the statutory provisions of § 2255. However, in the interest of justice, the Court is of the opinion the additional issues raised by Griffin's *Reply* are such that they can be disposed of without further briefing and/or oral argument. Thus, the Court **GRANTS** Griffin leave of Court to amend his original *Motion*, but only to the extent the new ineffective assistance of counsel claims are to be added. The Court will not allow Griffin to recast his original claims under the guise of ineffective assistance of counsel claims.

**B. Procedural Bar**

The Court now addresses the issue of whether Griffin's second and third claims of his original *Motion* (the Probation Officer misconstrued certain statements made by Griffin and the prior criminal record being considered at sentencing) are procedurally barred.

It is well settled that "[s]ection 2255 motions are not available to test the legality of matters which should have been raised on direct appeal." United States v. Cook, 45 F.3d 388, 392 (10th Cir. 1995) (quoting United States v. Warner, 23 F.3d 287, 291 (10th Cir. 1994)). Consequently, Griffin's failure to present an issue on direct criminal appeal bars him from raising that issue in his section 2255 motion, unless he can show cause for excusing his procedural default and actual prejudice resulting from the errors

of which he complains, or can show that a fundamental miscarriage of justice will occur if his claim is not addressed. Cook, 45 F.3d at 392.

Griffin has not shown sufficient cause and prejudice to excuse his procedural default, nor has he shown that a fundamental miscarriage of justice would occur if the claims go unaddressed. Even if the claims were not procedurally barred Griffin would not be entitled to relief on the basis of either claim. It is clear from the sentencing transcript that this Court gave Griffin and his counsel a full and fair opportunity to be heard with respect to the Probation Officer's Pre-sentence Investigation Report, particularly those statements Griffin claims were misconstrued. See Sent. Tr. pp. 2-15, 19-22.

Additionally, Griffin's claim his past criminal record should not have been considered at sentencing is frivolous. The undersigned sentenced Griffin to an 84 month term of imprisonment. The applicable United States Sentencing Guideline range, which included the applicable criminal history, for the crime to which Griffin pled guilty was 78-97 months imprisonment. The Probation Officer did not recommend an increase in the applicable Guideline range based on Griffin's past criminal conduct, nor did the Court impose a term of imprisonment above the applicable Guideline range. See Pre-sentence Investigation Report, pp. 4-6.

### C. Ineffective Assistance of Counsel

To establish ineffective assistance of counsel a defendant must show that his counsel's performance was deficient and that the deficient performance prejudiced his defense. Strickland v. Washington, 466 U.S. 668, 687 (1984). The Court firmly believes the first claim of ineffective assistance of counsel raised by the Motion, that his lawyer did not attack the plea agreement, lacks merit. It appears this single claim consists of three distinct reasons Griffin believes he was denied effective assistance of counsel. First, Griffin complains his counsel did not fully and completely explain the terms and conditions of the plea agreement. The record shows otherwise. See *Petition to Enter Plea of Guilty and Order Entering Plea* at ¶¶ 3, 6, 11, 12, 14, 15, 19, 21. The *Petition to Enter Plea of Guilty* was signed by Griffin in open Court. Each of the cited paragraphs expressly rebuts his claim he was not informed of the consequences attendant a guilty plea.

Next, Griffin complains that his attorney misled him "down a road he, the defendant was un-familiar (sic) with and had no knowledge of the seriousness of the plea-agreement." Again, the record shows otherwise. Id.

In the final subpart of his first claim of ineffective assistance of counsel, Griffin states he was under the impression he was entitled to a two point downward departure in the offense level computation pursuant to a stipulation between the United

States Attorney and himself. The two point downward departure was to have been for Griffin's acceptance of responsibility. Again, this argument defies the record. The sentencing Court is not bound by a stipulation between the United States Attorney and a defendant which affects the ultimate sentence imposed. U.S.S.G. § 6B1.1(b) (1989). Further, that the sentencing Court was not bound by the stipulation was clearly represented to Griffin in the proposed plea agreement letter sent by Assistant United States Attorney David O'Meilia to Griffin and his lawyer. Griffin and his lawyer approved said proposal by signing the second page of the letter. See Letter of September 13, 1989, Case No. 96-CV-529-B, Docket # 1. The undersigned explained to Griffin at the sentencing hearing that it did not appear Griffin had accepted responsibility for his actions. On the contrary, it appeared Griffin had rejected responsibility by trying to convince co-defendant Burke, a teenager, to accept full responsibility for the crime committed. See Sent. Tr. at 26-27. As a result, the Court exercised it's discretion and denied the two point reduction in the offense level computation. Thus, Griffin's first claim of ineffective assistance of counsel consisting of three subparts is hereby **DENIED**.

The fourth ground upon which relief is sought pursuant to the initial *Motion* is that counsel, Mr. Brunton, did not submit for the Court's consideration a "very loving letter from the defendant(s) (sic) Father." Griffin laments the letter should have been "taken

into a higher range of consideration and responsibility on the part of this petitioner. Just the fact of a person of this regards being able to aid and assist the defendant upon his release is enough to reverse the Courts (sic) prior decision in the range factor imposed on the day of sentencing." *Motion* at 8. Despite the probability this claim does not articulate a cognizable ground for relief, the undersigned construes it as an ineffective assistance of counsel claim. The Court would inform Griffin the letter from his father was read prior to sentencing. See *Sent. Tr.* at 30. Further, the Sentencing Guidelines limit the Court's authority to consider such a letter in mitigation. Thus, this claim is without merit and is **DENIED**.

The Court now moves to the ineffective assistance of counsel issues raised by Griffin in his Reply. Somewhat convoluted, the first claim reads as follows:

1) Defendant Griffin Asserts that his attorney was ineffective where he caused him to involuntarily give up his right to trial without investigating the facts, by requiring that defendant confess his guilt in order to gain standing for motion to suppress and subjecting defendant to a conflict of interest by continuing with a weak issue not to appear unethical; by not allowing court to exercise its discretion; and by not protecting defendant's due process and equal protection rights, or arguing Section 3B1.1.

As to the involuntariness of the waiver of the right to trial, the Court directs Griffin's attention to the *Petition to Enter Plea of Guilty* he executed, specifically paragraphs 6-9. Griffin's

argument is meritless and unsupported by the record.

The conflict of interest issue seems to arise from the fact Griffin's lawyer made a tactical decision to pursue a strategy he thought more likely to succeed, as opposed to the defense Griffin believed likely to produce his freedom. Mr. Brunton chose to contest the legality of the search of the vehicle. To be successful in this attack, it would have had to be established Griffin had standing to contest the search. To have standing to contest the search, Griffin would have had to have a reasonable expectation of privacy in the vehicle which a reasonable person would have recognized. Despite a full hearing on the subject, standing to contest the search could not be established as Griffin had no ownership interest in the vehicle, was not driving the vehicle, and did even not have a driver's license. See Order, Docket # 37.

Griffin felt it would be to his advantage to pursue the defense of necessity/duress. Griffin thought he could gain his freedom if his lawyer would argue to a jury that it was necessary due to duress for Griffin, along with two compatriots, to transport a kilogram of cocaine from Los Angeles to Baltimore for delivery to some people who held Griffin's brother hostage and had threatened to kill him if Griffin did not deliver the drugs. Mr. Brunton made a tactical decision to forego this defense option and arrange the best possible agreement for his client. The Court does not believe the decision made by Mr. Brunton fell below an objective standard of reasonableness. Thus, Griffin has failed to meet the first

prong of Strickland.

The Court is unable to determine what Griffin means by the statement his lawyer failed to allow the Court to exercise its discretion. The Court appropriately exercised its discretion as it saw fit.

Similarly, Griffin provides no supporting argument or facts for the statement his lawyer failed to protect his due process and equal protection rights. Such conclusory assertions are not grounds for relief under 28 U.S.C. § 2255.

Griffin then enunciates the belief his counsel's performance fell below an objective standard of reasonableness because he did not argue U.S.S.G. § 3B1.1. Griffin is referring to the section in the United States Sentencing Guidelines which provides for an increase in the offense level based on a defendant's role as organizer or leader. In this case, Griffin received a two point increase pursuant to U.S.S.G. § 3B1.1(c). The Court is of the opinion Mr. Brunton could not have posed a good faith argument against the two point increase in light of the fact Griffin admitted paying, or agreeing to pay, co-defendants Roper and Burke \$500 each to help him drive across country with the drugs. See Suppression Hearing Tr. at 122. The first claim of ineffective assistance of counsel raised by the Reply is **DENIED**.

The second claim of Griffin's Reply reads as follows:

2) Defendant Griffin Asserts that his attorney was ineffective for failing to investigate that codefendant Michael Eugene Roper could not sign the consensual search because the car was stolen.

The Court disagrees. All three defendants consented to the search of the vehicle. The Tenth Circuit Court of Appeal's affirmance of this Court's findings Roper had the principal right of possession and control, but no standing to contest the search, concludes the matter. See Order, Docket # 57. Griffin's second claim of the Reply is **DENIED**.

Finally, the third claim of Griffin's Reply reads as follows:

3) Defendant Griffin Asserts that he was not made aware of the consequences of his plea and a conflict of interest existed based on defense counsel's coercion to require defendant to accept ownership of the contraband seized and later causing defendant to plea guilty on grounds that the Government would use his acceptance of the contraband to convict him before the jury, all of which was unreasonable.

This claim seems to piece together arguments presented in claims previously addressed by this Order. The Court need not re-address such claims and Griffin's third claim is summarily **DENIED**.

#### CONCLUSION

The Court **GRANTS** Griffin leave to supplement his *Motion* to the extent the three ineffective assistance of counsel claims presented by the *Reply* shall be considered.

For the foregoing reasons, the Court is of the opinion Griffin is not being held in violation of the Constitution or the laws and treaties of the United States. Therefore, Griffin's *Motion*, as supplemented by the *Reply*, pursuant to 28 U.S.C. § 2255 is hereby **DENIED**.

IT IS SO ORDERED this 14<sup>th</sup> day of February, 1997.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

FEB 11 1997

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA )  
Plaintiff )  
VS )  
HUGO ABRAHAM )  
Defendant )

Case Number: 89-CR-101-004-B

ENTERED ON DOCKET

DATE FEB 19 1997

ORDER REVOKING SUPERVISED RELEASE

Now on this 6th day of February, 1997, this cause comes on for sentencing concerning allegations that the defendant violated conditions of supervised release as set out in the Petition on Supervised Release filed on December 6, 1996. The defendant is present in person and represented by counsel, C.W. Hack. The Government is represented by Assistant U.S. Attorney Robert Raley, and the United States Probation Office is represented by Dee Ann Bernaud.

The defendant was heretofore convicted on his plea of guilty to a single count Indictment charging him with Conspiracy to Distribute 50 Grams or More of Cocaine Base, in violation of 21 U.S.C. §§ 846 and 841(a)(1). On December 6, 1989, Abraham was sentenced to ninety-six (96) months in the custody of the Bureau of Prisons followed by a five (5) year period of supervised release. The Court did not impose any special conditions at the time of sentencing. On September 17, 1996, Abraham's conditions were modified to include the following special condition:

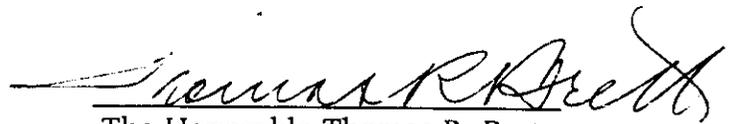
The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.

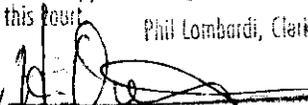
On December 19, 1996, a Revocation Hearing was held regarding the allegations as memorialized in the Petition on Supervised Release, filed December 6, 1996. Abraham stipulated to Possession of Marijuana and the positive drug tests. After hearing testimony, the Court found the defendant also violated supervised release by failing to successfully complete drug treatment. Because the defendant was employed at the time of the revocation hearing, the Court did not find there was a violation for failing to obtain employment. Sentencing was scheduled for February 6, 1997.

On February 6, 1997, as a result of the Sentencing Hearing, the Court found 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 constitutes a Grade B violation in accordance with U.S.S.G. § 7B1.1(a)(2), and that the defendant's original Criminal History Category of III establishes a revocation imprisonment range of 8 to 14 months, pursuant to U.S.S.G. § 7B1.4(a) and (b)(3). 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 is committed to the custody of the U. S. Bureau of Prisons to be imprisoned for a term of eighteen (18) months. It is recommended that the defendant be placed in an institution offering a substance abuse treatment program.

The defendant was remanded to the custody of the U.S. Marshal's Service pending transfer to an institution.

  
The Honorable Thomas R. Brett  
United States District Judge

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

EDD 2/19/97

UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF OKLAHOMA

**F I L E D**

FEB 1 2 1997

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA )  
Plaintiff )  
 )  
vs. )  
 )  
WANDA LOUISE PEARSON )  
Defendant )

Case No. 93-CR-070-001-B

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 the Court. Phil Lombardi, Clerk

**ORDER**

By  Deputy

Before the Court is defendant Wanda Louise Pearson's ("Pearson") 28 USC § 2255 Motion to Vacate, Set Aside, or Correct the Sentence this Court imposed upon her conviction for Possession of a Firearm After Former Conviction of a Felony, filed September 2, 1993. Pearson challenges her sentence contending the Court improperly applied USSG §5G1.3(b) in ordering a concurrent term by not compensating for time served on a State sentence that had been fully taken into account in the application of the Sentencing Guidelines relative to her instant conviction. Pearson argues that, on December 16, 1992, she was arrested and jailed for the crime of Unlawful Possession of Controlled Drugs With Intent to Distribute, Second Offense, AFCE, in Tulsa District Court case CF-92-5462. Pearson was subsequently arrested as a probation violator in Tulsa County case CF-91-2680. She ultimately was convicted in Tulsa County District Court case CF-92-5462 and her probation was revoked in case CF-91-2680, resulting in a total sentence of thirteen years in the custody of the Oklahoma Department of Corrections, a sentence that was an undischarged term at the time of her sentencing in this Court. She asserts that she was released on bond on this State charge on December 22, 1992, remaining free until her

arrest on January 8, 1993, as a probation violator, effecting her detention until sentencing on the instant offense on December 22, 1993, resulting in 223 days that were not credited toward the instant conviction.

The record reflects a slightly different calculation of time served prior to her sentencing in the instant offense. Tulsa County District Court records reveal that Pearson was arrested and jailed relative to case CF-92-5462 on December 16, 1992. She was release on bond on December 30, 1992. She was arrested and again jailed on January 17, 1993, when arrested by the Tulsa Police Department as a probation violator. She remained in custody until her sentencing in the instant matter on August 27, 1993, resulting in a detention period of 239 days.

In imposing sentence in this case the Court is constrained by the sentencing range and terms as dictated by the Sentencing Guidelines unless the Court finds a basis for departure. In this case the Court found that the Total Offense Level was 23 and the Criminal History Category was IV, resulting in a sentencing range of 70 to 87 months. The Court further found that USSG §5G1.3(b) was applicable because Pearson was serving an undischarged term of imprisonment resulting from an offense that had been fully taken into account in the determination of the offense level for the instant offense, and that the sentence for the instant offense shall be imposed to run concurrently with the undischarged term. In this case the undischarged term was the thirteen year sentence imposed in Tulsa County District Court cases CF-91-2680 and CF-92-5462. Consequently, the Court imposed a 70 month term with the sentence to run concurrently with Tulsa County District Court case CF-92-5462. Pearson argues in her 2255 Motion that the Court did not properly

apply §5G1.3(b) by failing to adjust the sentence imposed to account for, as she contends, 223 days served on the undischarged sentence fully taken into account in calculating the sentence that was credited toward her State sentence but not her Federal sentence. In application of §5G1.3(b) the Court is directed to adjust the sentence for any period of imprisonment already served as a result of the conduct taken into account in determining the guideline range for the instant offense. See USSG §5G1.3(b), comment. (n.2). In imposing sentence in the instant case, the Court determined that the appropriate term of imprisonment for the total conduct was 70 months. As directed by §5G1.3(b), this term should have been offset by the 239 days (eight months) Pearson had served relative to Tulsa County District Court cases CF-91-2680 and CF-92-5462, offenses that had been fully taken into account in the determination of the offense level for the instant offense. The correct sentence, therefore, would have been a term of 62 months, the 70 month term deemed fitting for Pearson's conduct, less eight months credit for time served on the undischarged State term fully taken into account in the calculation of the offense level in this case.

#### CONCLUSION

For the foregoing reasons, Pearson's Motion to Vacate, Set Aside, or Correct Sentence is GRANTED.

Both the attorney for the defendant and the attorney for the Government are unopposed to modification and correction of sentence, and further agree that the Court may modify and correct the sentence without a hearing or presence of the defendant.

Accordingly, the Court corrects and amends the sentence and judgment imposed by adjusting the sentence to account for the eight months served in State custody relative to this instant offense. The sentence and judgment is corrected and modified as to the custody term only. The defendant's custody term is hereby modified to order her committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 62 months, said sentence to run concurrently with her State custody terms. For the record, the Court notes that this term does not constitute a departure from the prescribed sentencing range because the defendant has been credited for guideline purposes under §5G1.3(b) with eight months served in state custody that will not be credited to this federal sentence under 18 USC § 3585.

The United States Probation Office is hereby directed to prepare an Amended Judgment and Commitment Order consistent with this Order.

IT IS SO ORDERED this <sup>7th</sup> 12 day of February, 1997.



Thomas R. Brett  
Senior United States District Judge

UNITED STATES DISTRICT COURT  
Northern District of Oklahoma

**F I L E D**

FEB 12 1997

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA

v.

Case Number 93-CR-070-001-B

ENTERED ON DOCKET

DATE FEB 19 1997

WANDA LOUISE PEARSON  
Defendant.

**AMENDED JUDGMENT IN A CRIMINAL CASE**  
**(For Offenses Committed On or After November 1, 1987)**  
DIRECT MOTION TO DISTRICT COURT PURSUANT TO 28 USC § 2255

The defendant, WANDA LOUISE PEARSON, was represented by Rob Nigh.

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

The defendant pleaded guilty to count(s) One of the Indictment. 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>
18:922(g)(1)	Possession of a Firearm After Former Conviction of a Felony	12-16-92	One

As pronounced on February 12, 1997, 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, for count(s) One 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 12<sup>th</sup> day of Feb., 1997.

  
The Honorable Thomas R. Brett, Senior  
United States District Judge

Defendant's SSN: 444-42-9574  
Defendant's Date of Birth: 04-02-44  
Defendant's address: C/O Oklahoma Dept. of Corrections; Lexington, OK

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: WANDA LOUISE PEARSON  
Case Number: 93-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 62 months concurrent with the two sentences previously imposed in Tulsa County, OK, District Court; Case numbers CR-91-2680, CF-91-2759 and CF-92-5462. The Court notes for the record that the sentence imposed is not a departure from the guideline range because the defendant has been credited for guideline purposes under § 5G1.3(b) with eight months served in state custody that has not been credited to the federal sentence under 18 USC § 3585(b).

The Court makes the following recommendations to the Bureau of Prisons: That the Bureau of Prisons designate the Oklahoma Department of Corrections to be the place of service of this sentence. Should the defendant be released from state custody by discharge or parole before the completion of the sentence imposed in this case, the defendant should be transferred to the custody of the Bureau of Prisons for the completion of service of this sentence.

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: WANDA LOUISE PEARSON  
Case Number: 93-CR-070-001-B

### **SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of Three (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 testing and treatment for alcohol and drug abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.

### **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: WANDA LOUISE PEARSON  
Case Number: 93-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 \$ 1,000. This fine includes any costs of incarceration and supervision.

The defendant to commence payment toward the fine while in federal and state custody. While in state custody, should the defendant have the financial ability, she should make fine payments according to her financial ability. she should make a reasonable effort to initiate such payments while in state custody. should the defendant be transferred to the Bureau of Prisons upon completion of the state sentence, she shall make fine payments through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from federal custody, any remaining balance shall be paid as a condition of supervised release, as directed by the U. S. Probation Office.

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: WANDA LOUISE PEARSON  
Case Number: 93-CR-070-001-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:	23
Criminal History Category:	IV
Imprisonment Range:	70 months to 87 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 10,000 to \$ 100,000
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**

FEB 19 1997

UNITED STATES OF AMERICA

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

v.

Case Number 96-CR-106-001-B

MANUEL DE JESUS MARTINEZ  
Defendant.

ENTERED ON DOCKET  
FEB 19 1997  
DATE \_\_\_\_\_

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

The defendant, MANUEL DE JESUS MARTINEZ, was represented by Steve Greubel.

The defendant pleaded guilty to count(s) 1 of the Indictment on November 8, 1996. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

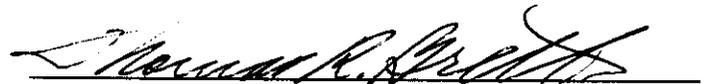
<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 844(i) & 2	Destruction by Fire and Aiding & Abetting	06/22/96	1

As pronounced on February 13, 1997, 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 19<sup>th</sup> day of February, 1997.

  
The Honorable Thomas R. Brett, Senior  
United States District Judge

Defendant's SSN: 615-42-1943  
Defendant's Date of Birth: 10/23/61  
Defendant's residence and mailing address: None

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: MANUEL DE JESUS MARTINEZ  
Case Number: 96-CR-106-001-B

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 60 months.

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: MANUEL DE JESUS MARTINEZ  
Case Number: 96-CR-106-001-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. Upon completion of your term of imprisonment, you are to be surrendered to a duly authorized immigration official for deportation in accordance with the established procedures provided by the Immigration and Naturalization Act, 8 USC Sections 1101-1524. It is further a condition of supervised release, if ordered departed, you shall remain outside the United States until termination of the term of supervised release.

### 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: MANUEL DE JESUS MARTINEZ  
Case Number: 96-CR-106-001-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 \$ 1,500.00. 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: MANUEL DE JESUS MARTINEZ  
Case Number: 96-CR-106-001-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:	21
Criminal History Category:	I
Imprisonment Range:	60 months - Ct. 1
Supervised Release Range:	2 to 3 years - Ct. 1
Fine Range:	\$ 7,500 to \$ 75,000 - Ct. 1
Restitution:	N/A

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 restitution has not been determined.

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

UNITED STATES OF AMERICA

DATE 2-19-97

v.

Case Number 96-CR-137-001-K

CORNELL EUGENE HUTTON  
Defendant.

**FILED**

FEB 18 1997

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

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

The defendant, CORNELL EUGENE HUTTON, was represented by Rueben Davis.

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

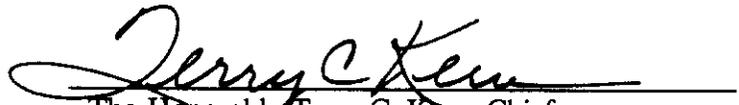
<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 286	Conspiracy to Defraud the Government	07/11/93	1

As pronounced on February 10, 1997, 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 14 day of February, 1997.

  
The Honorable Terry C. Kern, Chief  
United States District Judge

Defendant's SSN: 445-56-9430

Defendant's Date of Birth: 06/20/55

Defendant's mailing address: 1905 N. Kline, Oklahoma City, Oklahoma

Defendant's residence address: (Currently in custody of the Oklahoma Department of Corrections)

Defendant: CORNELL EUGENE HUTTON  
Case Number: 96-CR-137-001-K

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 24 months, to run consecutively to Oklahoma County Cases CF-87-3542 and CF-87-5707, but concurrently with Osage County Case CF-93-193.

The Court makes the following recommendations to the Bureau of Prisons: The Court recommends that the defendant be designated to a Bureau of Prisons facility equipped to provide comprehensive substance abuse treatment while he is in the custody of the Bureau of Prisons.

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: CORNELL EUGENE HUTTON  
Case Number: 96-CR-137-001-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 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: CORNELL EUGENE HUTTON  
Case Number: 96-CR-137-001-K

**RESTITUTION AND FORFEITURE**

**RESTITUTION**

The defendant shall make restitution in the total amount of \$3,073.79.

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>
Internal Revenue Service 3651 South Highway I-35 Stop 9002 AUSC Austin, Texas 78767	\$3,073.79

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: CORNELL EUGENE HUTTON  
Case Number: 96-CR-137-001-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:	8
Criminal History Category:	VI
Imprisonment Range:	18 months to 24 months - Ct. 1
Supervised Release Range:	2 to 3 years - Ct. 1
Fine Range:	\$ 1,000 to \$ 10,000 - Ct. 1
Restitution:	\$ 3,073.79

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.

*[Handwritten signature]*

UNITED STATES DISTRICT COURT  
Northern District of Oklahoma

UNITED STATES OF AMERICA

v.

Case Number 96-CR-150-001-K

ENTERED ON DOCKET

DATE 2-19-97

**F I L E D**

FEB 18 1997

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

MARCUS EUGENE TITSWORTH  
Defendant.

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

The defendant, MARCUS EUGENE TITSWORTH, was represented by Joe Bohannon.

On motion of the United States the court has dismissed count(s) 1 & 3 of the Indictment.

The defendant pleaded guilty to count(s) 2 of the Indictment on November 11, 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)	Distribution of a Controlled Substance	07/30/96	2

As pronounced on February 10, 1997, 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) 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 14 day of February, 1997.



The Honorable Terry C. Kern, Chief  
United States District Judge

Defendant's SSN: 445-70-7355

Defendant's Date of Birth: 07/24/72

Defendant's residence and mailing address: 1050 N. Irvington, Apt. B, Tulsa, OK 74106

Defendant: MARCUS EUGENE TITSWORTH  
Case Number: 96-CR-150-001-K

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 40 months. The term of imprisonment shall run consecutive to the term of imprisonment the defendant is currently serving in the Oklahoma Department of Corrections, Creek County, Oklahoma, Case #CRF-93-45.

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: MARCUS EUGENE TITSWORTH  
Case Number: 96-CR-150-001-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 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: MARCUS EUGENE TITSWORTH  
Case Number: 96-CR-150-001-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 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: MARCUS EUGENE TITSWORTH  
Case Number: 96-CR-150-001-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:	19
Criminal History Category:	III
Imprisonment Range:	37 months to 46 months - Ct. 2
Supervised Release Range:	3 years - Ct. 2
Fine Range:	\$ 6,000 to \$ 60,000 - Ct. 2
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

ENTERED ON DOCKET  
DATE 2-19-97

UNITED STATES OF AMERICA

v.

Case Number 96-CR-111-001-K

DONNA MARIA ADEDIBU  
Defendant.

**FILED**

FEB 18 1997

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

Lombardi, Clerk  
U.S. DISTRICT COURT

The defendant, DONNA MARIA ADEDIBU, was represented by Art Fleak.

The defendant pleaded guilty to count(s) 1 of the Indictment on September 26, 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 1029(a)(2)	Use of Unauthorized Access Device	12/21/95	1

As pronounced on February 7, 1997, 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 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 14 day of February, 1997.

  
The Honorable Terry C. Kern, Chief  
United States District Judge

Defendant's SSN: 312-76-6655

Defendant's Date of Birth: 02/09/62

Defendant's residence and mailing address: 1152 N. Oswego Ave., Tulsa, Oklahoma 74115

Defendant: DONNA MARIA ADEDIBU  
Case Number: 96-CR-111-001-K

### PROBATION

The defendant is hereby placed on probation for a term of 5 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 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.
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 3 months, to commence within 72 hours of sentencing date. 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.
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 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: DONNA MARIA ADEDIBU  
Case Number: 96-CR-111-001-K

**RESTITUTION AND FORFEITURE**

**RESTITUTION**

The defendant shall make restitution in the total amount of \$3,000.00.

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>
Fleet Bank 225 Rainbow Mall Niagara Falls, New York 14303	\$3,000.00

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 during the period of probation.

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

Defendant: DONNA MARIA ADEDIBU  
Case Number: 96-CR-111-001-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:	8
Criminal History Category:	I
Imprisonment Range:	0 months to 6 months - Ct. 1
Supervised Release Range:	2 to 3 years - Ct. 1
Fine Range:	\$ 1,000 to \$ 10,000 - Ct. 1
Restitution:	\$ 9,825.38

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

UNITED STATES OF AMERICA

ENTERED ON DOCKET

v.

DATE 2-19-97  
Case Number 95-CR-057-001-K

LARRY JAMES GAMBLE, SR.  
Defendant.

**F I L E D**

FEB 18 1997

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

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

The defendant, LARRY JAMES GAMBLE, SR., was represented by Craig Bryant.

The defendant pleaded guilty to count(s) 1 of the Indictment on November 16, 1996. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

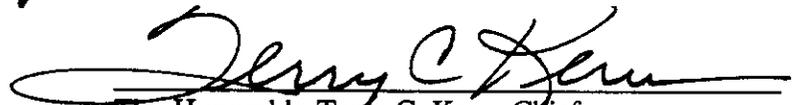
<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
21 USC 846, 841(a)(1), and 841(b)(1)(B)(ii)	Conspiracy to Possess Cocaine With Intent to Distribute	03/24/95	1

As pronounced on February 6, 1997, 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 14 day of February, 1997.

  
The Honorable Terry C. Kern, Chief  
United States District Judge

Defendant's SSN: 448-40-9671  
Defendant's Date of Birth: April 6, 1945  
Defendant's mailing address: 1316 North Rockwell, Oklahoma City, OK 73127  
Defendant's residence address: (Currently in Tulsa County Jail)

Defendant: LARRY JAMES GAMBLE, SR.  
Case Number: 95-CR-057-001-K

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 70 months.

The Court makes the following recommendations to the Bureau of Prisons: Classification provisions permitting, the Court recommends that the defendant be confined in their facility located in El Reno, Oklahoma, and that the defendant be provided substance abuse treatment.

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: LARRY JAMES GAMBLE, SR.  
Case Number: 95-CR-057-001-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 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: LARRY JAMES GAMBLE, SR.  
Case Number: 95-CR-057-001-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 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 JAMES GAMBLE, SR.  
Case Number: 95-CR-057-001-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:	25
Criminal History Category:	IV
Imprisonment Range:	84 months to 105 months - Ct. 1
Supervised Release Range:	4 to 5 years - Ct.1
Fine Range:	\$ 10,000 to \$ 2,000,000 - 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 departs from the guideline range for the following reason(s): Upon motion of the government, as a result of defendant's substantial assistance.

**FILED**

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

FEB 14 1997

UNITED STATES OF AMERICA

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

v.

Case Number 96-CR-116-001-B

ENTERED ON DOCKET

DATE 2-18-97

JOSEPH A. ISNARDI, JR.  
Defendant.

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

The defendant, JOSEPH A. ISNARDI, JR., was represented by Stanley D. Monroe.

On motion of the United States the court has dismissed count(s) 1-7 of the Indictment and 1 and 4-9 of the Superseding Indictment.

The defendant pleaded guilty to count(s) 1 of the Information on October 22, 1996. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

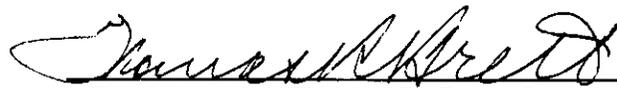
<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 1343	Wire Fraud	04/30/92	1

As pronounced on February 7, 1997, 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.

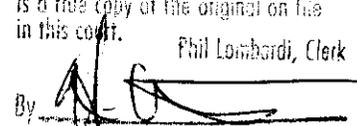
It is ordered that the defendant shall pay to the United States a special assessment of \$ 50.00, for count(s) 1 of the Information, which shall be due immediately.

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 14<sup>th</sup> day of February, 1997.

  
The Honorable Thomas R. Brett, Senior  
United States District Judge

Defendant's SSN: 120-32-1195  
Defendant's Date of Birth: 05/27/41  
Defendant's residence and mailing address: 208 First Lake Drive, Naples, Florida 34104

United States District Court )  
Northern District of Oklahoma ) 25  
I hereby certify that the foregoing )  
is a true copy of the original on file )  
in this court. Phil Lombardi, Clerk  
By  Deputy

Defendant: JOSEPH A. ISNARDI, JR.  
Case Number: 96-CR-116-001-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 months.

The Court makes the following recommendations to the Bureau of Prisons: That the defendant be incarcerated at a minimum security facility near his residence.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons before 2:00 p.m. on March 10, 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: JOSEPH A. ISNARDI, JR.  
Case Number: 96-CR-116-001-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 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: JOSEPH A. ISNARDI, JR.  
Case Number: 96-CR-116-001-B

**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>
James Dennis Caldron 2108 S. 121st E. Avenue Tulsa, OK 74129	\$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: JOSEPH A. ISNARDI, JR.  
Case Number: 96-CR-116-001-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:	19
Criminal History Category:	I
Imprisonment Range:	30 months to 37 months - Ct. 1
Supervised Release Range:	2 to 3 years - Ct. 1
Fine Range:	\$ 7,500 to \$ 1,078,082.50 - Ct. 1
Restitution:	\$ 50.000

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.

ENTERED ON RECORD

DATE 2/18/97

UNITED STATES DISTRICT COURT  
Northern District of Oklahoma

FEB 11 1997  
Phil L...  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA

v.

Case Number 96-CR-107-001-H

BRIAN DeWAYNE COFFEY  
Defendant.

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

The defendant, BRIAN DeWAYNE COFFEY, was represented by Stephen J. Knorr.

The defendant pleaded guilty to count(s) 1 of the Indictment on October 30, 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 5861(d)	Possession of an Unregistered Firearm (Silencer)	05/03/95	1

As pronounced on January 29, 1997, 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 11<sup>th</sup> day of FEBRUARY, 1997.

  
The Honorable Sven Erik Holmes  
United States District Judge

Defendant's SSN: 445-74-4978

Defendant's Date of Birth: 02/07/64

Defendant's residence and mailing address: C/O U.S. MARSHAL

2

Defendant: BRIAN DeWAYNE COFFEY  
Case Number: 96-CR-107-001-H

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 25 months.

The Court makes the following recommendations to the Bureau of Prisons: The Court recommends that the defendant be placed in a Bureau of Prisons Drug Treatment Program that would make him eligible for the early release under the provisions of 18:3621(e).

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons, to surrender 45 days from the sentencing date .

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: BRIAN DeWAYNE COFFEY  
Case Number: 96-CR-107-001-H

### 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 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: BRIAN DeWAYNE COFFEY  
Case Number: 96-CR-107-001-H

**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 \$ 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: BRIAN DeWAYNE COFFEY  
Case Number: 96-CR-107-001-H

**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:	15
Criminal History Category:	III
Imprisonment Range:	24 months to 30 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 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.

140

UNITED STATES DISTRICT COURT  
Northern District of Oklahoma

**FILED**

FEB 14 1997

UNITED STATES OF AMERICA

v.

Case Number 96-CR-116-002-B

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

CAROL A. ISNARDI  
Defendant.

ENTERED ON DOCKET

DATE 2-18-97

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

The defendant, CAROL A. ISNARDI, was represented by Stanley Monroe.

On motion of the United States the court has dismissed count(s) 1 of the Indictment and Counts 2 and 3 of the Superseding Indictment.

The defendant pleaded guilty to count(s) 1 of the Information on October 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>
26 USC 7206(1)	Willfully Making and Subscribing to a False Federal Income Tax Return	03/21/92	1

As pronounced on February 7, 1997, 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.

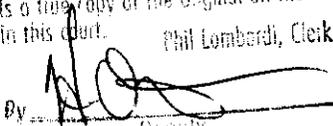
It is ordered that the defendant shall pay to the United States a special assessment of \$ 50.00, for count(s) 1 of the Information, which shall be due immediately.

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 14<sup>th</sup> day of February, 1997.

  
The Honorable Thomas R. Brett  
United States District Judge

Defendant's SSN: 448-40-9936  
Defendant's Date of Birth: 03/14/43  
Defendant's residence and mailing address: 208 First Lake Drive, Naples, Florida 34104

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  )  
Clerk )

Defendant: CAROL A. ISNARDI  
Case Number: 96-CR-116-002-B

### 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 be placed on home detention to include electronic monitoring at the discretion of the U. S. Probation Office for a period of 6 months, to commence within 10 days of the sentencing date. 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.
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.

### 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: CAROL A. ISNARDI  
Case Number: 96-CR-116-002-B

**RESTITUTION AND FORFEITURE**

**RESTITUTION**

The defendant shall make restitution in the total amount of \$3,657.50.

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>
James Dennis Caldron 2108 S. 121st E. Ave. Tulsa, OK 74129	\$3,657.50

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 during the period of probation.

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

Defendant: CAROL A. ISNARDI  
Case Number: 96-CR-116-002-B

**STATEMENT OF REASONS**

The court adopts the factual findings and guideline application in the presentence report except: The Court finds the tax loss is \$7,315.00, not \$81,764; therefore, the offense level is 6 as opposed to 12.

**Guideline Range Determined by the Court:**

Total Offense Level:	6
Criminal History Category:	I
Imprisonment Range:	0 months to 6 months - Ct. 1
Supervised Release Range:	1 year - Ct. 1
Fine Range:	\$ 500 to \$ 5,000 - Ct. 1
Restitution:	\$ 3,657.50

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**

FEB 14 1997

UNITED STATES OF AMERICA

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

v.

Case Number 96-CR-005-001-B

MARK DOUGLAS BLACK  
Defendant.

ENTERED ON DOCKET  
DATE FEB 18 1997

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

The defendant, MARK DOUGLAS BLACK, was represented by Craig Bryant.

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

The defendant pleaded guilty to count(s) 1 of the Indictment on October 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>
26 USC 5841, 5845, 5861(d), and 5871	Possession of An Unregistered Firearm	11/11/95	1

As pronounced on February 7, 1997, 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 Indictment, which shall be due immediately.

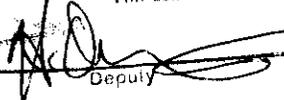
It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

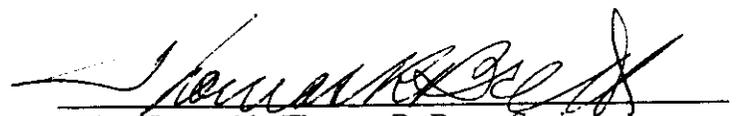
Signed this the 14<sup>th</sup> day of February, 1997.

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

  
The Honorable Thomas R. Brett, Senior  
United States District Judge

Defendant's SSN: 444-64-4131

Defendant's Date of Birth: 06/02/57

Defendant's residence and mailing address: C/O TULSA COUNTY JAIL, 500 S. DENVER, TULSA, OK 74103

Defendant: MARK DOUGLAS BLACK  
Case Number: 96-CR-005-001-B

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 63 months to run concurrent with Tulsa County District Court Case No. CF-95-393.

The Court makes the following recommendations to the Bureau of Prisons: That the defendant be confined in a facility capable of providing mental health treatment.

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: MARK DOUGLAS BLACK  
Case Number: 96-CR-005-001-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 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 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.
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.

### 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: MARK DOUGLAS BLACK  
Case Number: 96-CR-005-001-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:	19
Criminal History Category:	VI
Imprisonment Range:	63 months to 78 months - Ct. 1
Supervised Release Range:	2 to 3 years - Ct. 1
Fine Range:	\$ 6,000 to \$ 60,000 - 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 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

UNITED STATES OF AMERICA

v.

Case Number 96-CR-126-002-K

**FILED**

FEB 13 1997

KAREN SUE ALLISON  
Defendant.

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

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

The defendant, KAREN SUE ALLISON, was represented by WILLIAM E. HUGHES.

On motion of the United States the court has dismissed count(s) One, Two and Four of the Superseding Indictment.

The defendant pleaded guilty to count(s) Ten of the Superseding Indictment. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

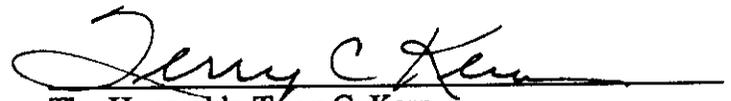
<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 472	Uttering Counterfeit Obligations or Securities	08-26-96	10

As pronounced on February 4, 1997, 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, for count(s) Ten of the Superseding 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 12 day of February, 1997.

  
The Honorable Terry C. Kern  
Chief United States District Judge

Defendant's SSN: 551-13-2432

Defendant's Date of Birth: 12-01-66

Defendant's residence and mailing address: 4915 S. MAYBELLE, TULSA, OKLAHOMA 74127

Defendant: KAREN SUE ALLISON  
Case Number: 96-CR-126-002-K

### PROBATION

The defendant is hereby placed on probation for a term of three (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 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.
4. 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: KAREN SUE ALLISON  
Case Number: 96-CR-126-002-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 \$ 1,000. 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: KAREN SUE ALLISON  
Case Number: 96-CR-126-002-K

**RESTITUTION AND FORFEITURE**

**RESTITUTION**

The defendant shall make restitution in the total amount of \$100 on Count Ten of the Superseding Indictment.

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>
Dollar Family Store 723 West 23rd Street Tulsa, OK 74107 Attn: Linda Saner	\$ 100.00

Payments of restitution are to be made to the United States Court Clerkneyfor the Northern District of Oklahoma, for transfer to the payee(s).

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid during the period of probation.

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

Defendant: KAREN SUE ALLISON  
Case Number: 96-CR-126-002-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
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 500 to \$ 5,000
Restitution:	\$ 100

The sentence departs from the guideline range upon motion of the government, as a result of the defendant's substantial assistance.

UNITED STATES DISTRICT COURT  
Northern District of Oklahoma

UNITED STATES OF AMERICA

v.

Case Number 96-CR-126-002-K

**FILED**

2-14-97

KAREN SUE ALLISON  
Defendant.

FEB 13 1997

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

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

The defendant, KAREN SUE ALLISON, was represented by WILLIAM E. HUGHES.

On motion of the United States the court has dismissed count(s) One, Two and Four of the Superseding Indictment.

The defendant pleaded guilty to count(s) Ten of the Superseding Indictment. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

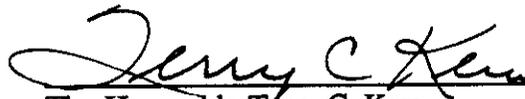
<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 472	Uttering Counterfeit Obligations or Securities	08-26-96	10

As pronounced on February 4, 1997, 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, for count(s) Ten of the Superseding 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 12 day of February, 1997.

  
The Honorable Terry C. Kern  
Chief United States District Judge

Defendant's SSN: 551-13-2432

Defendant's Date of Birth: 12-01-66

Defendant's residence and mailing address: 4915 S. MAYBELLE, TULSA, OKLAHOMA 74127

Defendant: KAREN SUE ALLISON  
Case Number: 96-CR-126-002-K

### PROBATION

The defendant is hereby placed on probation for a term of three (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 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.
4. 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: KAREN SUE ALLISON  
Case Number: 96-CR-126-002-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 \$ 1,000. 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: KAREN SUE ALLISON  
Case Number: 96-CR-126-002-K

**RESTITUTION AND FORFEITURE**

**RESTITUTION**

The defendant shall make restitution in the total amount of \$100 on Count Ten of the Superseding Indictment.

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>
Dollar Family Store 723 West 23rd Street Tulsa, OK 74107 Attn: Linda Saner	\$ 100.00

Payments of restitution are to be made to the United States Court Clerkneyfor the Northern District of Oklahoma, for transfer to the payee(s).

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid during the period of probation.

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

Defendant: KAREN SUE ALLISON  
Case Number: 96-CR-126-002-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
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 500 to \$ 5,000
Restitution:	\$ 100

The sentence departs from the guideline range upon motion of the government, as a result of the defendant's substantial assistance.

**FILED**

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

FEB 13 1997

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA

v.

Case Number 95-CR-102-002-B

ROBERT STERNING, JR.  
Defendant.

ENTERED ON DOCKET  
DATE 2-13-97

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

The defendant, ROBERT STERNING, JR., was represented by Kurt G. Glassco.

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

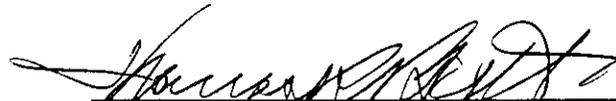
<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 371 & 2	Conspiracy and Causing a Criminal Act	07/31/93	1

As pronounced on January 31, 1997, 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 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 5<sup>th</sup> day of February, 1997.

  
The Honorable Thomas R. Brett  
Senior, United States District Judge

Defendant's SSN: 350-58-0552  
Defendant's Date of Birth: October 4, 1961  
Defendant's residence and mailing address: 176 Serena Drive, Chicago Heights, IL 60411

United States District Court ) SS  
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: ROBERT STERNING, JR.  
Case Number: 95-CR-102-002-B

### 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 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.
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.

### 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: ROBERT STERNING, JR.  
Case Number: 95-CR-102-002-B

**RESTITUTION AND FORFEITURE**

**RESTITUTION**

The defendant shall make restitution in the total amount of \$20,000.00.

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>
Jeffrey Lowry P.O. Box 3366 Bartlesville, OK 74006	\$20,000

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 during the period of probation, except that no further payment shall be required after the sum of the amounts paid by both defendants has fully covered the compensable injury.

Defendant: ROBERT STERNING, JR.  
Case Number: 95-CR-102-002-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:	10
Criminal History Category:	I
Imprisonment Range:	6 months to 12 months
Supervised Release Range:	N/A
Fine Range:	\$ 2,000 to \$ 20,000
Restitution:	\$ 100,096.50

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

CR

IN THE UNITED STATES DISTRICT COURT FOR THE **F I L E D**  
NORTHERN DISTRICT OF OKLAHOMA

FEB 11 1997

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 LAMAR LOWE aka )  
 LAMAR ROBINSON, )  
 )  
 Defendant. )

No. 93-CR-35-C

RECEIVED  
FEB 12 1997

**ORDER**

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

On August 31, 1993, a jury returned a verdict of guilty against Lowe on three Counts relating to the armed robbery of a credit union. More specifically, Lowe was convicted on Count One, conspiracy, in violation of 18 U.S.C. § 371; Count Two, armed robbery of a credit union, in violation of 18 U.S.C. § 2113(a) and (d); and Count Three, using or carrying a firearm during the commission of a crime of violence, in violation of 18 U.S.C § 924(c)(1). On October 20, 1993, Lowe was sentenced to 58 months imprisonment on Counts One and Two, and 60 months imprisonment on Count Three. The terms of imprisonment under Counts One and Two run concurrently, while the term of imprisonment imposed under Count Three runs consecutive to the sentences imposed in Counts One and Two. Lowe's conviction and sentence were affirmed on appeal. U.S. v. Lowe, 25 F.3d 1059 (10th Cir.1994), cert. denied, 115 S.Ct. 371 (1994).

On December 3, 1996, Lowe filed his present § 2255 motion, attacking his sentence imposed under Count Three. Lowe argues that his conviction under 18 U.S.C. § 924(c)(1) must be vacated

in light of the recent Supreme Court decision in Bailey v. U.S., 116 S.Ct. 501 (1995). Lowe now challenges his conviction under Count Three by asserting that he did not have a weapon during the commission of the underlying offense of robbery. Lowe maintains that he was merely the “getaway” driver, and he never left his vehicle during the robbery. Thus, Lowe essentially argues that the instructions given to the jury regarding Count Three were erroneous in light of the Bailey decision.

On December 11, 1996, the government filed its first response to Lowe’s motion. The government contended that Lowe was charged under Count Three of “using” and “carrying” a firearm. Thus, the government argued that it was only required to prove that Lowe aided and abetted in either the use or carrying of a firearm during and in relation to the bank robbery. The government conceded, however, that the Supreme Court in Bailey defined the term “use” more narrowly than prior Tenth Circuit precedent, and the government moved for the reversal of Lowe’s conviction as to Count Three and for a new trial on that Count. The Tenth Circuit has recently held that Bailey may be retroactively applied to § 2255 motions. See, U.S. v. Barnhardt, 93 F.3d 706 (10th Cir.1996).

On December 30, the government filed a supplemental response, in which the government, after further review, reversed its earlier position. In its supplemental response, the government argues that Bailey is not applicable to the instant case and that Lowe’s § 2255 motion should be denied. Because of Lowe’s extensive involvement in the planning and execution of a robbery in which firearms played an intricate part, the government contends that the evidence was sufficient to permit the jury to convict Lowe of aiding and abetting the use and carrying of a firearm during the commission of a crime of violence. The government offers the testimony of Marcoe Lowe, one of Lowe’s co-defendants, that he received a firearm from Lowe immediately prior to entering the credit

union. The government therefore suggests that, in light of the uncontroverted evidence demonstrating the employment of firearms during the robbery and Lowe's involvement in its commission, it was not necessary to give an instruction in accord with Bailey. Further, the government argues that the instructions which were given to the jury sufficiently defined the crime and properly advised the jury as to what elements they had to find before the guilt of Lowe was established.

Lowe filed a reply to the government's supplemental response on January 16, 1997. In his reply, Lowe disputes that he gave Marcoe Lowe a firearm prior to the robbery. Lowe contends that if he had provided Marcoe Lowe with a firearm, it was at least two weeks prior to the robbery. Further, Lowe argues that the .357 magnum and the .22 handgun could not have been provided by Lowe to any of his co-defendants, as these weapons were acquired elsewhere. Lowe asserts that his co-defendant, Marcoe Lowe, had the .357 magnum when he entered the credit union. Lowe additionally maintains that Bailey does apply to the instant case and that, under Bailey, the § 924(c) conviction must be vacated. Lowe argues that, under Bailey, the government must establish that Lowe knowingly and intentionally aided and abetted the actual elements of the underlying § 924(c) violation, rather than simply showing that Lowe created the circumstances which allowed the crime to occur. Since Lowe contends that the instructions regarding the aiding and abetting of the use of a firearm were erroneous in light of Bailey, Lowe maintains that his conviction under § 924(c) must be set aside.

A hearing with respect to Lowe's present § 2255 motion was held on January 23, 1997. On February 6, Lowe submitted a supplemental brief in support of his § 2255 motion. Lowe argues that Bailey redefined the use prong of § 924(c), requiring evidence sufficient to show an active

employment of the firearm by the defendant. Again, Lowe attacks the jury instruction regarding use, arguing that the instruction does not provide the jury with the active employment element of § 924(c) as required by Bailey. Lowe argues that the instruction regarding use is inconsistent with the active employment requirement of Bailey and fails to set forth the distinct elements of aiding and abetting a § 924(c) violation. Lowe contends that he is entitled to a properly instructed jury regarding the distinction between aiding and abetting the robbery and aiding and abetting the use of a firearm under § 924(c).

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.

With respect to Count Three, the Court instructed the jury that “The defendant is considered to have used a firearm if during the commission of the robbery, a firearm or other dangerous weapon was used in any manner to facilitate the offense.” This instruction was undoubtedly valid at the time

it was given. The issue concerning the Court is whether the decision in Bailey has since invalidated this instruction with respect to the “use” of a firearm. The government initially agreed with Lowe that the above instruction was legally deficient in light of Bailey, and the government acknowledged that no instruction was given with respect to the “carry” prong of § 924(c). However, the government subsequently reversed its position, and it now maintains that the instruction is valid, even in light of Bailey. The Court notes that no issue was previously raised as to the validity of the cited instruction.<sup>1</sup>

The Court agrees that Bailey affected the definition of “use,” and the effect of Bailey has been to invalidate a large number of instructions regarding use of a firearm given prior to that decision. Consequently, a great number of pre-Bailey § 924(c) convictions have been reversed due to instructions which incorporate an overbroad definition of “use.” However, not all pre-Bailey § 924(c) convictions must be vacated. Apparently, the government has been so inundated with post-Bailey challenges to “use” instructions that it routinely concedes error without fully examining each case independently. Such occurred in the instant case, which explains why the government offered its supplemental response objecting to Lowe’s § 2255 motion after taking “another look” at the instant case.

It is clear that Bailey only affects the definitional aspect of “use.” Bailey defined “use” and restricted the conduct which constitutes “use” of a firearm. Mere proximity of a firearm to the crime

---

<sup>1</sup> Since the evidence was so overwhelming as to Lowe’s active participation concerning the firearms, little attention was paid to the instructions regarding the firearm Count at the instruction conference. In light of the evidence against him, Lowe did not request a more complete firearm instruction at trial, and the Court was satisfied that the instructions which it gave adequately advised the jury as to the elements it must find prior to returning a verdict of guilty. There was simply no question that firearms were used during the robbery.

is no longer sufficient, and neither is mere possession. An active employment of the firearm is now required in order to establish “use” under § 924(c). However, an instruction which does not contain a definition of “use” is not necessarily invalid under Bailey. Such appears to be the case here. The instruction given to the jury did not define the word “use.” The instruction merely informed the jury that the defendant is considered to have used a firearm if a firearm was used in any manner to facilitate the offense. This is not a case in which the Court set out a definition for “use.” The Court notes that in other pre-Bailey cases, the Court did instruct the jury that “use” could be found if the defendant merely possessed the weapon or stored the weapon in a readily accessible place in order to protect himself or the fruits of his criminal activity. Such an instruction, while valid prior to Bailey, is unquestionably invalid in light of Bailey. Thus, this Court has not hesitated to vacate some § 924(c) convictions where its pre-Bailey “use” instructions ran directly counter to the dictates of Bailey. However, such is not the case here. The Court simply did not define “use” in any manner which would offend the Bailey decision. Merely explaining to the jury that “use” may be found if the firearm was used in any manner to facilitate the offense does not run counter to the definitional aspects developed by the Supreme Court in Bailey. At most, it can be argued that the instruction is incomplete in that it did not provide a definition of “use.” However, the instruction is technically correct even in light of the Bailey holding. This is simply not a case in which the Court gave an instruction regarding the definition of “use” which has since become invalid.

In U.S. v. Perkins, 939 F.Supp. 42, 44 (D.C. 1996), the trial court instructed the jury that “the use or carrying of a firearm relates to a drug trafficking offense if it advances or facilitates the commission of a drug trafficking offense.” In his § 2255 motion, the defendant attacked the instruction as being violative of Bailey. The District Court for the District of Columbia held that the

“instruction is in no way foreclosed by the Bailey decision and is consistent with it.” Id. The instruction which was upheld by the Perkins court as being consistent with Bailey is remarkably similar to the instruction which this Court gave with respect to Lowe. Both instructions advised the jury that it could find that defendant “used” a firearm if such was used to facilitate the offense. Moreover, the inclusion of the word “facilitate” in the instruction does connote a type of active employment of the firearm. That is, the instruction given to the jury does require more than mere possession or the maintenance of a firearm in close proximity in case it becomes necessary to employ it. The instruction requires the jury to find that the firearm was actually employed in order to facilitate the offense. Thus, the instruction does not give an overbroad definition of “use” and it therefore does not offend Bailey. Hence, the Court concludes that the instruction is valid in that it does not contain an overbroad definition of the word “use,” and it adequately advised the jury that some form of active employment was necessary before a verdict of guilty could be returned with respect to the § 924(c) Count.

A more difficult question arises with respect to the aiding and abetting issue. It is undisputed that Lowe did not enter the financial institution at the time of the robbery. Further, Lowe was not in possession of a firearm during the actual commission of the robbery. Rather, during the robbery, Lowe acted as the “getaway” driver. Thus, in order to convict Lowe of a § 924(c) firearms offense with respect to the underlying offense of robbery, it was necessary for the government to prove that Lowe was an aider and abettor within the meaning of 18 U.S.C. § 2. Section 2 provides, in part, that whoever aids, abets, counsels, commands, induces or procures an offense against the United States is punishable as a principal. Thus, since Lowe did not actually enter the financial institution with a

firearm, the government was required to show that Lowe aided, abetted, counseled, commanded, induced, or procured a firearm to be used in the underlying offense of bank robbery.

In U.S. v. Medina, 74 F.3d 413, 416 (2d Cir.1996), the Second Circuit held that “a defendant may avoid aider and abettor liability by virtue of the fact that he took no act to assist the brandishing or carrying of a firearm . . .” The defendant cannot be convicted as an aider and abettor unless he consciously assisted in the § 924(c) violation in some active way. Id. In U.S. v. Masotto, 73 F.3d 1233, 1240 (2d Cir.1996), cert. denied, 117 S.Ct. 54 (1996), the Second Circuit noted that a defendant cannot be convicted as an aider and abettor under § 924(c) merely because he knew that a firearm would be employed during the underlying crime. “Instead, the defendant must have ‘performed some act that directly facilitated or encouraged the use or carrying of a firearm.’” Id. (quoting, U.S. v. Medina, 32 F.3d 40, 45 (2d Cir.1994)). The Masotto court upheld jury instructions which advised the jury that the defendant could only be convicted if it found that he carried or used a firearm or aided and abetted the use of a firearm. The instructions also advised the jury that it must find that the defendant aided and abetted others in using and carrying firearms during the course of the crimes charged. The Masotto court found that these instructions “clearly directed the jury that it could not convict [the defendant] unless it found that he participated in the use and carrying of a firearm.” Id. at 1241.

Additionally, in U.S. v. Foreman, 914 F.Supp. 385, 387 (C.D.Ca. 1996), the district court held that an “aider and abettor must knowingly and intentionally aid and abet the actual elements of the crime, and not just create the circumstances that permit the crime to occur.” While “serving as a lookout or driver may make one an aider and abettor of an armed robbery, it does not necessarily make one an aider and abettor of using or carrying the gun. There is nothing in the act of serving as

lookout or driver that proves that the defendant also did the necessary extra acts that would make him an aider and abettor of the use of the gun.” Id. Thus, the government must prove that the defendant “aided and abetted the specific act of actively using or carrying a firearm” in order to convict the defendant as an aider and abettor under § 924(c).

The Court agrees with the cited cases regarding aider and abettor liability with respect to § 924(c) violations. However, the Court finds that the government proved that Lowe was indeed an aider and abettor of the use of a firearm, and, therefore, Lowe was properly convicted under § 924(c). The evidence is clear that Lowe actively planned and participated in the robbery of the credit union. The record is replete with testimony that Lowe masterminded and instigated the robbery. The testimony of Marcoe Lowe revealed that Lamar Lowe needed money to pay off an illicit drug debt and that Lamar Lowe suggested credit union robbery. The testimony revealed that Lowe gathered others to participate in the robbery and acquired a stolen car for use in the robbery. The evidence further showed that Lowe and his associates scouted for easy targets to rob and were very careful as to when would be the best time to conduct the robbery. The evidence revealed that Lowe told his co-conspirators that he would stay outside and act as getaway driver since Lowe had done this kind of thing too many times and he wanted to turn the others on to the game.

However, most relevant to the Court’s inquiry here is that Marcoe Lowe testified that Lamar Lowe gave Marcoe a black nine-millimeter automatic firearm when Marcoe was getting out of the car to go into the credit union. This testimony demonstrates that not only did Lowe actively participate in the planning and commission of the robbery, but he also actively participated in the use of a firearm during the commission of the robbery. This additionally addresses Lowe’s assertion that he could not have provided a weapon for use in the robbery because the .22 and the .357 magnum

firearms were acquired elsewhere. While this may be accurate, it is also immaterial. Marcoe Lowe clearly testified that Lamar Lowe gave him a nine-millimeter as he was getting out of the car to enter the credit union. Hence, although two of the weapons may have been acquired elsewhere, Marcoe Lowe's testimony reveals that Lamar Lowe provided at least the nine-millimeter. Lowe also contends that the testimony reveals that the co-conspirators were in possession of the weapons before they left for the robbery. Lowe argues that this contradicts Marcoe Lowe's testimony that he acquired his weapon from Lamar immediately before entering the credit union. However, the testimony that Lowe refers to only reveals that the conspirators knew they had three guns before they left the house. The testimony which Lowe cites does not reveal who had possession of the guns when they left the house.

Marcoe Lowe also testified that Lamar Lowe told the co-conspirators that his (Lamar's) gun was not loaded. Additionally, Marcoe Lowe testified that Lamar instructed the group that when they went into the credit union, the tellers would see the guns and would not think about whether they were loaded or not. Furthermore, Keelan Woodard, one of Lowe's co-defendants, testified that he did, in fact, point his gun at someone while inside the credit union. Hence, it is clear that firearms were used during the commission of the robbery, even under the definition set forth in Bailey.

With respect to aiding and abetting, the Court instructed the jury that,

where two or more persons are charged with the commission of a crime, the guilt of any defendant charged in the Indictment may be established without proof that he personally did every act constituting the offense charged.

Whoever commits an offense against the United States, or aids, abets, counsels, commands, induces, or procures its commission, is punishable as a principal.

Whoever willfully causes an act to be done, which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

In other words, every person who willfully participates in the commission of a crime may be found to be guilty of that offense. Participation is willful if done voluntarily and intentionally, and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law.

These instructions, when viewed with the instruction given regarding “use” and the other instructions given outlining the elements of a § 924(c) offense, adequately advised the jury of what it must find prior to returning a verdict of guilty with respect to Count Three. Before it could enter a finding of guilt as to Count Three, the jury was instructed that it must first find that a firearm was used in any manner to facilitate the offense. The jury was then instructed that although Lowe may not have personally used the firearm, he can nevertheless be found guilty if he aids, abets, counsels, commands, induces, or procures its commission. The evidence clearly revealed that Lowe did, in fact, engage in conduct which constitutes the aiding and abetting of a firearm, as Lowe planned the armed robbery, knew that firearms would be involved, and procured at least one weapon for use in the robbery. Similar to the finding of the Second Circuit in Masotto, these instructions “clearly directed the jury that it could not convict [Lowe] unless it found that he participated in the use and carrying of a firearm.” Masotto at 1241. The evidence before the jury plainly demonstrated that Lowe actively assisted in the use of a firearm by giving a weapon to Marcoe Lowe immediately prior to the robbery. Given the evidence, it was certainly not unexpected for the jury to conclude, beyond a reasonable doubt, that Lowe did, in fact, actively aid and abet the use of a firearm in violation of § 924(c).

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

IT IS SO ORDERED this 11<sup>th</sup> day of February, 1997.

A handwritten signature in cursive script, appearing to read "H. Dale Cook", written over a horizontal line.

H. DALE COOK  
United States District Judge

UNITED STATES DISTRICT COURT **FILED**  
Northern District of Oklahoma FEB - 5 1997

UNITED STATES OF AMERICA

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

v.

Case Number 95-CR-102-001-B

JAMES K. McCLELLAND  
Defendant.

ENTERED ON DOCKET  
FEB - 5 1997  
DATE \_\_\_\_\_

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

The defendant, JAMES K. McCLELLAND, was represented by Joel Wohlgemuth.

The defendant was found guilty on count(s) 1, 2, and 3 of the Superseding Indictment on July 9, 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>
18 USC 371	Conspiracy	07/31/93	1
18 USC 2314	Interstate Transfer of Securities by Fraud	03/18/93	2, 3

As pronounced on January 31, 1997, 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 Superseding 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 5<sup>th</sup> day of February, 1997.

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.  
By Phil Lombardi, Clerk  
H. Over  
Deputy

Thomas R. Brett  
The Honorable Thomas R. Brett  
Senior, United States District Judge

Defendant's SSN: 333-38-3467  
Defendant's Date of Birth: 02/20/47  
Defendant's residence and mailing address: 15225 Willow Creek Lane, Orland Park, IL 60462

Defendant: JAMES K. McCLELLAND  
Case Number: 95-CR-102-001-B

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 41 months as to each of Counts 1, 2, and 3, all counts to run concurrently, each with the other.

The defendant shall surrender to the United States Marshal in the Northern District of Oklahoma, at 11:00 a.m. on Thursday, February 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: JAMES K. McCLELLAND  
Case Number: 95-CR-102-001-B

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years as to each count, 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 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.
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: JAMES K. McCLELLAND  
Case Number: 95-CR-102-001-B

**RESTITUTION AND FORFEITURE**

**RESTITUTION**

The defendant shall make restitution in the total amount of \$100,096.50 on Count 1, jointly and severally with codefendant, Robert Sterning, Jr..

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>
Jeffrey Lowry P.O. Box 3366 Bartlesville, OK 74006	\$100,096.50

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.

Defendant: JAMES K. McCLELLAND  
Case Number: 95-CR-102-001-B

**STATEMENT OF REASONS**

The court adopts the factual findings and guideline application in the presentence report except: Paragraph 10 should reflect 62 victims, rather than 65.

**Guideline Range Determined by the Court:**

Total Offense Level:	21
Criminal History Category:	I
Imprisonment Range:	37 months to 46 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 7,500 to \$ 75,000
Restitution:	\$ 100,096.50

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.

LA

**FILED**

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

**FEB 03 1997**

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

UNITED STATES OF AMERICA

Case Number 89-CR-118-001-B

v.

ENTERED ON DOCKET

RODNEY LEE MORGAN  
Defendant.

DATE 2-4-97

**AMENDED JUDGMENT IN A CRIMINAL CASE  
(For Offenses Committed On or After November 1, 1987)  
(Direct Motion to District Court Pursuant to 28 USC § 2255)**

The defendant, RODNEY LEE MORGAN, was represented by Steve Stidham.

The defendant was found guilty on count(s) 1 and 2 of the Indictment on December 5, 1989 after a plea of not guilty. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

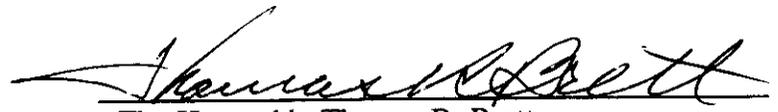
Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 USC 2113 (a) & (d)	Armed Bank Robbery	08/11/89	1
18 USC 924(c)(1)	Possession of Firearm During Commission of a Crime of Violence	08/11/89	2

As pronounced on January 27, 1997, 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 and 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 31 day of January, 1997.



The Honorable Thomas R. Brett  
Senior United States District Judge

Defendant's SSN: 444-70-7716  
Defendant's Date of Birth: April 11, 1966  
Defendant's residence and mailing address: C/O Bureau of Prisons, Dallas, TX

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 [Signature]  
Deputy

Defendant: RODNEY LEE MORGAN  
Case Number: 89-CR-118-001-B

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 120 months. This sentence consists of a term of 60 months as to Count 1, and 60 months as to Count 2, to run consecutively to the term imposed in Count 1, for a total sentence of 120 months.

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: RODNEY LEE MORGAN  
Case Number: 89-CR-118-001-B

### **SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of 5 years as to Count 1, and 3 years as to Count 2, each count 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.

### **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: RODNEY LEE MORGAN  
Case Number: 89-CR-118-001-B

**RESTITUTION AND FORFEITURE**

**RESTITUTION**

The defendant shall make restitution in the total amount of \$245.00.

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>
Betty Moyer 1029 N. 2nd Street Jenks, Oklahoma	\$245.00

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: RODNEY LEE MORGAN  
Case Number: 89-CR-118-001-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:	23
Criminal History Category:	III
Imprisonment Range:	57 months to 71 months - Ct. 1 60 months - Ct. 2
Supervised Release Range:	3 to 5 years - Ct. 1 2 to 3 years - Ct. 2
Fine Range:	\$ 10,000 to \$ 100,000 - Cts. 1 & 2
Restitution:	\$ 245.00

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 FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 30 1997

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

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 TERESA LYNN TAYLOR, )  
 )  
 Defendant. )

No. 96-CR-166-H

ENTERED ON DOCKET

DATE FEB 3 1997

**ORDER OF DISMISSAL**

Upon application of the United States Attorney, the Court finds that as to defendant, TERESA LYNN TAYLOR, on the 27th day of January, 1997, the defendant was accepted for pretrial diversion and, therefore, the Indictment filed in the above styled and numbered cause should be ordered dismissed without prejudice to the refiling thereof.

THEREFORE, IT IS ORDERED by the Court that the Indictment filed against the defedant, TERESA LYNN TAYLOR, in the above styled and numbered cause be and the same is hereby dismissed without prejudice to the refiling thereof.

  
Sven Erik Holmes  
United States District Judge