

**FILED**

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

*mm* MAY 29 1997

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

UNITED STATES OF AMERICA

v.

Case Number 96-CR-174-001-BU

SHELLIE M. EDMOND  
Defendant.

ENTERED ON DOCKET

DATE 5-30-97

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

The defendant, SHELLIE M. EDMOND, was represented by Stephen Knorr.

On motion of the United States the court has dismissed Counts 1 through 8 of the Indictment.

The defendant pleaded guilty on March 18, 1997, to Counts 1, 2, & 3 of the Information. 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 1951	Robbery Affecting Interstate Commerce	11/23/96	1 & 2
18 USC 924(c)(1)	Possession of a Firearm During Commission of a Violent Crime	11/21/96	3

As pronounced on May 22, 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 \$ 300, for count(s) 1, 2, & 3 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 29<sup>th</sup> day of may, 1997.

*Michael Burrage*  
The Honorable Michael Burrage, Chief  
United States District Judge

Defendant's SSN: 447-72-1111  
Defendant's Date of Birth: 4/27/62  
Defendant's mailing address: 203 N. 111th E. Ave. No. 334, Tulsa OK  
Defendant's residence address: Tulsa County Jail

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 *Roseanne J. Miller*  
Deputy

Defendant: SHELLIE M. EDMOND  
Case Number: 96-CR-174-001-BU

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of two hundred seventy-one (271) months. This term consists of one hundred fifty-one (151) months as to Counts 1 and 2, said counts to run concurrently, and 120 months as to Count 3 to run consecutively to Counts 1 & 2, for a total sentence as to all counts of two hundred seventy-one (271) months. This two hundred seventy-one (271) month sentence is consistent with the provisions of the Rule 11(e)(1)(C) plea agreement previously accepted by the Court.

The Court makes the following recommendations to the Bureau of Prisons: That the defendant be confined in a facility capable of providing comprehensive 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: SHELLIE M. EDMOND  
Case Number: 96-CR-174-001-BU

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years as to Counts 1, 2, & 3, to run concurrently, each with the other.

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

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

### STANDARD CONDITIONS OF SUPERVISION

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

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

Defendant: SHELLIE M. EDMOND  
Case Number: 96-CR-174-001-BU

**RESTITUTION AND FORFEITURE**

**RESTITUTION**

The defendant shall make restitution in the total amount of \$1,414.

This amount is the total of the restitution imposed on individual counts, as follows: \$219 on Count 1, and \$1,195 on Count 2.

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>
Alwilda Radican 3230 S. Winston, Apt. No. 104 Tulsa OK 74137	\$69
St. Lukes Episcopal Church 4818 E. 9th Tulsa OK 74112	\$150
Robyn Eskridge 1411 East 50th Street Tulsa OK 74105	\$1,195

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: SHELLIE M. EDMOND  
Case Number: 96-CR-174-001-BU

**STATEMENT OF REASONS**

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

**Guideline Range Determined by the Court:**

Total Offense Level:	29	
Criminal History Category:	VI	
Imprisonment Range:	151 months to 188 months	Counts 1 & 2
	120 months	Count 3
Supervised Release Range:	2 to 3 years	Count 1, 2, & 3
Fine Range:	\$ 15,000 to \$ 150,000	Count 1, 2, & 3
Restitution:	\$ 1,414	

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 reasons: The low end of the guideline range provides a substantial term of imprisonment. This sentence is consistent with the plea agreement and also provides protection to the community.

MAY 27 1997

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

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA

v.

Case Number 95-CR-116-01-C

CLANTON T. BENNETT  
Defendant.

DATE 5/27/97

**AMENDED JUDGMENT IN A CRIMINAL CASE  
(For Offenses Committed On or After November 1, 1987)  
Correction of Sentence on Remand (Fed. R. Crim. P. 35(a))**

The defendant, CLANTON T. BENNETT, was represented by Steve Greubel.

The defendant pleaded guilty on November 28, 1995, to Count 1 of the Indictment. 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)	Bank Robbery	4/21/95	1

As pronounced on May 21, 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) 1 of the Indictment, which shall be due immediately.

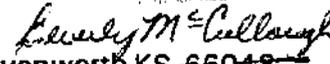
It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 27 day of May, 1997.

  
The Honorable H. Dale Cook  
United States District Judge

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

Defendant's SSN: 156-38-8951  
Defendant's Date of Birth: 5/27/49  
Defendant's residence and mailing address: USP Leavenworth, 1300 Metropolitan, Leavenworth, KS 66048



Defendant: CLANTON T. BENNETT  
Case Number: 95-CR-116-01-C

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 76 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: CLANTON T. BENNETT  
Case Number: 95-CR-116-01-C

### 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 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: CLANTON T. BENNETT  
Case Number: 95-CR-116-01-C

**FINE**

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

The defendant shall pay a fine of \$ 1,000. 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: CLANTON T. BENNETT  
Case Number: 95-CR-116-01-C

**STATEMENT OF REASONS**

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

**Guideline Range Determined by the Court:**

Total Offense Level:	19
Criminal History Category:	VI
Imprisonment Range:	63 months to 78 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 6,000 to \$ 60,000
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.

**FILED**

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

MAY 23 1997

UNITED STATES OF AMERICA

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

v.

Case Number 93-CR-034-001-E

ENTERED ON DOCKET

THOMAS RAY FISHER  
Defendant.

DATE 5/23/97

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

The defendant, THOMAS RAY FISHER, was represented by Richard D. White, Jr..

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

The defendant pleaded guilty on February 3, 1997 to Count 1 of the Information. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

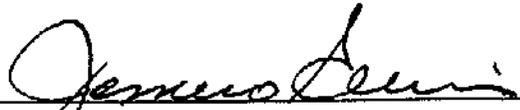
<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
3 USC 371	Conspiracy	1/27/93	1

As pronounced on May 15, 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, 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 22<sup>d</sup> day of May, 1997.

  
The Honorable James O. Ellison  
Senior United States District Judge

Defendant's SSN: 448-42-4729  
Defendant's Date of Birth: 6/29/44  
Defendant's residence and mailing address: Tulsa County Jail

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: THOMAS RAY FISHER  
Case Number: 93-CR-034-001-E

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of sixty (60) months to run concurrently with Case No. 93-CR-113-001-E. This sixty month sentence is consistent with Rule 11(e)(1)(C) plea agreement and does not represent a departure from the applicable guideline range.

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: THOMAS RAY FISHER

Case Number: 93-CR-034-001-E

**SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years to run concurrently with Case No. 93-CR-113-001-E.

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. 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.
7. The defendant shall comply with all laws and regulations of the I.R.S.

**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: THOMAS RAY FISHER  
Case Number: 93-CR-034-001-E

**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:	30
Criminal History Category:	I
Imprisonment Range:	97 months to 120 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 15,000 to \$ 150,000
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 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**

MAY 23 1997

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA

v.

Case Number 93-CR-113-001-E

THOMAS RAY FISHER  
Defendant.

FILED ON DOCKET  
DATE 5/23/97

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

The defendant, THOMAS RAY FISHER, was represented by Richard D. White, Jr..

On motion of the United States the court has dismissed Count 2 of the Indictment.

The defendant pleaded guilty on February 3, 1997, to Count 1 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>
USC 7201	Attempt to Evade or Defeat Tax	12/27/90	1

As pronounced on May 15, 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) 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 22<sup>nd</sup> day of May, 1997.

  
The Honorable James O. Ellison  
Senior United States District Judge

Defendant's SSN: 448-42-4729  
Defendant's Date of Birth: 6/29/44  
Defendant's residence and mailing address: Tulsa County Jail

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 Beverly M. Lullough  
Deputy

Defendant: THOMAS RAY FISHER  
Case Number: 93-CR-113-001-E

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of sixty (60) months to run concurrently with Case No. 93-CR-034-001-E. This sixty month sentence is consistent with the Rule 11(e)(1)(C) plea agreement and does not represent a departure from the applicable guideline range.

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: THOMAS RAY FISHER  
Case Number: 93-CR-113-001-E

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years to run concurrently with Case No. 93-CR-034-001-E.

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 comply with all laws and regulations of the I.R.S.
7. 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: THOMAS RAY FISHER  
Case Number: 93-CR-113-001-E

**COST OF PROSECUTION**

The defendant shall pay a cost of prosecution of \$ 2,378. This cost of prosecution 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 cost of prosecution 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: THOMAS RAY FISHER  
Case Number: 93-CR-113-001-E

**STATEMENT OF REASONS**

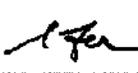
The court adopts the factual findings and guideline application in the presentence report.

**Guideline Range Determined by the Court:**

Total Offense Level:	30
Criminal History Category:	1
Imprisonment Range:	97 months to 120 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 15,000 to \$ 150,000
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.



IN THE UNITED STATES DISTRICT COURT FOR THE **FILED**

NORTHERN DISTRICT OF OKLAHOMA

MAY 21 1997

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

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 DELMAR LEE DAVIS, )  
 )  
 Defendant. )

Case No. 97-CR-52-BU ✓

ENTERED ON DOCKET

DATE MAY 23 1997

**ORDER**

Upon Plaintiff's application, it is hereby ORDERED that the  
Information filed in this case is DISMISSED WITHOUT PREJUDICE.

ENTERED this 20<sup>th</sup> day of May, 1997.

  
MICHAEL BURRAGE  
UNITED STATES DISTRICT JUDGE

**FILED**

MAY 22 1997

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

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

UNITED STATES OF AMERICA

v.

Case Number 96-CR-125-001-B

TARYN MARISA OZANUS  
Defendant.

ENTERED ON DOCKET

DATE MAY 23 1997

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

The defendant, TARYN MARISA OZANUS, was represented by Wayne Sullivan.

On motion of the United States the court has dismissed Counts 2 and 3 of the Indictment.

The defendant pleaded guilty on October 18, 1996 to Count 1 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>
USC 1029(b)(2)	Conspiracy to Use Counterfeit Access Devices	8/8/96	1

As pronounced on May 16, 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 \$ 100, 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 21<sup>st</sup> day of May, 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  
Deputy

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

Defendant's SSN: 453-39-8755

Defendant's Date of Birth: 8/24/76

Defendant's residence and mailing address: 8105 S. 74TH E. Ave, Tulsa OK 74133

Defendant: TARYN MARISA OZANUS  
Case Number: 96-CR-125-001-B

### PROBATION

The defendant is hereby placed on probation for a term of three (3) years.

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 four (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.

### 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: TARYN MARISA OZANUS  
 Case Number: 96-CR-125-001-B

**RESTITUTION AND FORFEITURE**

**RESTITUTION**

The defendant shall make restitution in the total amount of \$5,780.73.

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>
AT&T Universal Mastercard 8787 Baypine Road Jacksonville, Florida 32256 ATTN: Tammy Youngblood	\$4,207.73
Wallgreen Drug Store No. 1628 4971 South Memorial Drive Tulsa OK ATTN: Brett Burgett	\$45.53
Target Stores No. 63 7178 South Memorial Drive Tulsa OK 74134	\$177.70
Walmart Stores, Inc. No. 992 2019 E. 81st Street Tulsa OK ATTN: Russell Parker	\$475.10
Mervyn's California Dept. Store No. 162 22301 Foothill Blvd Hayward, California ATTN: Jeff Korate	\$875.13

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, except that no further payments shall be required after the sum of amounts actually paid by defendants Taryn Ozanus and Kristy Fields has fully covered the compensable injury.

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

Defendant: TARYN MARISA OZANUS  
Case Number: 96-CR-125-001-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:	8
Criminal History Category:	I
Imprisonment Range:	0 months to 6 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 1,000 to \$ 10,000
Restitution:	\$ 5,780.73

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.

*me*

**FILED**

MAY 21 1997

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

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

UNITED STATES OF AMERICA

v.

Case Number 96-CR-168-01-C

WILLIAM CARPENTER  
Defendant.

ENTERED ON DOCKET

DATE 5-21-97

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

The defendant, WILLIAM CARPENTER, was represented by Stephen J. Knorr.

The defendant pleaded guilty on January 23, 1997, to Count 1 of the Information. 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	7/11/93	1

As pronounced on May 14, 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) 1 of the Information, which shall be due immediately.

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

Signed this the 21<sup>st</sup> day of May, 1997.

  
The Honorable H. Dale Cook  
United States District Judge

Defendant's SSN: 442-60-2874  
Defendant's Date of Birth: 8/15/58  
Defendant's residence and mailing address: Oklahoma Department of Corrections

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: WILLIAM CARPENTER  
Case Number: 96-CR-168-01-C

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of thirty (30) months. Said sentence shall run consecutively to sentences imposed in Tulsa County District Court cases CF-90-4145 and CRF-90-4421.

The Court makes the following recommendations to the Bureau of Prisons: That the Bureau of Prisons designate an institution that provides for comprehensive substance abuse counseling under 18 USC§3621.

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: WILLIAM CARPENTER

Case Number: 96-CR-168-01-C

**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 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.
6. 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.
- The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: WILLIAM CARPENTER  
Case Number: 96-CR-168-01-C

**RESTITUTION AND FORFEITURE**

**RESTITUTION**

The defendant shall make restitution in the total amount of \$5,400.

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 S. Highway I-35 Stop 9002 AUSC Austin TX 78767	\$5,400

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: WILLIAM CARPENTER  
Case Number: 96-CR-168-01-C

**STATEMENT OF REASONS**

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

**Guideline Range Determined by the Court:**

Total Offense Level:	15
Criminal History Category:	VI
Imprisonment Range:	41 months to 51 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 4,000 to \$ 40,000
Restitution:	\$ 15,764.02

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.

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

**F I L E D**

MAY 16 1997 *lw*

UNITED STATES OF AMERICA, )

Plaintiff, )

vs. )

ALVIN MANSKER, )

Defendant. )

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

Case No. 97-CV-42-B

*92CR473*

*EOD 5/19/97*

**ORDER**

Before the Court is Defendant Alvin Mansker's Application For Certificate of Appealability, pursuant to 28 U.S.C. § 2253(c)(1)(B), from the Order of this Court entered April 10, 1997. 28 U.S.C. § 2253(c)(2) instructs that the Court may issue a certificate of appealability "only if the applicant has made a substantial showing of the denial of a constitutional right."

Mansker claims this Court's denial of his 28 U.S.C. § 2255 claim the government breached the plea agreement constituted a denial of due process. In support, Mansker argues this Court failed to address the issue of whether the government breached the plea agreement at some point after Mansker's direct appeal. In the Order denying relief, this Court found the Tenth Circuit's decision that the government had not breached the plea agreement dispositive of Mansker's § 2255 claim of breach. Obviously, the precise issue of whether the government breached the plea agreement after the direct appeal was not considered by the Tenth Circuit in its decision. However, as the record indicates no

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post-appeal assistance by Mansker which might obligate the government to perform under the plea agreement, this Court was and is of the opinion the Tenth Circuit's decision remains dispositive. Although the decision was issued in summary form, this Court did consider the issue of whether the government breached the plea agreement at some point after the direct appeal.

The Court disagrees Mansker was denied due process and finds Mansker has not met the requirements of § 2253(c)(2). Accordingly, the Application for a Certificate of Appealability is DENIED.

IT IS SO ORDERED this 16<sup>th</sup> day of May, 1997.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

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

**MAY 15 1997**

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

UNITED STATES OF AMERICA

~~SEALED~~

v.

Case Number 90-CR-141-001-E

JAMES RANDOLPH CARTER  
Defendant.

~~SEALED~~

ENTERED ON DOCKET  
MAY 15 1997  
DATE \_\_\_\_\_

**AMENDED JUDGMENT IN A CRIMINAL CASE**

**(For Offenses Committed On or After November 1, 1987)**

Reduction of Sentence for Changed Circumstances (Fed. R. Crim. P. 35(b))

The defendant, JAMES RANDOLPH CARTER, was represented by Scott Keith.

The defendant pleaded guilty to Count 1 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>
21 USC 841 (a)(1)	Possession of Methamphetamine With Intent to Distribute	10/26/90	1

As pronounced on May 15, 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, for count(s) 1 of the Indictment, which shall be due immediately.

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

Signed this the 15<sup>th</sup> day of May, 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

Deputy

*James O. Ellison, Senior*

The Honorable James O. Ellison, Senior  
United States District Judge

Defendant's SSN: 444-54-4685

Defendant's Date of Birth: 1/25/55

Defendant's residence and mailing address: Rt. 1 Box 270-A, Rose, Oklahoma 74364

Defendant: JAMES RANDOLPH CARTER  
Case Number: 90-CR-141-001-E

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of sixty (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: JAMES RANDOLPH CARTER  
Case Number: 90-CR-141-001-E

### **SUPERVISED RELEASE**

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

### **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 RANDOLPH CARTER  
Case Number: 90-CR-141-001-E

**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:	I
Imprisonment Range:	121 months to 151 months
Supervised Release Range:	0 to 5 years
Fine Range:	\$ 17,500 to \$ 4,000,000
Restitution:	\$ n/a

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

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

**F I L E D**

MAY 14 1997

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA, )

Plaintiff, )

vs. )

DARREN HARRIS, )

Defendant. )

No. 89-CR-91-C ✓  
97-C-344-C

ENTERED ON DOCKET

DATE MAY 15 1997

**ORDER**

Currently pending before the Court is the motion filed by defendant, Darren Harris, seeking reconsideration of this Court's April 30, 1997, order transferring Harris' second § 2255 motion to the Circuit for certification. Harris contends that his previously filed § 2255 motion, filed on September 27, 1990, was dismissed by this Court without considering its merits since Harris had an appeal pending at the time he filed such motion. Harris argues that in denying his previous § 2255 motion, this Court found that it was without jurisdiction to entertain it, given the pending appeal. Harris contends that he never had an opportunity to file a § 2255 motion and have it considered on the merits, and Harris therefore argues that this Court should have entertained his recently filed § 2255 rather than transferring it to the Circuit.

Because § 2255, as amended in April of 1996, requires that all second or successive § 2255 motions be certified by the appropriate court of appeals prior to being considered by the district court, this Court conducts a thorough examination of the record any time a § 2255 is filed, in order to determine whether a prior § 2255 had been filed by the same petitioner. In examining the record in the present case, the Court found that on September 27, 1990, Harris filed a § 2255 motion, which

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the Court denied on October 4, 1990. Contrary to Harris' argument, the Court did not find in its October 4 order that a jurisdictional bar precluded the filing and consideration of a § 2255 filed during the pendency of Harris' appeal. Moreover, the Court found in its October 4, 1990, order that the argument raised in Harris' first § 2255 was meritless. Hence, it is clear that Harris has previously filed a § 2255 motion, and that such motion was considered and rejected on the merits. As such, this Court properly transferred Harris' second § 2255 motion, filed on April 16, 1997, to the Tenth Circuit for certification.

Accordingly, Harris' motion for reconsideration is hereby DENIED.

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



H. Dale Cook  
U.S. District Judge

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

**FILED**  
MAY 14 1997  
Phil Lombardi, Clerk  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 MARK JOEL ANTHONY, )  
 )  
 Defendant. )

No. 89-CR-91-C  
97-C-296-C

ENTERED ON DOCKET

DATE MAY 15 1997

**ORDER**

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

On September 6, 1989, Anthony was named in Count One of a two-Count Superseding Indictment. On December 6, 1989, a jury convicted Anthony of Count One, conspiracy to distribute in excess of 50 grams of cocaine base, in violation of 21 U.S.C. §§ 846, and 841(a)(1). On February 14, 1990, Anthony was sentenced to 360 months imprisonment. Anthony's conviction was affirmed on appeal, but the Circuit vacated Anthony's sentence and remanded for resentencing in order to permit this Court to make the findings and determinations required by Fed.R.Crim.P. 32(c)(3)(D). U.S. v. Anthony, 944 F.2d 780 (10th Cir.1991). Anthony was resentenced on February 7, 1992, to the term originally imposed. Anthony's sentence was affirmed on appeal in an unpublished opinion. U.S. v. Price, 996 F.2d 312 (10th Cir.1993).

On April 1, 1997, Anthony filed his present § 2255 motion. Anthony moves this Court to vacate, set aside, or correct the sentence imposed upon him on several grounds of error: (1) improper firearm enhancement, (2) improper role enhancement, (3) Anthony should have received a downward

departure for being a minor participant, (4) Anthony's relevant conduct issue was not effectively argued by counsel, (5) counsel failed to object to hearsay, (6) counsel failed to object to evidence of gangs, (7) counsel's failure to subpoena the probation officer of one of the government's witnesses, and (8) ineffective assistance of counsel.

Prior to addressing the merits of Anthony's motion, the Court notes that § 2255, as amended in April of 1996, provides for a one-year limitations period in which to file a § 2255 motion. The Court further notes that if the Court were to apply the limitations period to Anthony, his motion would be time-barred. However, the Tenth Circuit has recently mandated a one-year grace period in which to allow the filing of § 2255 motions, holding that "prisoners whose convictions became final on or before April 24, 1996 must file their § 2255 motions before April 24, 1997." U.S. v. Simmonds, 1997 WL 177560 (10th Cir.1997). Since Anthony's present motion was submitted prior to April 24, the motion is not time-barred under § 2255, as amended.

Typically, "§ 2255 is not available to test the legality of matters which should have been raised on appeal." U.S. v. Walling, 982 F.2d 447, 448 (10th Cir.1992). A failure to raise an issue on direct appeal acts as a bar to raising the issue in a § 2255 motion, unless Anthony can show cause and actual prejudice, or can show that a fundamental miscarriage of justice will result if his claim is not addressed. U.S. v. Allen, 16 F.3d 377, 378 (10th Cir.1994). This procedural bar applies to collateral attacks on a defendant's sentence, as well as his conviction. Id. Since the government raised this procedural bar in the instant case, this Court must enforce it and hold Anthony's claims barred unless cause and prejudice or a miscarriage of justice is shown. Id.

In order to evade this procedural bar, Anthony relies upon the well-established exception (and now the universal claim) of ineffective assistance of counsel. "A defendant may establish cause for

procedural default by showing he received ineffective assistance of counsel.” U.S. v. Cox, 83 F.3d 336 (10th Cir.1996). To succeed on a claim of ineffective assistance of counsel, Anthony must satisfy the rigid standard contained in Strickland v. Washington, 466 U.S. 668 (1984). The Supreme Court in Strickland held that a claim of ineffective assistance of counsel has two components. First, Anthony must show that his attorney “made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed . . . by the Sixth Amendment.” Id. at 687. “The proper standard for attorney performance is that of reasonably effective assistance.” Id. Therefore, to succeed, Anthony must show that his counsel’s performance fell below an objective standard of reasonableness. Furthermore, Anthony must show that “the deficient performance prejudiced the defense.” Id. However, “a court must indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance . . .” Id. at 689. Anthony must show that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Id. at 694.

Anthony first attacks the two-point enhancement under § 2D1.1(b)(1) of the Sentencing Guidelines for possession of a firearm. Anthony contends that there is insufficient evidence to warrant such a two-point enhancement. Anthony asserts that the two-point enhancement is based on the testimony of Willie James Louis, Jr. and does not establish by a preponderance of the evidence that Anthony possessed a firearm while distributing cocaine. Anthony also attacks Louis’ credibility, suggesting that Louis is a mentally unbalanced drug user, and Anthony also maintains that Louis never specifically stated that Anthony possessed a firearm. Anthony argues that had counsel raised this issue on appeal, Anthony would have received a substantial sentence reduction. The government argues that even if Anthony’s counsel had raised the issue on appeal, the result would have been the

same. The government contends that the evidence regarding possession of a firearm was corroborated by other witnesses' testimony demonstrating that Anthony had been in possession of a firearm during the commission of the offense. Specifically, the government points to the testimony of Officer Witt, who testified that Anthony's co-defendant, Ward Price, had told him that Price and the other codefendants were usually "strapped", i.e., armed, and would pull their weapons if confronted by members of a rival gang. The government also points to the testimony of Louis, who testified that Anthony was, in fact, in possession of firearms during the commission of the offense.

The government bears the burden of proving possession of a dangerous weapon by a preponderance of the evidence. U.S. v. Roberts, 980 F.2d 645, 647 (10th Cir.1992). Anthony is essentially arguing that the government failed to meet its burden, and if this issue had been raised on appeal, Anthony would have received a reduction. The Court disagrees. Anthony's trial counsel did, in fact, file an objection to the two-point weapons enhancement recommendation contained in the presentence report (PSR). The Court considered the objection and rejected it, finding that the government had established, by a preponderance of the evidence, that Anthony possessed a dangerous weapon in connection with the offense. It was quite apparent to the Court at the time of sentencing that weapons played an integral role in the offense for which Anthony was convicted, and that Anthony had possessed weapons in connection with such offense. Anthony does not now deny that he possessed weapons during the course of the offense. Moreover, the PSR reveals that Anthony was observed to be in possession of a .22 caliber handgun on at least one occasion. The PSR also indicates that Anthony and other members of his organization were known to carry weapons and had a propensity toward violence. Anthony's co-defendant, Ward Price, reported that members of the organization to which Anthony belonged were always carrying guns, and these guns were pulled

whenever a rival gang was encountered. Hence, the Court does not believe that the result would have been different had Anthony's appellate counsel raised this precise issue on appeal. Rather, the Court is quite comfortable with the accuracy of its finding regarding weapons possession, and the Court is therefore of the opinion that the appellate court would have accepted this Court's findings and conclusions with respect to this issue if it had been raised on appeal. Anthony therefore suffered no prejudice.

Anthony attacks the two-point enhancement under § 3B1.1(c) of the Sentencing Guidelines for supervisory role. Anthony contends that there is no evidence that he gave cocaine to any runners for distribution. Anthony argues that if his appellate counsel had raised this issue on appeal, he would have received a sentence reduction. The government argues that the evidence does reveal that Anthony had been in a supervisory role in his organization. The government points to the testimony of Lomas Amos Atkins who testified that he overheard Anthony ordering G.G. Atkins to sell a baggie of rock cocaine. The government also points to the testimony of Suzanne Atkins who testified that she had seen G.G. Atkins, with Anthony, cutting up drugs to sell.

The Court "applies the preponderance of the evidence standard to determine adjustments under the guidelines." U.S. v. Hanif, 1 F.3d 998, 1004 (10th Cir.1993), cert. denied, 510 U.S. 1001 (1993). The Court notes that Anthony's trial counsel did file an objection to the PSR's recommendation that a two-point enhancement be imposed for role in the offense. The record reveals that defense counsel objected to the characterization of Anthony's role as a supervisor, arguing that such is based on facts not presented to the jury. The Court considered the objection and rejected it, finding that the government had established, by a preponderance of the evidence, that Anthony acted in a supervisory role. The PSR indicates that Anthony participated in the distribution of crack to

juvenile runners and collected money from them. The juvenile runners were responsible for selling the crack to street buyers. The PSR indicates that juveniles were recruited and used by Anthony and his organization as a shield from direct prosecution for distribution of crack. The PSR also reveals that Anthony would take turns staying at the organization's base of operation at night to supervise the juvenile runners and the distribution of their drugs. Moreover, Anthony does not now deny that he acted in such a capacity. Given the facts that were presented to the Court at the time of sentencing, the Court found that the government had met its burden of proof, and the Court concluded that the enhancement was proper. The Court does not believe that the Circuit would have found otherwise had this issue been raised on appeal. Thus, Anthony has demonstrated no prejudice.

Anthony next argues that his trial and appellate counsel failed to request a downward departure for being a minor participant pursuant to § 3B1.2. However, since the Court specifically found that Anthony acted in a supervisory role, thereby permitting an aggravating role enhancement, the Court has trouble understanding what benefit Anthony would have received had counsel requested such a downward departure. The finding of an aggravating role necessarily negates a finding of minor participation. Hence, any such request would have been overruled. Moreover, had the issue been raised on appeal, the Circuit would have surely rejected it. Indeed, the Circuit specifically found that the evidence was sufficient to show Anthony's involvement in the drug conspiracy, and the Circuit noted that Anthony played an active role in selling crack, distributing it to juvenile runners, and collecting money. Anthony, 944 F.2d at 781. Hence, Anthony's argument on this point is meritless.

Anthony argues that his appellate counsel failed to effectively argue Anthony's relevant conduct issue. Anthony also urges application of Amendment 439 to his case. Anthony argues that

he was improperly held accountable for 500 grams when his relevant conduct should include only 28 grams of crack. However, on his second appeal, the Circuit specifically held that the record supports the finding that Anthony is accountable for the sale of over 500 grams of crack. The Circuit also noted that although Anthony was only involved in the conspiracy for a little more than a month, this Court properly found that the conspiracy involved over 500 grams in that short time. In fact, at Anthony's sentencing hearing, this Court stated that if one looks only at the month in which Anthony was involved in the conspiracy, it would not have taken too much crack to be sold in just two weeks to have reached the critical level of 500 grams. This Court also stated that there is no indication that during the month in which Anthony participated in the conspiracy that the organization was not as active as any other month either before or after. The Circuit also rejected Anthony's argument that Anthony could not have reasonably foreseen that his co-conspirators would distribute such a large amount of crack in a little more than a month. As this issue has been fully addressed on appeal, Anthony's attempt to relitigate it in this Court is improper. Anthony requests that Amendment 439 be applied to his case. However, Amendment 439 is not one of the enumerated amendments contained in § 1B1.10(c), and the Court is therefore not authorized to give it retroactive effect. § 1B1.10(a). Moreover, the Court does not believe that Amendment 439 would provide any benefit to Anthony. In any event, since this Court and the Circuit have held that Anthony is accountable for 500 grams of crack, the issue is now moot.

Anthony contends that his trial counsel failed to object to hearsay and his appellate counsel failed to raise the issue on appeal. Anthony argues that his trial counsel erred in failing to object to Officer Witt's testimony of what another co-defendant had told him. Anthony asserts that Officer Witt was testifying with regard to an untaped conversation he had with Ward Price on June 7, 1989.

Officer Witt testified that Price referred to Anthony as being one of the main players in the conspiracy. Anthony argues that since he was jailed on May 10, 1989, the statements made on June 7 were not made in furtherance of the conspiracy with respect to Anthony. The government argues that the Circuit found that Anthony was in fact a member of the conspiracy with Price and other individuals. The government points to the Circuit's finding that Anthony had knowingly acted in furtherance of the conspiracy to distribute crack. Anthony, 944 F.2d 781. The government also points out that this Court made the determination during pretrial that the conversations between Price and Officer Witt were made in the furtherance of the conspiracy, and that such statements were not hearsay under Rule 801(d)(2)(E) of the Federal Rules of Evidence. The Court agrees with the government. Since the Court had already determined that the statements were not hearsay, any objection would have been promptly overruled. Thus, it cannot be said that counsel was ineffective in failing to raise an apparently futile objection. In any event, Anthony has failed to show prejudice. Even without Officer Witt's testimony, the Court is not convinced that the result of the trial would have been different. The Circuit found that witnesses other than Officer Witt and other corroborating evidence sufficiently demonstrated Anthony's participation in the conspiracy. Hence, the Court finds no error.

Anthony next contends that it was error for counsel not to object to evidence of gangs. Anthony argues that he was on trial for conspiracy to sell drugs, not for his gang involvement. Anthony further maintains that the jury was improperly instructed as to the admission of gang evidence. Anthony argues that such evidence was unduly prejudicial under Evidence Rule 403. The government counters that evidence pertaining to gang affiliation was brought about through witness testimony and not used as direct evidence. The Court does not find that the evidence with respect

to gang affiliation unduly prejudiced Anthony, and the Court does not believe that such evidence, in and of itself, led to Anthony's conviction in the present case. Rather, the testimony and evidence linking Anthony to the drug distribution conspiracy and the criminal organization was sufficient to support a finding of guilt, even if reference to gangs had not been made. Demonstrating that Anthony participated in an organized endeavor to distribute crack was necessary in order to prove that Anthony conspired with others to violate federal drug laws. The fact that the evidence tended to label such an organized endeavor as a gang or refer to it as the bloods, rips or rip boys, does not necessarily indicate that unfair prejudice resulted. Assigning a name to Anthony's organized endeavor cannot be said to have been the determining factor resulting in Anthony's conviction; the evidence of Anthony's participation within the endeavor, however, was sufficient to result in a conviction, as the Circuit so held. Anthony, 944 F.2d 781. In the present case, the government did not attempt to show that Anthony's association with a particular gang signified that Anthony was, per se, criminally liable for the conduct charged. This is not a case of guilt by association. Instead, this is a case in which Anthony was convicted based on sufficient evidence indicating that he was an active participant in a drug distribution conspiracy. As such, the Court cannot now find that if the name of the organization to which Anthony belonged had been concealed from the jury, the result would have been different. Indeed, Anthony has utterly failed to demonstrate that the result in this case would have been different if his attorney had successfully objected to all reference of gangs or gang affiliation.

Anthony also attacks the jury instruction on the admission of gang evidence. Anthony complains of the following jury instruction:

There has been evidence presented which relates to other possible

unlawful acts and conduct of a defendant other than the specific offense with which he is charged and is on trial. You are instructed that this evidence has been admitted only for the limited purpose of showing guilty knowledge, intent, plan and lack of mistake or accident, if any, of the defendant with respect to the offense charged. Such evidence of other possible unlawful acts may not be considered by you as proof the defendant is guilty of the offense charged, but is relevant and may be considered by you only for the limited purpose I have just stated.

Anthony argues that while the instruction indicates that the jury should consider the evidence only for the purposes stated, the Court never told the jury what these purposes were. The Court finds this argument odd, as the limited purposes of knowledge, intent, plan, and lack of mistake or accident, are clearly stated in the instruction. The Court finds the instruction proper, and the Court further finds that no prejudice resulted to Anthony.

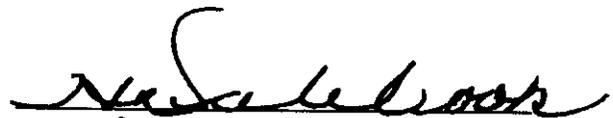
Lastly, Anthony asserts that his trial counsel erred in failing to subpoena Willie James Louis, Jr.'s probation officer, Mr. Hughes. As noted, Louis testified for the prosecution and was a key government witness. Louis' probation file contains a written notation of "mentally imbalanced." Anthony argues that Hughes could have testified as to his personal interviews and encounters with Louis, and Hughes could have provided evidence which would have had a substantial effect on Louis' credibility. Anthony contends that Hughes' testimony would have discredited Louis to the point that the jury would have been forced to acquit. However, it appears to the Court that Anthony is merely speculating as to what *might* have happened had Hughes testified. Further, there is absolutely no evidence that Hughes is even the person who made the notation of "mentally imbalanced" or that Hughes would have testified as Anthony has suggested. Moreover, Anthony merely presumes that the notation referred to Louis. The Circuit was faced with the issue regarding the admissibility of the notation, and found that whoever "made this notation was presumably not an expert." Anthony, 944

F.2d at 782. The Circuit further stated that "if the author of the notation had been present at trial, he would not have been allowed to give his opinion until it had first been shown that such opinion was rationally based on his perception." *Id.* Furthermore, the Circuit found that "this entire case did not turn on Louis' testimony -- there was some corroborating evidence." *Id.* at 781. Hence, the Court does not understand Anthony's conclusion that the result would have been different if the jury had heard from Hughes. Even if Hughes testified that Louis appeared mentally imbalanced, there is no reason to believe that the jury would have acquitted Anthony, especially in light of the weight of corroborating evidence against him.

Thus, the Court finds and concludes that Anthony has failed to satisfy the Strickland standard for demonstrating ineffective assistance of counsel. The Court finds that both trial and appellate counsel performed as reasonably effective advocates and that counsels' performance did not fall below an objective standard of reasonableness. Moreover, none of Anthony's above arguments convince the Court that the result of the proceeding would have been different but for counsel's alleged unprofessional errors. It was clear to the Court, and presumably to the jury who convicted him, that Anthony did, in fact, conspire to violate federal drug laws. The allegations contained herein fail to convince the Court that Anthony was deprived of his constitutional right to a fair trial and reasonably effective assistance.

Accordingly, Anthony's motion pursuant to § 2255 is hereby DENIED.

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

  
H. Dale Cook  
U.S. District Judge

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

FILED

MAY 14 1997

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TROY T. COLEMAN,

Defendant.

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No. 89-CR-90-C ✓

ENTERED ON DOCKET

DATE MAY 15 1997

**ORDER**

Currently pending before the Court is the motion filed by defendant, Troy Coleman, seeking modification of sentence pursuant to 18 U.S.C. § 3742(a). However, the Court notes that § 3742(a) does not appear to confer a right upon Coleman to challenge his sentence in this Court. Rather, that section provides that a defendant may file a notice of appeal for review of a sentence if imposed unlawfully or imposed as a result of an incorrect application of the guidelines. Thus, this section relates to a defendant's right to appeal his sentence rather than attack it in the district court. Coleman's motion is therefore more properly construed as a motion pursuant to 28 U.S.C. § 2255. In any event, Coleman's motion must fail. Coleman argues that his sentence enhancement under § 2D1.1(b)(1) is improper. However, the Tenth Circuit considered and rejected this precise issue on appeal, holding that this Court "did not err in enhancing Coleman's sentence for weapons possession." U.S. v. Coleman, 947 F.2d 1424, 1429 (10th Cir.1991), cert. denied, 503 U.S. 972 (1992). This Court will not permit Coleman to attempt to relitigate an issue that has already been resolved on appeal.

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Accordingly, Coleman's motion is hereby DENIED.

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

A handwritten signature in cursive script, appearing to read "H. Dale Cook".

H. Dale Cook  
U.S. District Judge

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

**F I L E D**  
MAY 14 1997 *llw*

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 MIKE YOUNGPETER, )  
 )  
 Defendant. )

No. 91-CR-50-C

ENTERED ON DOCKET  
DATE MAY 15 1997

**ORDER**

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

On May 9, 1991, Youngpeter along with codefendants, Randy Glover, Johnny Glover, James Barnes, Melvin Reynolds, and Roy Glover, were named in Count Two of a five-Count Indictment. The same controlled substance, methamphetamine, was attributable to all six defendants charged under Count Two. On September 24, 1991, a jury convicted Youngpeter of Count Two, conspiracy to manufacture, possess, and distribute methamphetamine, in violation of 21 U.S.C. §§ 846, and 841(a)(1). On December 11, 1991, Youngpeter was sentenced to 188 months imprisonment, five years of supervised release, and ordered to pay a special assessment of \$50. Youngpeter's conviction and sentence were affirmed on appeal. U.S. v. Youngpeter, 986 F.2d 349 (10th Cir.1993).

On October 28, 1994, Youngpeter filed a § 2255 motion, alleging, inter alia, that the government failed to prove the type of methamphetamine involved in the conspiracy for which Youngpeter was convicted. On August 11, 1995, this Court entered an order denying Youngpeter's § 2255 motion. The Circuit affirmed this Court's denial of Youngpeter's § 2255 in an unpublished

opinion. U.S. v. Youngpeter, 83 F.3d 434 (10th Cir.1996). On January 13, 1997, the Circuit recalled its mandate, and vacated that portion of its order and judgment which rejected Youngpeter's claims regarding his counsel's failure to require the government to prove the type of methamphetamine involved. The Circuit remanded the issue to this Court for a factual hearing regarding the type of methamphetamine involved in Youngpeter's conviction.

As noted, the same controlled substance, methamphetamine, served as the basis for Count Two, and all six defendants charged under Count Two were adjudged to have conspired to distribute the same drug. Since their convictions under Count Two, at least four of the six defendants, Mike Youngpeter, Randy Glover, Roy Glover, and James Barnes have made motion to this Court pursuant to § 2255 attacking their sentences, alleging that the government failed to prove that D-Methamphetamine was involved in the conspiracy. At the time that these defendants were sentenced, the Guidelines assigned a far less severe penalty to offenses involving L-Methamphetamine than those involving D-Methamphetamine. In their respective motions, each defendant argued, inter alia, that the Court erred in sentencing them under the range applicable to D-Methamphetamine since the government failed to offer proof at the sentencing hearings that D-Methamphetamine was, in fact, involved in the conspiracy charged under Count Two.

At the time that the Circuit remanded the issue to this Court for a factual hearing, the Court was addressing an identical issue raised by Youngpeter's codefendant, James Barnes. On March 13, 1996, Barnes filed a § 2255 motion alleging, inter alia, that the government failed to prove the type of methamphetamine involved in the present conspiracy. On October 9, 1996, this Court entered an order denying Barnes' § 2255 motion. On October 23, 1996, Barnes filed a motion to alter or amend judgment, which the Court granted by minute order on October 31, 1996. On January 23, 1997,

pursuant to U.S. v. Glover, 97 F.3d 1345 (10th Cir.1996), this Court conducted a full evidentiary hearing in an effort to determine which type of methamphetamine was involved in the conspiracy for which Barnes and his codefendants were convicted under Count Two. On March 24, 1997, this Court once again denied Barnes' § 2255 motion. After carefully considering the evidence presented at the hearing, this Court concluded in its March 24 order that the government "clearly established" by a preponderance of the evidence that the character of the methamphetamine involved in the conspiracy charged in Count Two was DL-Methamphetamine and that Barnes' sentence was properly calculated based on his unlawful involvement with D-Methamphetamine.

Youngpeter's § 2255 motion asserts a substantially similar attack on his sentence, alleging that the government failed to offer the requisite proof that D-Methamphetamine was involved in the conspiracy for which he was convicted under Count Two. However, since Youngpeter was involved in the same conspiracy as Barnes, was charged in the same Count of the same Indictment as Barnes for conspiracy to manufacture, possess and distribute the same controlled substance, and since this Court has determined after an evidentiary hearing that the type of methamphetamine involved in said conspiracy was clearly the DL type, the Court concludes that to hold another hearing on the same issue involving the same controlled substance would be non-productive. The Court notes that Rule 4(b) of the Rules Governing § 2255 Proceedings provides that, "[i]f it plainly appears from the face of the motion . . . and the prior proceedings in the case that the movant is not entitled to relief in the district court, the judge shall make an order for its summary dismissal . . . ." The evidentiary hearing held with regard to Barnes' attack on the type of methamphetamine may be considered a "prior proceeding in the case" and, thus, the Court's finding as to the type of methamphetamine rendered after the Barnes hearing may be extended to Barnes' codefendants, especially since the Court found

that the government "clearly established" that the type of methamphetamine which served as the basis for Count Two was DL-Methamphetamine.

The Court additionally finds that it would not be in the interest of judicial economy to hold another hearing which would yield the same result as a previous hearing on the same issue in the same case. See, Abraham v. U.S., 549 F.2d 236 (2d Cir.1977) (recognizing that in certain circumstances the court may dispense with a § 2255 hearing, but remanding to district court to determine whether codefendants' claims differed so substantially from claims filed earlier by other codefendants, who were afforded a hearing, so that a second hearing was required). The Court agrees that under recent Tenth Circuit precedent, a hearing is normally required in which the government must prove, by a preponderance of the evidence, which type of methamphetamine was involved in a particular defendant's case. However, once a full hearing has been held in which the government has had an opportunity to present its evidence and satisfy its burden, and in which an opportunity is given to fully and fairly rebut such evidence, the Court is of the opinion that the conclusions reached as a result of such a hearing should extend to similarly situated codefendants who raise substantially the same argument. That is, the Court does not believe that a separate hearing is required for each individual codefendant charged in the same Count with distributing the same drug who raises the same issue when an evidentiary hearing has already been held on the precise issue and any subsequent hearing would yield the same result. In the present case, the Court is faced with motions from four codefendants, each of whom raises the same issue regarding the type of methamphetamine involved in the conspiracy charged under Count Two. A full and fair hearing was held regarding the common issue with respect to one of these codefendants, and the Court entered its findings in favor of the government once the Court became satisfied that the government carried its burden with respect to

the type of methamphetamine involved in the present conspiracy. This result will not change simply because another codefendant raises the same issue and requests a hearing in order to once again force the government to relitigate an issue which has already been resolved. See, also, U.S. v. Reveron Martinez, 836 F.2d 684, 687 (1st Cir. 1988) (if order and fairness are to attend the legal process, the same issue can be resolved no differently for one defendant than for his identically situated codefendants).

In sum, the Court finds that Youngpeter's claim regarding the type of methamphetamine does not substantially differ from the claim which was raised by Barnes and fully addressed in the January 23 evidentiary hearing. The Court finds that the factual hearing which the Circuit mandated on January 13, 1997, was fully satisfied when the Court held its January 23 hearing with respect to Barnes, since that hearing specifically addressed the issue which concerned the Circuit regarding the type of methamphetamine involved in the conspiracy charged under Count Two. As the Court previously determined with respect to Barnes' § 2255, the Court concludes that Youngpeter was properly sentenced based on the D-Methamphetamine guideline.

Accordingly, Youngpeter's motion pursuant to § 2255 is hereby DENIED.

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



H. Dale Cook  
U.S. District Judge

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

MAY 14 1997 /

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 RANDY GLOVER, )  
 )  
 Defendant. )

No. 91-CR-50-C  
97-C-414-C

ENTERED ON DOCKET

DATE MAY 15 1997

**ORDER**

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

On May 9, 1991, Randy Glover, Johnny Glover, James Barnes, Melvin Reynolds, Roy Glover, and Mike Youngpeter, were named in Count Two of a five-Count Indictment. The same controlled substance, methamphetamine, was attributable to all six defendants charged under Count Two. On April 1, 1992, a jury convicted Randy Glover of Count Two, conspiracy to manufacture, possess, and distribute methamphetamine, in violation of 21 U.S.C. §§ 846, and 841(a)(1). On May 20, 1992, Randy Glover was sentenced to 292 months imprisonment. Randy Glover's conviction and sentence were affirmed on appeal in an unpublished opinion. U.S. v. Glover, 986 F.2d 1430 (10th Cir.1993).

On April 21, 1997, Randy Glover submitted his present § 2255 motion. Glover moves this Court to vacate, set aside, or correct the sentence imposed upon him on the following grounds: (1) Amendment 439 of the Sentencing Guidelines should be applied retroactively to Glover's case, (2) the Court adopted the drug quantity contained in the presentence report which was not based on the amount of drugs actually seized, (3) the Court erred in sentencing Glover under the guideline

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applicable to D-Methamphetamine, and (4) ineffective assistance of counsel.

Prior to addressing the merits of Glover's motion, the Court notes that § 2255, as amended in April of 1996, provides for a one-year limitations period in which to file a § 2255 motion. The Court further notes that if the Court were to apply the limitations period to Glover, his motion would be time-barred. However, the Tenth Circuit has recently mandated a one-year grace period in which to allow the filing of § 2255 motions, holding that "prisoners whose convictions became final on or before April 24, 1996 must file their § 2255 motions before April 24, 1997." U.S. v. Simmonds, 1997 WL 177560 (10th Cir.1997). Since Glover's present motion was submitted prior to April 24, the motion is not time-barred under § 2255, as amended.

Typically, "§ 2255 is not available to test the legality of matters which should have been raised on appeal." U.S. v. Walling, 982 F.2d 447, 448 (10th Cir.1992). A failure to raise an issue on direct appeal acts as a bar to raising the issue in a § 2255 motion, unless Glover can show cause and actual prejudice, or can show that a fundamental miscarriage of justice will result if his claim is not addressed. U.S. v. Allen, 16 F.3d 377, 378 (10th Cir.1994). This procedural bar applies to collateral attacks on a defendant's sentence, as well as his conviction. Id. In order to evade this procedural bar, Glover relies upon the well-established exception (and now the universal claim) of ineffective assistance of counsel. "A defendant may establish cause for procedural default by showing he received ineffective assistance of counsel." U.S. v. Cox, 83 F.3d 336 (10th Cir.1996).

Glover first contends that Amendment 439 to the Sentencing Guidelines, which went into effect on November 1, 1992 and defines reasonable foreseeability, should apply here. However, Amendment 439 is not one of the enumerated amendments listed in § 1B1.10(c), and, therefore, the Court is not authorized to retroactively apply it to Glover's sentence. § 1B1.10(a). Moreover, the

Circuit specifically held that the drug quantity attributable to Glover was within the scope of and reasonably foreseeable in connection with the criminal activity in which he engaged. Hence, Glover's first point is meritless.

Glover next argues that the Court adopted the drug quantity contained in the presentence report which was not based on the amount of drugs actually seized, but was rather based on the perjured testimony of several witnesses. Glover alleges that his sentence is grounded upon the testimony of criminals who testified as to the amount of drugs attributable to Glover, and that such biased testimony was given in exchange for sentence reductions and lenient treatment. Glover claims that such testimony was not founded upon any evidence that has any indicia of reliability. Glover further points to affidavits signed by some witnesses evincing an effort to recant their testimony with respect to Glover's involvement. As one court noted, "[t]his is the not unusual situation where a defendant who pled guilty and testified as a government witness recants his trial testimony against a codefendant who was convicted. As is often the case, the recantation occurs only after the statute of limitations on perjury bars any prosecution based upon his trial testimony." U.S. v. Manfredi, 447 F.Supp. 847, 848 (S.D.N.Y. 1978). Moreover, "[r]ecantation of testimony given under oath . . . is not looked upon with favor. Indeed, such is generally looked upon with downright suspicion." U.S. v. Ahern, 612 F.2d 507, 509 (10th Cir.1980), cert. denied, 449 U.S. 1093 (1981). The Court has nevertheless reviewed these documents, but the Court does not see how such alleged recantations provide much benefit to Randy Glover; rather, the documents which Randy Glover submitted appear to primarily relate to Roy Glover's conviction, and several of them do not even purport to recant testimony personally given by the particular affiant. In any event, the Circuit specifically found that the record clearly supports this Court's finding with respect to the amount of drugs attributable to

Glover. Even recognizing the requirement that a minimal indicia of reliability must accompany evidence before it may be used in calculating the base level offense, the Circuit concluded that this Court's reliance on testimony establishing drug quantity was not clearly erroneous, especially in light of the fact that the testimony of the several witnesses was consistent. This Court remains satisfied that Glover was appropriately sentenced, and the Court further finds it improper for Glover to attempt to relitigate issues in this Court which have already been considered and rejected on appeal.

Glover next argues that the Court erred by applying the more onerous sentencing guideline based upon a conviction involving D-Methamphetamine. The same controlled substance, methamphetamine, served as the basis for Count Two, and all six defendants charged under Count Two were adjudged to have conspired to distribute the same drug. Since their convictions under Count Two, at least four of the six defendants, Randy Glover, Roy Glover, James Barnes, and Mike Youngpeter, have made motion to this Court pursuant to § 2255 attacking their sentences, alleging that the government failed to prove that D-Methamphetamine was involved in the conspiracy. At the time that these defendants were sentenced, the Guidelines treated L-Methamphetamine far less severely than D-Methamphetamine. In their respective motions, each defendant argued, inter alia, that the Court erred in sentencing them under the range applicable to D-Methamphetamine since the government failed to offer proof at the sentencing hearings that D-Methamphetamine was, in fact, involved in the conspiracy charged under Count Two.

On March 13, 1996, James Barnes filed a § 2255 motion, alleging that he was improperly sentenced under the guidelines applicable to D-Methamphetamine. On October 9, 1996, this Court entered an order denying Barnes' § 2255 motion. On October 23, 1996, Barnes filed a motion to alter or amend judgment, which the Court granted by minute order on October 31, 1996. On January

23, 1997, pursuant to U.S. v. Glover, 97 F.3d 1345 (10th Cir.1996), this Court conducted a full evidentiary hearing in an effort to determine which type of methamphetamine was actually involved in the conspiracy for which Barnes and his codefendants were convicted under Count Two. On March 24, 1997, this Court once again denied Barnes' § 2255 motion. After carefully considering the evidence presented at the hearing, this Court concluded in its March 24 order that the government "clearly established" by a preponderance of the evidence that the character of the methamphetamine involved in the conspiracy charged in Count Two was DL-Methamphetamine, and that Barnes' sentence was properly calculated based on his unlawful involvement with D-Methamphetamine.

Randy Glover's present motion asserts a substantially similar attack on his sentence, alleging that the government failed to offer the requisite proof that D-Methamphetamine was involved in the conspiracy for which he was convicted under Count Two. However, since Glover was involved in the same conspiracy as Barnes, was charged in the same Count of the same Indictment as Barnes for conspiracy to manufacture, possess and distribute the same controlled substance, and since this Court has determined after an evidentiary hearing that the type of methamphetamine involved in said conspiracy was clearly the DL type, the Court concludes that to hold another hearing on the same issue involving the same controlled substance would be redundant and non-productive. The Court notes that Rule 4(b) of the Rules Governing § 2255 Proceedings provides that, "[i]f it plainly appears from the face of the motion . . . and the prior proceedings in the case that the movant is not entitled to relief in the district court, the judge shall make an order for its summary dismissal . . . ." The evidentiary hearing held with regard to Barnes' attack on the type of methamphetamine may be considered a "prior proceeding in the case" and, thus, the Court's finding as to the type of methamphetamine rendered after the Barnes hearing may be extended to Glover, especially since the

Court found that the government "clearly established" that the type of methamphetamine which served as the basis for Count Two was DL-Methamphetamine.

The Court additionally finds that it would not be in the interest of judicial economy to hold another hearing which would yield the same result as a previous hearing on the same issue in the same case. See, Abraham v. U.S., 549 F.2d 236 (2d Cir.1977) (recognizing that in certain circumstances the court may dispense with a § 2255 hearing, but remanding to district court to determine whether codefendants' claims differed so substantially from claims filed earlier by other codefendants, who were afforded a hearing, so that a second hearing was required). The Court agrees that under recent Tenth Circuit precedent, a hearing is normally required in which the government must prove, by a preponderance of the evidence, which type of methamphetamine was involved in a particular defendant's case. However, once a full hearing has been held in which the government has had an opportunity to present its evidence and satisfy its burden, and in which an opportunity is given to fully and fairly rebut such evidence, the Court is of the opinion that the conclusions reached as a result of such a hearing should extend to similarly situated codefendants who raise substantially the same argument. That is, the Court does not believe that a separate hearing is required for each individual codefendant charged in the same Count with distributing the same drug who raises the same issue when one hearing has already been held on the precise issue and any subsequent hearing would yield the same result. In the present case, the Court is faced with motions from four codefendants, each of whom raises the same issue regarding the type of methamphetamine involved in the conspiracy charged under Count Two. A full and fair hearing was held regarding the common issue with respect to one of these codefendants, and the Court entered its findings in favor of the government, as the Court is completely satisfied that the government carried its burden with respect to the type of

methamphetamine involved in the present conspiracy. This result will not change simply because another codefendant raises the same issue and requests a hearing in order to once again force the government to relitigate an issue which has already been resolved. See, also, U.S. v. Reveron Martinez, 836 F.2d 684, 687 (1st Cir.1988) (if order and fairness are to attend the legal process, the same issue can be resolved no differently for one defendant than for his identically situated codefendants). In Sum, the Court finds that Glover's present claim regarding the type of methamphetamine does not substantially differ from the claim which was raised by Barnes and fully addressed at the January 23 evidentiary hearing. Accordingly, as the Court previously determined with respect to Barnes' § 2255, the Court finds that Glover was properly sentenced based on the D-Methamphetamine guideline.

Lastly, Glover asserts that his trial attorney rendered ineffective assistance. Glover alleges that his counsel failed to research the difference in punishment between D and L-Methamphetamine, failed to object to sentencing based on D-Methamphetamine, and failed to appeal the issues raised herein.

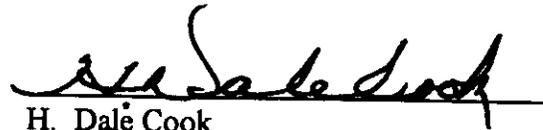
However, the issue regarding counsel's ineffectiveness for failing to research the difference in punishment between D and L-Methamphetamine is moot. As noted, the Court has already concluded that Glover was properly sentenced pursuant to D-Methamphetamine. Hence, even assuming counsel erred in failing to raise this issue at sentencing, there has been no prejudice. With respect to the other issues raised herein, it is clear that such issues were raised on appeal, and rejected by the Circuit.

Glover requests a hearing on the issues raised herein. Section 2255 provides that unless the motion and records conclusively show that Glover is entitled to no relief, the Court shall grant a

hearing. In the present case, the Court concludes that the record conclusively shows that Glover is entitled to no relief, and a hearing would simply be superfluous. Hence, Glover's request for a hearing is denied.

Accordingly, Glover's motion pursuant to § 2255 is hereby DENIED.

IT IS SO ORDERED this 17<sup>th</sup> day of May, 1997.

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

H. Dale Cook  
U.S. District Judge

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

**FILED**  
MAY 14 1997  
Phil Lombardi, Clerk  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 MARK JOEL ANTHONY, )  
 )  
 Defendant. )

No. 89-CR-91-C  
97-C-296-C

ENTERED ON DOCKET

DATE MAY 15 1997

**ORDER**

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

On September 6, 1989, Anthony was named in Count One of a two-Count Superseding Indictment. On December 6, 1989, a jury convicted Anthony of Count One, conspiracy to distribute in excess of 50 grams of cocaine base, in violation of 21 U.S.C. §§ 846, and 841(a)(1). On February 14, 1990, Anthony was sentenced to 360 months imprisonment. Anthony's conviction was affirmed on appeal, but the Circuit vacated Anthony's sentence and remanded for resentencing in order to permit this Court to make the findings and determinations required by Fed.R.Crim.P. 32(c)(3)(D). U.S. v. Anthony, 944 F.2d 780 (10th Cir.1991). Anthony was resentenced on February 7, 1992, to the term originally imposed. Anthony's sentence was affirmed on appeal in an unpublished opinion. U.S. v. Price, 996 F.2d 312 (10th Cir.1993).

On April 1, 1997, Anthony filed his present § 2255 motion. Anthony moves this Court to vacate, set aside, or correct the sentence imposed upon him on several grounds of error: (1) improper firearm enhancement, (2) improper role enhancement, (3) Anthony should have received a downward

departure for being a minor participant, (4) Anthony's relevant conduct issue was not effectively argued by counsel, (5) counsel failed to object to hearsay, (6) counsel failed to object to evidence of gangs, (7) counsel's failure to subpoena the probation officer of one of the government's witnesses, and (8) ineffective assistance of counsel.

Prior to addressing the merits of Anthony's motion, the Court notes that § 2255, as amended in April of 1996, provides for a one-year limitations period in which to file a § 2255 motion. The Court further notes that if the Court were to apply the limitations period to Anthony, his motion would be time-barred. However, the Tenth Circuit has recently mandated a one-year grace period in which to allow the filing of § 2255 motions, holding that "prisoners whose convictions became final on or before April 24, 1996 must file their § 2255 motions before April 24, 1997." U.S. v. Simmonds, 1997 WL 177560 (10th Cir.1997). Since Anthony's present motion was submitted prior to April 24, the motion is not time-barred under § 2255, as amended.

Typically, "§ 2255 is not available to test the legality of matters which should have been raised on appeal." U.S. v. Walling, 982 F.2d 447, 448 (10th Cir.1992). A failure to raise an issue on direct appeal acts as a bar to raising the issue in a § 2255 motion, unless Anthony can show cause and actual prejudice, or can show that a fundamental miscarriage of justice will result if his claim is not addressed. U.S. v. Allen, 16 F.3d 377, 378 (10th Cir.1994). This procedural bar applies to collateral attacks on a defendant's sentence, as well as his conviction. Id. Since the government raised this procedural bar in the instant case, this Court must enforce it and hold Anthony's claims barred unless cause and prejudice or a miscarriage of justice is shown. Id.

In order to evade this procedural bar, Anthony relies upon the well-established exception (and now the universal claim) of ineffective assistance of counsel. "A defendant may establish cause for

procedural default by showing he received ineffective assistance of counsel.” U.S. v. Cox, 83 F.3d 336 (10th Cir.1996). To succeed on a claim of ineffective assistance of counsel, Anthony must satisfy the rigid standard contained in Strickland v. Washington, 466 U.S. 668 (1984). The Supreme Court in Strickland held that a claim of ineffective assistance of counsel has two components. First, Anthony must show that his attorney “made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed . . . by the Sixth Amendment.” Id. at 687. “The proper standard for attorney performance is that of reasonably effective assistance.” Id. Therefore, to succeed, Anthony must show that his counsel’s performance fell below an objective standard of reasonableness. Furthermore, Anthony must show that “the deficient performance prejudiced the defense.” Id. However, “a court must indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance . . .” Id. at 689. Anthony must show that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Id. at 694.

Anthony first attacks the two-point enhancement under § 2D1.1(b)(1) of the Sentencing Guidelines for possession of a firearm. Anthony contends that there is insufficient evidence to warrant such a two-point enhancement. Anthony asserts that the two-point enhancement is based on the testimony of Willie James Louis, Jr. and does not establish by a preponderance of the evidence that Anthony possessed a firearm while distributing cocaine. Anthony also attacks Louis’ credibility, suggesting that Louis is a mentally unbalanced drug user, and Anthony also maintains that Louis never specifically stated that Anthony possessed a firearm. Anthony argues that had counsel raised this issue on appeal, Anthony would have received a substantial sentence reduction. The government argues that even if Anthony’s counsel had raised the issue on appeal, the result would have been the

same. The government contends that the evidence regarding possession of a firearm was corroborated by other witnesses' testimony demonstrating that Anthony had been in possession of a firearm during the commission of the offense. Specifically, the government points to the testimony of Officer Witt, who testified that Anthony's co-defendant, Ward Price, had told him that Price and the other codefendants were usually "strapped", i.e., armed, and would pull their weapons if confronted by members of a rival gang. The government also points to the testimony of Louis, who testified that Anthony was, in fact, in possession of firearms during the commission of the offense.

The government bears the burden of proving possession of a dangerous weapon by a preponderance of the evidence. U.S. v. Roberts, 980 F.2d 645, 647 (10th Cir.1992). Anthony is essentially arguing that the government failed to meet its burden, and if this issue had been raised on appeal, Anthony would have received a reduction. The Court disagrees. Anthony's trial counsel did, in fact, file an objection to the two-point weapons enhancement recommendation contained in the presentence report (PSR). The Court considered the objection and rejected it, finding that the government had established, by a preponderance of the evidence, that Anthony possessed a dangerous weapon in connection with the offense. It was quite apparent to the Court at the time of sentencing that weapons played an integral role in the offense for which Anthony was convicted, and that Anthony had possessed weapons in connection with such offense. Anthony does not now deny that he possessed weapons during the course of the offense. Moreover, the PSR reveals that Anthony was observed to be in possession of a .22 caliber handgun on at least one occasion. The PSR also indicates that Anthony and other members of his organization were known to carry weapons and had a propensity toward violence. Anthony's co-defendant, Ward Price, reported that members of the organization to which Anthony belonged were always carrying guns, and these guns were pulled

whenever a rival gang was encountered. Hence, the Court does not believe that the result would have been different had Anthony's appellate counsel raised this precise issue on appeal. Rather, the Court is quite comfortable with the accuracy of its finding regarding weapons possession, and the Court is therefore of the opinion that the appellate court would have accepted this Court's findings and conclusions with respect to this issue if it had been raised on appeal. Anthony therefore suffered no prejudice.

Anthony attacks the two-point enhancement under § 3B1.1(c) of the Sentencing Guidelines for supervisory role. Anthony contends that there is no evidence that he gave cocaine to any runners for distribution. Anthony argues that if his appellate counsel had raised this issue on appeal, he would have received a sentence reduction. The government argues that the evidence does reveal that Anthony had been in a supervisory role in his organization. The government points to the testimony of Lomas Amos Atkins who testified that he overheard Anthony ordering G.G. Atkins to sell a baggie of rock cocaine. The government also points to the testimony of Suzanne Atkins who testified that she had seen G.G. Atkins, with Anthony, cutting up drugs to sell.

The Court "applies the preponderance of the evidence standard to determine adjustments under the guidelines." U.S. v. Hanif, 1 F.3d 998, 1004 (10th Cir.1993), cert. denied, 510 U.S. 1001 (1993). The Court notes that Anthony's trial counsel did file an objection to the PSR's recommendation that a two-point enhancement be imposed for role in the offense. The record reveals that defense counsel objected to the characterization of Anthony's role as a supervisor, arguing that such is based on facts not presented to the jury. The Court considered the objection and rejected it, finding that the government had established, by a preponderance of the evidence, that Anthony acted in a supervisory role. The PSR indicates that Anthony participated in the distribution of crack to

juvenile runners and collected money from them. The juvenile runners were responsible for selling the crack to street buyers. The PSR indicates that juveniles were recruited and used by Anthony and his organization as a shield from direct prosecution for distribution of crack. The PSR also reveals that Anthony would take turns staying at the organization's base of operation at night to supervise the juvenile runners and the distribution of their drugs. Moreover, Anthony does not now deny that he acted in such a capacity. Given the facts that were presented to the Court at the time of sentencing, the Court found that the government had met its burden of proof, and the Court concluded that the enhancement was proper. The Court does not believe that the Circuit would have found otherwise had this issue been raised on appeal. Thus, Anthony has demonstrated no prejudice.

Anthony next argues that his trial and appellate counsel failed to request a downward departure for being a minor participant pursuant to § 3B1.2. However, since the Court specifically found that Anthony acted in a supervisory role, thereby permitting an aggravating role enhancement, the Court has trouble understanding what benefit Anthony would have received had counsel requested such a downward departure. The finding of an aggravating role necessarily negates a finding of minor participation. Hence, any such request would have been overruled. Moreover, had the issue been raised on appeal, the Circuit would have surely rejected it. Indeed, the Circuit specifically found that the evidence was sufficient to show Anthony's involvement in the drug conspiracy, and the Circuit noted that Anthony played an active role in selling crack, distributing it to juvenile runners, and collecting money. Anthony, 944 F.2d at 781. Hence, Anthony's argument on this point is meritless.

Anthony argues that his appellate counsel failed to effectively argue Anthony's relevant conduct issue. Anthony also urges application of Amendment 439 to his case. Anthony argues that

he was improperly held accountable for 500 grams when his relevant conduct should include only 28 grams of crack. However, on his second appeal, the Circuit specifically held that the record supports the finding that Anthony is accountable for the sale of over 500 grams of crack. The Circuit also noted that although Anthony was only involved in the conspiracy for a little more than a month, this Court properly found that the conspiracy involved over 500 grams in that short time. In fact, at Anthony's sentencing hearing, this Court stated that if one looks only at the month in which Anthony was involved in the conspiracy, it would not have taken too much crack to be sold in just two weeks to have reached the critical level of 500 grams. This Court also stated that there is no indication that during the month in which Anthony participated in the conspiracy that the organization was not as active as any other month either before or after. The Circuit also rejected Anthony's argument that Anthony could not have reasonably foreseen that his co-conspirators would distribute such a large amount of crack in a little more than a month. As this issue has been fully addressed on appeal, Anthony's attempt to relitigate it in this Court is improper. Anthony requests that Amendment 439 be applied to his case. However, Amendment 439 is not one of the enumerated amendments contained in § 1B1.10(c), and the Court is therefore not authorized to give it retroactive effect. § 1B1.10(a). Moreover, the Court does not believe that Amendment 439 would provide any benefit to Anthony. In any event, since this Court and the Circuit have held that Anthony is accountable for 500 grams of crack, the issue is now moot.

Anthony contends that his trial counsel failed to object to hearsay and his appellate counsel failed to raise the issue on appeal. Anthony argues that his trial counsel erred in failing to object to Officer Witt's testimony of what another co-defendant had told him. Anthony asserts that Officer Witt was testifying with regard to an untaped conversation he had with Ward Price on June 7, 1989.

Officer Witt testified that Price referred to Anthony as being one of the main players in the conspiracy. Anthony argues that since he was jailed on May 10, 1989, the statements made on June 7 were not made in furtherance of the conspiracy with respect to Anthony. The government argues that the Circuit found that Anthony was in fact a member of the conspiracy with Price and other individuals. The government points to the Circuit's finding that Anthony had knowingly acted in furtherance of the conspiracy to distribute crack. Anthony, 944 F.2d 781. The government also points out that this Court made the determination during pretrial that the conversations between Price and Officer Witt were made in the furtherance of the conspiracy, and that such statements were not hearsay under Rule 801(d)(2)(E) of the Federal Rules of Evidence. The Court agrees with the government. Since the Court had already determined that the statements were not hearsay, any objection would have been promptly overruled. Thus, it cannot be said that counsel was ineffective in failing to raise an apparently futile objection. In any event, Anthony has failed to show prejudice. Even without Officer Witt's testimony, the Court is not convinced that the result of the trial would have been different. The Circuit found that witnesses other than Officer Witt and other corroborating evidence sufficiently demonstrated Anthony's participation in the conspiracy. Hence, the Court finds no error.

Anthony next contends that it was error for counsel not to object to evidence of gangs. Anthony argues that he was on trial for conspiracy to sell drugs, not for his gang involvement. Anthony further maintains that the jury was improperly instructed as to the admission of gang evidence. Anthony argues that such evidence was unduly prejudicial under Evidence Rule 403. The government counters that evidence pertaining to gang affiliation was brought about through witness testimony and not used as direct evidence. The Court does not find that the evidence with respect

to gang affiliation unduly prejudiced Anthony, and the Court does not believe that such evidence, in and of itself, led to Anthony's conviction in the present case. Rather, the testimony and evidence linking Anthony to the drug distribution conspiracy and the criminal organization was sufficient to support a finding of guilt, even if reference to gangs had not been made. Demonstrating that Anthony participated in an organized endeavor to distribute crack was necessary in order to prove that Anthony conspired with others to violate federal drug laws. The fact that the evidence tended to label such an organized endeavor as a gang or refer to it as the bloods, rips or rip boys, does not necessarily indicate that unfair prejudice resulted. Assigning a name to Anthony's organized endeavor cannot be said to have been the determining factor resulting in Anthony's conviction; the evidence of Anthony's participation within the endeavor, however, was sufficient to result in a conviction, as the Circuit so held. Anthony, 944 F.2d 781. In the present case, the government did not attempt to show that Anthony's association with a particular gang signified that Anthony was, per se, criminally liable for the conduct charged. This is not a case of guilt by association. Instead, this is a case in which Anthony was convicted based on sufficient evidence indicating that he was an active participant in a drug distribution conspiracy. As such, the Court cannot now find that if the name of the organization to which Anthony belonged had been concealed from the jury, the result would have been different. Indeed, Anthony has utterly failed to demonstrate that the result in this case would have been different if his attorney had successfully objected to all reference of gangs or gang affiliation.

Anthony also attacks the jury instruction on the admission of gang evidence. Anthony complains of the following jury instruction:

There has been evidence presented which relates to other possible

unlawful acts and conduct of a defendant other than the specific offense with which he is charged and is on trial. You are instructed that this evidence has been admitted only for the limited purpose of showing guilty knowledge, intent, plan and lack of mistake or accident, if any, of the defendant with respect to the offense charged. Such evidence of other possible unlawful acts may not be considered by you as proof the defendant is guilty of the offense charged, but is relevant and may be considered by you only for the limited purpose I have just stated.

Anthony argues that while the instruction indicates that the jury should consider the evidence only for the purposes stated, the Court never told the jury what these purposes were. The Court finds this argument odd, as the limited purposes of knowledge, intent, plan, and lack of mistake or accident, are clearly stated in the instruction. The Court finds the instruction proper, and the Court further finds that no prejudice resulted to Anthony.

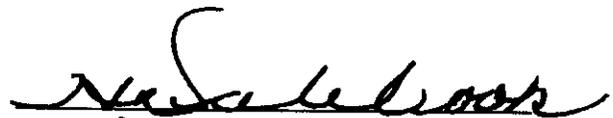
Lastly, Anthony asserts that his trial counsel erred in failing to subpoena Willie James Louis, Jr.'s probation officer, Mr. Hughes. As noted, Louis testified for the prosecution and was a key government witness. Louis' probation file contains a written notation of "mentally imbalanced." Anthony argues that Hughes could have testified as to his personal interviews and encounters with Louis, and Hughes could have provided evidence which would have had a substantial effect on Louis' credibility. Anthony contends that Hughes' testimony would have discredited Louis to the point that the jury would have been forced to acquit. However, it appears to the Court that Anthony is merely speculating as to what *might* have happened had Hughes testified. Further, there is absolutely no evidence that Hughes is even the person who made the notation of "mentally imbalanced" or that Hughes would have testified as Anthony has suggested. Moreover, Anthony merely presumes that the notation referred to Louis. The Circuit was faced with the issue regarding the admissibility of the notation, and found that whoever "made this notation was presumably not an expert." Anthony, 944

F.2d at 782. The Circuit further stated that "if the author of the notation had been present at trial, he would not have been allowed to give his opinion until it had first been shown that such opinion was rationally based on his perception." *Id.* Furthermore, the Circuit found that "this entire case did not turn on Louis' testimony -- there was some corroborating evidence." *Id.* at 781. Hence, the Court does not understand Anthony's conclusion that the result would have been different if the jury had heard from Hughes. Even if Hughes testified that Louis appeared mentally imbalanced, there is no reason to believe that the jury would have acquitted Anthony, especially in light of the weight of corroborating evidence against him.

Thus, the Court finds and concludes that Anthony has failed to satisfy the Strickland standard for demonstrating ineffective assistance of counsel. The Court finds that both trial and appellate counsel performed as reasonably effective advocates and that counsels' performance did not fall below an objective standard of reasonableness. Moreover, none of Anthony's above arguments convince the Court that the result of the proceeding would have been different but for counsel's alleged unprofessional errors. It was clear to the Court, and presumably to the jury who convicted him, that Anthony did, in fact, conspire to violate federal drug laws. The allegations contained herein fail to convince the Court that Anthony was deprived of his constitutional right to a fair trial and reasonably effective assistance.

Accordingly, Anthony's motion pursuant to § 2255 is hereby DENIED.

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

  
H. Dale Cook  
U.S. District Judge

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

FILED

MAY 14 1997

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TROY T. COLEMAN,

Defendant.

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No. 89-CR-90-C ✓

ENTERED ON DOCKET

DATE MAY 15 1997

**ORDER**

Currently pending before the Court is the motion filed by defendant, Troy Coleman, seeking modification of sentence pursuant to 18 U.S.C. § 3742(a). However, the Court notes that § 3742(a) does not appear to confer a right upon Coleman to challenge his sentence in this Court. Rather, that section provides that a defendant may file a notice of appeal for review of a sentence if imposed unlawfully or imposed as a result of an incorrect application of the guidelines. Thus, this section relates to a defendant's right to appeal his sentence rather than attack it in the district court. Coleman's motion is therefore more properly construed as a motion pursuant to 28 U.S.C. § 2255. In any event, Coleman's motion must fail. Coleman argues that his sentence enhancement under § 2D1.1(b)(1) is improper. However, the Tenth Circuit considered and rejected this precise issue on appeal, holding that this Court "did not err in enhancing Coleman's sentence for weapons possession." U.S. v. Coleman, 947 F.2d 1424, 1429 (10th Cir.1991), cert. denied, 503 U.S. 972 (1992). This Court will not permit Coleman to attempt to relitigate an issue that has already been resolved on appeal.

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Accordingly, Coleman's motion is hereby DENIED.

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

A handwritten signature in cursive script, appearing to read "H. Dale Cook".

H. Dale Cook  
U.S. District Judge

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

**F I L E D**  
MAY 14 1997 *llw*

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
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 vs. )  
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 MIKE YOUNGPETER, )  
 )  
 Defendant. )

No. 91-CR-50-C

ENTERED ON DOCKET

DATE MAY 15 1997

**ORDER**

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

On May 9, 1991, Youngpeter along with codefendants, Randy Glover, Johnny Glover, James Barnes, Melvin Reynolds, and Roy Glover, were named in Count Two of a five-Count Indictment. The same controlled substance, methamphetamine, was attributable to all six defendants charged under Count Two. On September 24, 1991, a jury convicted Youngpeter of Count Two, conspiracy to manufacture, possess, and distribute methamphetamine, in violation of 21 U.S.C. §§ 846, and 841(a)(1). On December 11, 1991, Youngpeter was sentenced to 188 months imprisonment, five years of supervised release, and ordered to pay a special assessment of \$50. Youngpeter's conviction and sentence were affirmed on appeal. U.S. v. Youngpeter, 986 F.2d 349 (10th Cir.1993).

On October 28, 1994, Youngpeter filed a § 2255 motion, alleging, inter alia, that the government failed to prove the type of methamphetamine involved in the conspiracy for which Youngpeter was convicted. On August 11, 1995, this Court entered an order denying Youngpeter's § 2255 motion. The Circuit affirmed this Court's denial of Youngpeter's § 2255 in an unpublished

opinion. U.S. v. Youngpeter, 83 F.3d 434 (10th Cir.1996). On January 13, 1997, the Circuit recalled its mandate, and vacated that portion of its order and judgment which rejected Youngpeter's claims regarding his counsel's failure to require the government to prove the type of methamphetamine involved. The Circuit remanded the issue to this Court for a factual hearing regarding the type of methamphetamine involved in Youngpeter's conviction.

As noted, the same controlled substance, methamphetamine, served as the basis for Count Two, and all six defendants charged under Count Two were adjudged to have conspired to distribute the same drug. Since their convictions under Count Two, at least four of the six defendants, Mike Youngpeter, Randy Glover, Roy Glover, and James Barnes have made motion to this Court pursuant to § 2255 attacking their sentences, alleging that the government failed to prove that D-Methamphetamine was involved in the conspiracy. At the time that these defendants were sentenced, the Guidelines assigned a far less severe penalty to offenses involving L-Methamphetamine than those involving D-Methamphetamine. In their respective motions, each defendant argued, inter alia, that the Court erred in sentencing them under the range applicable to D-Methamphetamine since the government failed to offer proof at the sentencing hearings that D-Methamphetamine was, in fact, involved in the conspiracy charged under Count Two.

At the time that the Circuit remanded the issue to this Court for a factual hearing, the Court was addressing an identical issue raised by Youngpeter's codefendant, James Barnes. On March 13, 1996, Barnes filed a § 2255 motion alleging, inter alia, that the government failed to prove the type of methamphetamine involved in the present conspiracy. On October 9, 1996, this Court entered an order denying Barnes' § 2255 motion. On October 23, 1996, Barnes filed a motion to alter or amend judgment, which the Court granted by minute order on October 31, 1996. On January 23, 1997,

pursuant to U.S. v. Glover, 97 F.3d 1345 (10th Cir.1996), this Court conducted a full evidentiary hearing in an effort to determine which type of methamphetamine was involved in the conspiracy for which Barnes and his codefendants were convicted under Count Two. On March 24, 1997, this Court once again denied Barnes' § 2255 motion. After carefully considering the evidence presented at the hearing, this Court concluded in its March 24 order that the government "clearly established" by a preponderance of the evidence that the character of the methamphetamine involved in the conspiracy charged in Count Two was DL-Methamphetamine and that Barnes' sentence was properly calculated based on his unlawful involvement with D-Methamphetamine.

Youngpeter's § 2255 motion asserts a substantially similar attack on his sentence, alleging that the government failed to offer the requisite proof that D-Methamphetamine was involved in the conspiracy for which he was convicted under Count Two. However, since Youngpeter was involved in the same conspiracy as Barnes, was charged in the same Count of the same Indictment as Barnes for conspiracy to manufacture, possess and distribute the same controlled substance, and since this Court has determined after an evidentiary hearing that the type of methamphetamine involved in said conspiracy was clearly the DL type, the Court concludes that to hold another hearing on the same issue involving the same controlled substance would be non-productive. The Court notes that Rule 4(b) of the Rules Governing § 2255 Proceedings provides that, "[i]f it plainly appears from the face of the motion . . . and the prior proceedings in the case that the movant is not entitled to relief in the district court, the judge shall make an order for its summary dismissal . . . ." The evidentiary hearing held with regard to Barnes' attack on the type of methamphetamine may be considered a "prior proceeding in the case" and, thus, the Court's finding as to the type of methamphetamine rendered after the Barnes hearing may be extended to Barnes' codefendants, especially since the Court found

that the government "clearly established" that the type of methamphetamine which served as the basis for Count Two was DL-Methamphetamine.

The Court additionally finds that it would not be in the interest of judicial economy to hold another hearing which would yield the same result as a previous hearing on the same issue in the same case. See, Abraham v. U.S., 549 F.2d 236 (2d Cir.1977) (recognizing that in certain circumstances the court may dispense with a § 2255 hearing, but remanding to district court to determine whether codefendants' claims differed so substantially from claims filed earlier by other codefendants, who were afforded a hearing, so that a second hearing was required). The Court agrees that under recent Tenth Circuit precedent, a hearing is normally required in which the government must prove, by a preponderance of the evidence, which type of methamphetamine was involved in a particular defendant's case. However, once a full hearing has been held in which the government has had an opportunity to present its evidence and satisfy its burden, and in which an opportunity is given to fully and fairly rebut such evidence, the Court is of the opinion that the conclusions reached as a result of such a hearing should extend to similarly situated codefendants who raise substantially the same argument. That is, the Court does not believe that a separate hearing is required for each individual codefendant charged in the same Count with distributing the same drug who raises the same issue when an evidentiary hearing has already been held on the precise issue and any subsequent hearing would yield the same result. In the present case, the Court is faced with motions from four codefendants, each of whom raises the same issue regarding the type of methamphetamine involved in the conspiracy charged under Count Two. A full and fair hearing was held regarding the common issue with respect to one of these codefendants, and the Court entered its findings in favor of the government once the Court became satisfied that the government carried its burden with respect to

the type of methamphetamine involved in the present conspiracy. This result will not change simply because another codefendant raises the same issue and requests a hearing in order to once again force the government to relitigate an issue which has already been resolved. See, also, U.S. v. Reveron Martinez, 836 F.2d 684, 687 (1st Cir. 1988) (if order and fairness are to attend the legal process, the same issue can be resolved no differently for one defendant than for his identically situated codefendants).

In sum, the Court finds that Youngpeter's claim regarding the type of methamphetamine does not substantially differ from the claim which was raised by Barnes and fully addressed in the January 23 evidentiary hearing. The Court finds that the factual hearing which the Circuit mandated on January 13, 1997, was fully satisfied when the Court held its January 23 hearing with respect to Barnes, since that hearing specifically addressed the issue which concerned the Circuit regarding the type of methamphetamine involved in the conspiracy charged under Count Two. As the Court previously determined with respect to Barnes' § 2255, the Court concludes that Youngpeter was properly sentenced based on the D-Methamphetamine guideline.

Accordingly, Youngpeter's motion pursuant to § 2255 is hereby DENIED.

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



H. Dale Cook  
U.S. District Judge

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

MAY 14 1997 /

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 RANDY GLOVER, )  
 )  
 Defendant. )

No. 91-CR-50-C  
97-C-414-C

ENTERED ON DOCKET

DATE MAY 15 1997

**ORDER**

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

On May 9, 1991, Randy Glover, Johnny Glover, James Barnes, Melvin Reynolds, Roy Glover, and Mike Youngpeter, were named in Count Two of a five-Count Indictment. The same controlled substance, methamphetamine, was attributable to all six defendants charged under Count Two. On April 1, 1992, a jury convicted Randy Glover of Count Two, conspiracy to manufacture, possess, and distribute methamphetamine, in violation of 21 U.S.C. §§ 846, and 841(a)(1). On May 20, 1992, Randy Glover was sentenced to 292 months imprisonment. Randy Glover's conviction and sentence were affirmed on appeal in an unpublished opinion. U.S. v. Glover, 986 F.2d 1430 (10th Cir.1993).

On April 21, 1997, Randy Glover submitted his present § 2255 motion. Glover moves this Court to vacate, set aside, or correct the sentence imposed upon him on the following grounds: (1) Amendment 439 of the Sentencing Guidelines should be applied retroactively to Glover's case, (2) the Court adopted the drug quantity contained in the presentence report which was not based on the amount of drugs actually seized, (3) the Court erred in sentencing Glover under the guideline

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applicable to D-Methamphetamine, and (4) ineffective assistance of counsel.

Prior to addressing the merits of Glover's motion, the Court notes that § 2255, as amended in April of 1996, provides for a one-year limitations period in which to file a § 2255 motion. The Court further notes that if the Court were to apply the limitations period to Glover, his motion would be time-barred. However, the Tenth Circuit has recently mandated a one-year grace period in which to allow the filing of § 2255 motions, holding that "prisoners whose convictions became final on or before April 24, 1996 must file their § 2255 motions before April 24, 1997." U.S. v. Simmonds, 1997 WL 177560 (10th Cir.1997). Since Glover's present motion was submitted prior to April 24, the motion is not time-barred under § 2255, as amended.

Typically, "§ 2255 is not available to test the legality of matters which should have been raised on appeal." U.S. v. Walling, 982 F.2d 447, 448 (10th Cir.1992). A failure to raise an issue on direct appeal acts as a bar to raising the issue in a § 2255 motion, unless Glover can show cause and actual prejudice, or can show that a fundamental miscarriage of justice will result if his claim is not addressed. U.S. v. Allen, 16 F.3d 377, 378 (10th Cir.1994). This procedural bar applies to collateral attacks on a defendant's sentence, as well as his conviction. Id. In order to evade this procedural bar, Glover relies upon the well-established exception (and now the universal claim) of ineffective assistance of counsel. "A defendant may establish cause for procedural default by showing he received ineffective assistance of counsel." U.S. v. Cox, 83 F.3d 336 (10th Cir.1996).

Glover first contends that Amendment 439 to the Sentencing Guidelines, which went into effect on November 1, 1992 and defines reasonable foreseeability, should apply here. However, Amendment 439 is not one of the enumerated amendments listed in § 1B1.10(c), and, therefore, the Court is not authorized to retroactively apply it to Glover's sentence. § 1B1.10(a). Moreover, the

Circuit specifically held that the drug quantity attributable to Glover was within the scope of and reasonably foreseeable in connection with the criminal activity in which he engaged. Hence, Glover's first point is meritless.

Glover next argues that the Court adopted the drug quantity contained in the presentence report which was not based on the amount of drugs actually seized, but was rather based on the perjured testimony of several witnesses. Glover alleges that his sentence is grounded upon the testimony of criminals who testified as to the amount of drugs attributable to Glover, and that such biased testimony was given in exchange for sentence reductions and lenient treatment. Glover claims that such testimony was not founded upon any evidence that has any indicia of reliability. Glover further points to affidavits signed by some witnesses evincing an effort to recant their testimony with respect to Glover's involvement. As one court noted, "[t]his is the not unusual situation where a defendant who pled guilty and testified as a government witness recants his trial testimony against a codefendant who was convicted. As is often the case, the recantation occurs only after the statute of limitations on perjury bars any prosecution based upon his trial testimony." U.S. v. Manfredi, 447 F.Supp. 847, 848 (S.D.N.Y. 1978). Moreover, "[r]ecantation of testimony given under oath . . . is not looked upon with favor. Indeed, such is generally looked upon with downright suspicion." U.S. v. Ahern, 612 F.2d 507, 509 (10th Cir.1980), cert. denied, 449 U.S. 1093 (1981). The Court has nevertheless reviewed these documents, but the Court does not see how such alleged recantations provide much benefit to Randy Glover; rather, the documents which Randy Glover submitted appear to primarily relate to Roy Glover's conviction, and several of them do not even purport to recant testimony personally given by the particular affiant. In any event, the Circuit specifically found that the record clearly supports this Court's finding with respect to the amount of drugs attributable to

Glover. Even recognizing the requirement that a minimal indicia of reliability must accompany evidence before it may be used in calculating the base level offense, the Circuit concluded that this Court's reliance on testimony establishing drug quantity was not clearly erroneous, especially in light of the fact that the testimony of the several witnesses was consistent. This Court remains satisfied that Glover was appropriately sentenced, and the Court further finds it improper for Glover to attempt to relitigate issues in this Court which have already been considered and rejected on appeal.

Glover next argues that the Court erred by applying the more onerous sentencing guideline based upon a conviction involving D-Methamphetamine. The same controlled substance, methamphetamine, served as the basis for Count Two, and all six defendants charged under Count Two were adjudged to have conspired to distribute the same drug. Since their convictions under Count Two, at least four of the six defendants, Randy Glover, Roy Glover, James Barnes, and Mike Youngpeter, have made motion to this Court pursuant to § 2255 attacking their sentences, alleging that the government failed to prove that D-Methamphetamine was involved in the conspiracy. At the time that these defendants were sentenced, the Guidelines treated L-Methamphetamine far less severely than D-Methamphetamine. In their respective motions, each defendant argued, inter alia, that the Court erred in sentencing them under the range applicable to D-Methamphetamine since the government failed to offer proof at the sentencing hearings that D-Methamphetamine was, in fact, involved in the conspiracy charged under Count Two.

On March 13, 1996, James Barnes filed a § 2255 motion, alleging that he was improperly sentenced under the guidelines applicable to D-Methamphetamine. On October 9, 1996, this Court entered an order denying Barnes' § 2255 motion. On October 23, 1996, Barnes filed a motion to alter or amend judgment, which the Court granted by minute order on October 31, 1996. On January

23, 1997, pursuant to U.S. v. Glover, 97 F.3d 1345 (10th Cir.1996), this Court conducted a full evidentiary hearing in an effort to determine which type of methamphetamine was actually involved in the conspiracy for which Barnes and his codefendants were convicted under Count Two. On March 24, 1997, this Court once again denied Barnes' § 2255 motion. After carefully considering the evidence presented at the hearing, this Court concluded in its March 24 order that the government "clearly established" by a preponderance of the evidence that the character of the methamphetamine involved in the conspiracy charged in Count Two was DL-Methamphetamine, and that Barnes' sentence was properly calculated based on his unlawful involvement with D-Methamphetamine.

Randy Glover's present motion asserts a substantially similar attack on his sentence, alleging that the government failed to offer the requisite proof that D-Methamphetamine was involved in the conspiracy for which he was convicted under Count Two. However, since Glover was involved in the same conspiracy as Barnes, was charged in the same Count of the same Indictment as Barnes for conspiracy to manufacture, possess and distribute the same controlled substance, and since this Court has determined after an evidentiary hearing that the type of methamphetamine involved in said conspiracy was clearly the DL type, the Court concludes that to hold another hearing on the same issue involving the same controlled substance would be redundant and non-productive. The Court notes that Rule 4(b) of the Rules Governing § 2255 Proceedings provides that, "[i]f it plainly appears from the face of the motion . . . and the prior proceedings in the case that the movant is not entitled to relief in the district court, the judge shall make an order for its summary dismissal . . . ." The evidentiary hearing held with regard to Barnes' attack on the type of methamphetamine may be considered a "prior proceeding in the case" and, thus, the Court's finding as to the type of methamphetamine rendered after the Barnes hearing may be extended to Glover, especially since the

Court found that the government "clearly established" that the type of methamphetamine which served as the basis for Count Two was DL-Methamphetamine.

The Court additionally finds that it would not be in the interest of judicial economy to hold another hearing which would yield the same result as a previous hearing on the same issue in the same case. See, Abraham v. U.S., 549 F.2d 236 (2d Cir.1977) (recognizing that in certain circumstances the court may dispense with a § 2255 hearing, but remanding to district court to determine whether codefendants' claims differed so substantially from claims filed earlier by other codefendants, who were afforded a hearing, so that a second hearing was required). The Court agrees that under recent Tenth Circuit precedent, a hearing is normally required in which the government must prove, by a preponderance of the evidence, which type of methamphetamine was involved in a particular defendant's case. However, once a full hearing has been held in which the government has had an opportunity to present its evidence and satisfy its burden, and in which an opportunity is given to fully and fairly rebut such evidence, the Court is of the opinion that the conclusions reached as a result of such a hearing should extend to similarly situated codefendants who raise substantially the same argument. That is, the Court does not believe that a separate hearing is required for each individual codefendant charged in the same Count with distributing the same drug who raises the same issue when one hearing has already been held on the precise issue and any subsequent hearing would yield the same result. In the present case, the Court is faced with motions from four codefendants, each of whom raises the same issue regarding the type of methamphetamine involved in the conspiracy charged under Count Two. A full and fair hearing was held regarding the common issue with respect to one of these codefendants, and the Court entered its findings in favor of the government, as the Court is completely satisfied that the government carried its burden with respect to the type of

methamphetamine involved in the present conspiracy. This result will not change simply because another codefendant raises the same issue and requests a hearing in order to once again force the government to relitigate an issue which has already been resolved. See, also, U.S. v. Reveron Martinez, 836 F.2d 684, 687 (1st Cir.1988) (if order and fairness are to attend the legal process, the same issue can be resolved no differently for one defendant than for his identically situated codefendants). In Sum, the Court finds that Glover's present claim regarding the type of methamphetamine does not substantially differ from the claim which was raised by Barnes and fully addressed at the January 23 evidentiary hearing. Accordingly, as the Court previously determined with respect to Barnes' § 2255, the Court finds that Glover was properly sentenced based on the D-Methamphetamine guideline.

Lastly, Glover asserts that his trial attorney rendered ineffective assistance. Glover alleges that his counsel failed to research the difference in punishment between D and L-Methamphetamine, failed to object to sentencing based on D-Methamphetamine, and failed to appeal the issues raised herein.

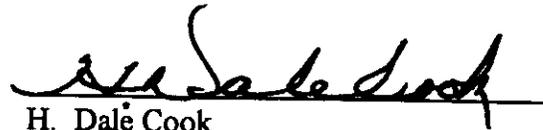
However, the issue regarding counsel's ineffectiveness for failing to research the difference in punishment between D and L-Methamphetamine is moot. As noted, the Court has already concluded that Glover was properly sentenced pursuant to D-Methamphetamine. Hence, even assuming counsel erred in failing to raise this issue at sentencing, there has been no prejudice. With respect to the other issues raised herein, it is clear that such issues were raised on appeal, and rejected by the Circuit.

Glover requests a hearing on the issues raised herein. Section 2255 provides that unless the motion and records conclusively show that Glover is entitled to no relief, the Court shall grant a

hearing. In the present case, the Court concludes that the record conclusively shows that Glover is entitled to no relief, and a hearing would simply be superfluous. Hence, Glover's request for a hearing is denied.

Accordingly, Glover's motion pursuant to § 2255 is hereby DENIED.

IT IS SO ORDERED this 17<sup>th</sup> day of May, 1997.

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

H. Dale Cook  
U.S. District Judge

**UNITED STATES DISTRICT COURT **F I L E D****  
Northern District of Oklahoma

MAY 13 1997

UNITED STATES OF AMERICA

v.

Phil Lombardi, Clerk  
U.S. DISTRICT COURT  
Case Number 96-CR-152-001-K ✓

*CS*

PRESTON STANLEY DUTTON  
Defendant.

ENTERED ON DOCKET  
DATE 5-15-97

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

The defendant, PRESTON STANLEY DUTTON, was represented by Craig Bryant.

The defendant was found guilty January 23, 1997, on Counts 1, 2, 3, 4, and 5 of the Second Superseding Indictment after a plea of not guilty. On May 1, 1997, the Court sustained the Defendant's Motion for Judgement of Acquittal as to Count 2. Accordingly, the defendant is adjudged guilty of Counts 1, 3, 4, and 5, involving the following offense(s):

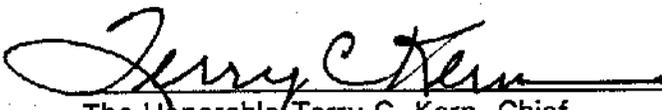
<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
21 USC 841 (a)(1) (b)(1)(C)	Distribution of Controlled Drug	6/3/96 6/18/96	1 & 5
26 USC 5841, 5845, 5861(d), 5871	Possession of an Unregistered Firearm	6/18/96	3
26 USC 5822, 5845, 5861(f), 5871	Making a Firearm	6/18/96	4

As pronounced on May 7, 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 \$ 400, for counts 1, 3, 4, and 5 of the Second 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 May, 1997.

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

Defendant's SSN: 448-54-9435  
Defendant's Date of Birth: 2/19/54  
Defendant's mailing address: 378 N.W. Kay, Claremore, OK  
Defendant's residence address: Tulsa County Jail

Defendant: Preston Stanley Davis  
Case Number: 96-CR-152-001-K

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of thirty-three (33) months as to each of Counts 1, 3, 4, and 5, all counts to run concurrently, each with the other.

The Court makes the following recommendations to the Bureau of Prisons: That the defendant be confined in a facility capable of providing 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: Preston Stanley Dutton

Case Number: 96-CR-152-001-K

**SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years as to each of Counts 1, 3, 4, and 5. All counts to run concurrently, each with the other.

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

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

**STANDARD CONDITIONS OF SUPERVISION**

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

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

Defendant: Preston Stanley Dutton  
Case Number: 96-CR-152-001-K

**STATEMENT OF REASONS**

The court adopts the factual findings and guideline application in the presentence report, EXCEPT: The Court found that the facts did not support a four point enhancement pursuant to USSG § 2K2.1(b)(5) and reduced the offense level from 22 to level 18. Further, the Court modified line No. 5 within paragraph 9 of the presentence report to read "The CI volunteered to Dutton, after the transaction, that he was going to start selling crank (methamphetamine) out of his residence and indicated that he needed the gun to protect his money and drugs."

**Guideline Range Determined by the Court:**

Total Offense Level:	18	
Criminal History Category:	I	
Imprisonment Range:	27 months to 33 months	Counts 1, 3, 4, 5
Supervised Release Range:	3 years	Counts 1 & 5
	2 years to 3 years	Counts 3 & 4
Fine Range:	\$ 6,000 to \$ 1,000,000	Counts 1, 3, 4, 5
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 FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

GINGER R. MARTIN,

Defendant,

and

PREVUE NETWORKS,

Garnishee.

CIVIL ACTION NO. 92-CR-079-C

**FILED**

MAY 14 1997

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

ENTERED ON DOCKET  
DATE MAY 15 1997

ORDER DIRECTING DISBURSAL OF GARNISHMENT MONIES

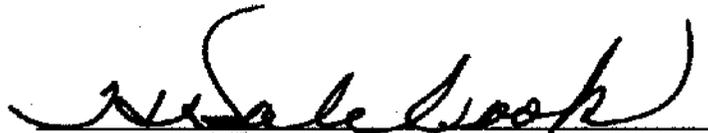
This Court having reviewed the United States' Application for Disbursal of Garnishment Monies finds:

1. Pursuant to the Writ of Continuing Garnishment entered on March 5, 1997, the Garnishee, Prevue Networks, has made garnishment payments into the Court's registry deposit fund.

2. A Garnishee Order was issued April 30, 1997, ordering the Garnishee, Prevue Networks, to pay twenty-five percent (25%) of Ginger R. Martin's income to plaintiff and continue said payment until the debt to the plaintiff is paid in full or until the garnishee, Prevue Networks, no longer has custody, possession or control of any property belonging to the debtor, Ginger R. Martin, or until further Order of the Court. Payment is to be made to the U.S. Department of Justice and submitted to the U. S. Attorney's Office.

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IT IS THEREFORE ORDERED that the United States Court Clerk is to disburse all monies paid into the Court's registry deposit fund as a result of the United States' garnishment on Ginger R. Martin.

  
United States District Judge

Submitted by:

UNITED STATES OF AMERICA

Stephen C. Lewis  
United States Attorney

  
LORETTA F. RADFORD, OBA #11158  
Assistant United States Attorney  
333 West 4th Ste 3460  
Tulsa, Oklahoma 74103  
(918) 581-7463

LFR/jmo

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

**F I L E D**

MAY 12 1997

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA, )  
)  
Plaintiff, )  
)  
vs. )  
)  
DAN LESLIE MEADOR, )  
)  
Defendant. )

No. 96-CR-113-C

ENTERED ON DOCKET  
DATE MAY 13 1997

**ORDER**

Before the Court are various motions filed by the defendant, Dan Leslie Meador, pro se, and through his trial counsel. Each of the motions are in support of defendant's request for a new trial, or alternatively for acquittal of conviction as to all, or as to Count I of the indictment which charged him with obstruction of justice. Through his trial counsel, the defendant asserts that the Court erred in not allowing him to present evidence to rebut the element of specific intent.

The defendant was found guilty by a jury verdict rendered on January 10, 1997, of one count of obstruction of justice in violation of 18 U.S.C. § 1503 and two counts of improperly communicating with a grand jury in violation of 18 U.S.C. § 1504. The defendant argues that the Court refused him the opportunity to present evidence of his purpose in filing a pleading styled "Notice of Refusal" and in communicating with the grand jury through two letters. Specifically, the defendant contends that the Court refused to allow him to present evidence of his "intent, purpose, beliefs or motives" in filing the pleading and sending the letters.

The defendant misconstrues the evidentiary ruling on this issue. At no time did the Court restrict the defendant from offering evidence as to whether he purposefully communicated with the

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grand jury with the intent to influence the proceeding. The only relevant issue of "intent" is whether the defendant intended to influence the grand jury. The philosophical reasons supporting defendant's political views are irrelevant to the issue of whether defendant intended to influence the grand jury through presentation of those views. Moreover, defendant failed to articulate what specific evidence that he would have offered to rebut the element of specific intent. A determination as to relevance of the excluded evidence cannot be made without a proffer of evidence which the defendant contends that he was denied the opportunity to present. Accordingly, defendant's motion for new trial or, in the alternative, for acquittal are denied.

Defendant's pro se pleadings are primarily a re-submission of his pretrial pleadings. For the reasons previously stated by the Court, defendant's pro se motions are also denied.

IT IS SO ORDERED this 9<sup>th</sup> day of May, 1997.



H. DALE COOK  
Senior U.S. District Judge

ENTERED ON DOCKET

DATE 5/9/97  
**FILED**

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

MAY - 8 1997

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA

v.

Case Number 96-CR-164-001-H

FREDERICK EUGENE GASSETT  
Defendant.

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

The defendant, FREDERICK EUGENE GASSETT, was represented by Robert G. Brown.

The defendant was found guilty on January 29, 1997, on Count 1 of the 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 Concluded	Count Number(s)
49 USC 32703 32709	Altering an Odometer	3/12/96	1

As pronounced on April 30, 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) 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 7th day of May, 1997.



The Honorable Sven Erik Holmes  
United States District Judge

Defendant's SSN: 447-40-0671

Defendant's Date of Birth: 7/31/41

Defendant's residence and mailing address: 7358 S. Darlington; Tulsa, OK 74136

Defendant: FREDERICK EUGENE GASSETT  
Case Number: 96-CR-164-001-H

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of six (6) months.

The Court makes the following recommendations to the Bureau of Prisons: That the Defendant not serve the term of imprisonment at a halfway house, but rather serve his incarceration in a penal institution.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons before 2:00 p.m. on May 30, 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: FREDERICK EUGENE GASSETT  
Case Number: 96-CR-164-001-H

### 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 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 abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.
- the defendant shall successfully participate in a program of treatment for gambling addiction 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.
- 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: FREDERICK EUGENE GASSETT  
Case Number: 96-CR-164-001-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 \$ 2500. 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: FREDERICK EUGENE GASSETT  
Case Number: 96-CR-164-001-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:	6	
Criminal History Category:	1	
Imprisonment Range:	0 months to 6 months	Count 1
Supervised Release Range:	2 to 3 years	Count 1
Fine Range:	\$ 500 to \$ 5,000	Count 1
Restitution:	\$ n/a	

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

*Law*

DATE 5/9/97  
**FILED**

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

MAY 8 1997

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

UNITED STATES OF AMERICA

v.

Case Number 96-CR-171-01-H

STEVEN LIND COLE  
Defendant.

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

The defendant, STEVEN LIND COLE, was represented by Craig Bryant.

On motion of the United States the court has dismissed Counts 2 through 7 of the indictment.

The defendant pleaded guilty on January 31, 1996, to Count 1 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>
8 USC 1951	Robbery Affecting Interstate Commerce	11/28/96	1

As pronounced on May 2, 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 \$ 100, 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 7<sup>th</sup> day of MAY, 1997.



The Honorable Sven Erik Holmes  
United States District Judge

Defendant's SSN: 448-66-7057

Defendant's Date of Birth: 7/22/59

Defendant's residence and mailing address: c/o U.S. Marshal/Bureau of Prisons

Defendant: STEVEN LIND COLE  
Case Number: 96-CR-171-01-H

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 128 months.

The Court makes the following recommendations to the Bureau of Prisons: The court recommends that the Bureau of Prisons designate Cole's place of confinement where he will be offered the opportunity to participate in an Intensive Drug Treatment Program. The court recommended that the Bureau of Prisons designate Cole's place of confinement in an institution outside of the Bureau of Prisons' South Central Region. In addition, the court ordered the U.S. Marshals Service to transport and confine Cole in such a manner that he will avoid placement in the Federal Transfer Center in Oklahoma City, Oklahoma, while in route to the facility designated as his place of confinement.

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: STEVEN LIND COLE

Case Number: 96-CR-171-01-H

**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 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: STEVEN LIND COLE  
Case Number: 96-CR-171-01-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 \$ 2,500. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid during the term of supervised release.

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

Defendant: STEVEN LIND COLE  
Case Number: 96-CR-171-01-H

**RESTITUTION AND FORFEITURE**

**RESTITUTION**

The defendant shall make restitution in the total amount of \$82.73.

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>
Git-N-Go, Inc. ATTN: Rick Whitman, Loss Prevention 8316 East 73rd Street Tulsa OK 74133	\$82.73

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: STEVEN LIND COLE  
Case Number: 96-CR-171-01-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:	25
Criminal History Category:	VI
Imprisonment Range:	110 months to 137 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 10,000 to \$ 100,000
Restitution:	\$ 82.73

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 reasons: A sentence in the middle of the applicable range is appropriate because of the defendant's criminal record and the serious nature of the offense.

DATE 5/9/97

UNITED STATES DISTRICT COURT  
Northern District of Oklahoma

**FILED**

MAY 8 1997

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

UNITED STATES OF AMERICA

v.

Case Number 96-CR-172-001-H

STRAP SILVER DAVIS  
Defendant.

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

The defendant, STRAP SILVER DAVIS, was represented by Mr. Stephen J. Knorr.

On motion of the United States the court has dismissed Counts 2 and 3 of the Indictment.

The defendant pleaded guilty on January 31, 1997, to Count 1 of the Indictment. 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)
8 USC 1708	Theft or Receipt of Stolen Mail Matter	11/19/96	1

As pronounced on May 2, 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 \$ 100, 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 7<sup>th</sup> day of May, 1997.



The Honorable Sven Erik Holmes  
United States District Judge

Defendant's SSN: 541-70-9385

Defendant's Date of Birth: 6/20/53

Defendant's residence and mailing address: 6333 E. Skelly Drive; Tulsa, OK 74135

B

Defendant: STRAP SILVER DAVIS  
Case Number: 96-CR-172-001-H

**IMPRISONMENT**

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

The Court makes the following recommendations to the Bureau of Prisons: 1) That the Bureau of Prisons designate the Freedom Ranch halfway house as the place of confinement. 2) That the Bureau of Prisons designate a facility that provides substance abuse treatment while defendant is in custody.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons before 12:00 p.m. on July 1, 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: STRAP SILVER DAVIS  
 Case Number: 96-CR-172-001-H

### 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 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 be placed on home detention to include electronic monitoring at the discretion of the U. S. Probation Office for a period of five (5) months, to commence within 72 hours of release from confinement. During this time, the defendant shall remain at place of residence except for employment and other activities approved in advance by the probation office. The defendant shall maintain a telephone at place of residence without any special services, modems, answering machines, or cordless telephones for the above period. The defendant shall wear an electronic device and shall observe the rules specified by the Probation Office. The entire cost of this program shall be paid by the defendant.
6. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.
7. The defendant 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: STRAP SILVER DAVIS  
Case Number: 96-CR-172-001-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 \$ 3,000. 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: STRAP SILVER DAVIS  
Case Number: 96-CR-172-001-H

**RESTITUTION AND FORFEITURE**

**RESTITUTION**

The defendant shall make restitution in the total amount of \$2,833.22 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>
State Bank & Trust 502 S. Main Mall Tulsa OK 74103 ATTN: Keith Parsons	\$665.00
Reasons Food Market ATTN: Gayle 5616 W. Skelly Drive Tulsa OK 74107	\$1,698.27
Boatmen's Bank 5950 E. Admiral Place Tulsa OK 74115 ATTN: Leslie Mayes, reference High Tech signs	\$469.95

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: STRAP SILVER DAVIS  
Case Number: 96-CR-172-001-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:	12
Criminal History Category:	I
Imprisonment Range:	10 months to 16 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 3,000 to \$ 30,000
Restitution:	\$ 2,833.22

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.

*170*

**F I L E D**

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

MAY 2 1997 *PLW*

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA, )  
)  
Plaintiff, )  
)  
vs. )  
)  
LEROY MERRITT, )  
)  
Defendant. )

No. 91-CR-39-C ✓

ENTERED ON DOCKET  
DATE MAY 05 1997

**ORDER**

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

Merritt was convicted on September 18, 1991, for possession of a firearm after former conviction of a felony, in violation of 18 U.S.C. § 922(g)(1). On December 9, 1991, Merritt was sentenced to fifteen years imprisonment, pursuant to 18 U.S.C. § 924(e)(1). Merritt's conviction and sentence were affirmed on appeal. U.S. v. Merritt, 986 F.2d 1430 (10th Cir.1993). On April 22, 1997, Merritt submitted the present motion pursuant to 28 U.S.C. § 2255, alleging that he was improperly sentenced under § 924(e)(1).

Prior to addressing the merits of Merritt's motion, the Court notes that § 2255, as amended in April of 1996, provides for a one-year limitations period in which to file a § 2255 motion. The Court further notes that if the Court were to apply the limitations period to Merritt, his motion would be time-barred. However, the Tenth Circuit has recently mandated a one-year grace period in which to allow the filing of § 2255 motions, holding that "prisoners whose convictions became final on or before April 24, 1996 must file their § 2255 motions before April 24, 1997." U.S. v. Simmonds,

1997 WL 177560 (10th Cir.1997). Since Merritt's present motion was submitted prior to April 24, the motion is not time-barred under § 2255, as amended.

Typically, "§ 2255 is not available to test the legality of matters which should have been raised on appeal." U.S. v. Walling, 982 F.2d 447, 448 (10th Cir.1992). A failure to raise an issue on direct appeal acts as a bar to raising the issue in a § 2255 motion, unless Merritt can show cause and actual prejudice, or can show that a fundamental miscarriage of justice will result if his claim is not addressed. U.S. v. Allen, 16 F.3d 377, 378 (10th Cir.1994). This procedural bar applies to collateral attacks on a defendant's sentence, as well as his conviction. Id. In order to evade this procedural bar, Merritt relies upon the well-established exception (and now the universal claim) of ineffective assistance of counsel. "A defendant may establish cause for procedural default by showing he received ineffective assistance of counsel." U.S. v. Cox, 83 F.3d 336 (10th Cir.1996). Merritt alleges that his counsel failed to challenge his sentence at sentencing or on appeal. Merritt contends that since he did not have three previous convictions for a violent felony or a serious drug offense, he was improperly sentenced to the minimum statutory term of fifteen years contained in § 924(e)(1).

Section 924(e)(1) provides, in part, that in the case of a person who violates 18 U.S.C. § 922(g) and has three previous convictions by any court for a violent felony or a serious drug offense, committed on occasions different from one another, such person shall be imprisoned not less than fifteen years. The term "violent felony" means any crime punishable by imprisonment for a term in excess of one year that has as an element the use, attempted use, or threatened use of physical force against the person of another. 18 U.S.C. § 924(e)(2)(B).

Upon examining the record, the Court is satisfied that Merritt was properly sentenced pursuant to § 924(e)(1). The presentence report clearly indicates that Merritt has at least three

previous convictions for a violent felony, as that term is defined in § 924(e)(2)(B), and that these violent acts were committed on occasions different from one another. Moreover, “[f]ailure to object to a fact in a presentence report, or failure to object at the hearing, acts as an admission of fact.” U.S. v. Deninno, 29 F.3d 572, 580 (10th Cir.1994), cert. denied, 115 S.Ct. 1117 (1995).

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

IT IS SO ORDERED this 1st day of May, 1997.



H. DALE COOK  
United States District Judge

UNITED STATES DISTRICT COURT  
Northern District of Oklahoma

UNITED STATES OF AMERICA

v.

Case Number 96-CR-135-01-H

PEGGY JAYNE WILLIAMS  
Defendant.

FILED

APR 28 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, PEGGY JAYNE WILLIAMS, was represented by Roy W. Byars.

The defendant pleaded guilty on November 26, 1996, to Count 1 of the Information. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 371	Conspiracy to Conduct Illegal Gambling Business	9/14/95	1

As pronounced on April 17, 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, 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 28<sup>TH</sup> day of APRIL, 1997.



The Honorable Sven Erik Holmes  
United States District Judge

Defendant's SSN: 499-64-3186  
Defendant's Date of Birth: 8/18/56  
Defendant's residence and mailing address: 707 N. Elm St.; Miami, OK 74354

Defendant: PEGGY JAYNE WILLIAMS  
 Case Number: 96-CR-135-01-H

### PROBATION

The defendant is hereby placed on probation for a term of three (3) years.

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 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 two (2) months, to commence within seven (7) days 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 U.S. Probation Office.
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: PEGGY JAYNE WILLIAMS  
Case Number: 96-CR-135-01-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 \$ 250. 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: PEGGY JAYNE WILLIAMS  
Case Number: 96-CR-135-01-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:	13
Criminal History Category:	I
Imprisonment Range:	12 months to 18 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 3,000 to \$ 30,000
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): The sentence departs from the guideline range: upon motion of the government, as a result of defendant's substantial assistance.

*lth*

5/1/97

UNITED STATES DISTRICT COURT  
Northern District of Oklahoma

UNITED STATES OF AMERICA

v.

Case Number 96-CR-029-001-H

WARREN D. OSBORN  
Defendant.

**FILED**  
APR 29 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, WARREN D. OSBORN, was represented by Michael G. McGuire.

The defendant pleaded guilty on April 5, 1996, to count(s) One and Two 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 USC 371	Conspiracy	9-14-95	1
18 USC 1955 & 2	Illegal Gambling, Aiding and Abetting	9-14-96	2

As pronounced on April 17, 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 \$ 100, for count(s) One and Two 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 29<sup>TH</sup> day of APRIL, 1997.

  
The Honorable Sven Erik Holmes  
United States District Judge

Defendant's SSN: 551-58-0975

Defendant's Date of Birth: 01-20-44

Defendant's residence and mailing address: 409 North Cherry, Commerce, OK 74339

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Defendant: WARREN D. OSBORN

Case Number: 96-CR-029-001-H

**PROBATION**

The defendant is hereby placed on probation for a term of three years as to each of Counts One and Two to run concurrently each to the other.

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 six (6) months, to commence within seven (7) days 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.

**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: WARREN D. OSBORN  
Case Number: 96-CR-029-001-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 \$ 2,000 as to Count One. 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: WARREN D. OSBORN  
Case Number: 96-CR-029-001-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:	II	
Imprisonment Range:	21 months to 27 months	Counts One & Two
Supervised Release Range:	2 to 3 years	Counts One & Two
Fine Range:	\$ 4,000 to \$ 40,000	Counts One & Two
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.

*PP*

DATE 5/1/97

UNITED STATES DISTRICT COURT  
Northern District of Oklahoma

UNITED STATES OF AMERICA

v.

Case Number 95-CR-141-02-H

JUDY HOGAN  
Defendant.

FILED  
MAY 29 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, JUDY HOGAN, was represented by Allen Smallwood.

The defendant pleaded guilty on April 14, 1996, to count(s) 1 & 2 of the Indictment. 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 371	Conspiracy	9/14/95	1
8 USC 1955 & 2	Illegal Gambling and Causing A Criminal Act	9/14/95	2

As pronounced on April 17, 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 \$ 100, for count(s) 1 & 2, 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 29<sup>TH</sup> day of APRIL, 1997.

  
The Honorable Sven Erik Holmes  
United States District Judge

Defendant's SSN: 447-36-8085  
Defendant's Date of Birth: 10-10-39  
Defendant's residence and mailing address: 1915 "K" St. S.W., Miami, OK 74354

Defendant: JUDY HOGAN  
 Case Number: 95-CR-141-02-H

### PROBATION

The defendant is hereby placed on probation for a term of three (3) years as to Counts 1 & 2, said counts to run concurrently, each with the other.

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 two (2) months, to commence within seven (7) days 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.
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: JUDY HOGAN  
Case Number: 95-CR-141-02-H

**FINE**

The defendant shall pay a fine of \$ 4,000 as to Count 1. 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: JUDY HOGAN  
Case Number: 95-CR-141-02-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:	I	
Imprisonment Range:	18 months to 24 months	Counts 1 & 2
Supervised Release Range:	2 to 3 years	Counts 1 & 2
Fine Range:	\$ 4,000 to \$ 40,000	Counts 1 & 2
Restitution:	\$ N/A	

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.

*AGA*