

UNITED STATES DISTRICT COURT  
Northern District of Oklahoma

FILED

JUL 23 1997 *rm*

UNITED STATES OF AMERICA

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

v.

Case Number 96-CR-161-002-BU

FREDDIE LEONARD FEAGANS, IV  
Defendant.

ENTERED ON DOCKET

DATE 7-31-97

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

The defendant, FREDDIE LEONARD FEAGANS, IV, was represented by Martin G. Hart.

On motion of the United States the court has dismissed Counts 26, 27, 28, 31, 57, 58, 59, and 62 of the Indictment.

The defendant pleaded guilty March 10, 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)
18 USC 371	Conspiracy to Possess a Forged Security and Commit Bank Fraud	6/17/94	1

As pronounced on July 1, 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 23<sup>rd</sup> day of July, 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



The Honorable Michael Bunge, Chief  
United States District Judge

By [Signature]  
Deputy

Defendant's SSN: 565-11-9674

Defendant's Date of Birth: 9/5/70

Defendant's residence and mailing address: 1710 N. Imperial Terrace Lane, Unit B, Anaheim Hills CA 92807

Defendant: FREDDIE LEONARD FEAGANS, IV  
Case Number: 96-CR-161-002-BU

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 12 months.

The Court makes the following recommendations to the Bureau of Prisons: that the defendant receive intensive and comprehensive drug treatment while in custody.

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: FREDDIE LEONARD FEAGANS, IV  
Case Number: 96-CR-161-002-BU

### 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.
6. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

### STANDARD CONDITIONS OF SUPERVISION

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

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

Defendant: FREDDIE LEONARD FEAGANS, IV  
 Case Number: 96-CR-161-002-BU

**RESTITUTION AND FORFEITURE**

**RESTITUTION**

The defendant shall make restitution in the total amount of \$5,000, as to 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>
Bank of Oklahoma Attn: Lowell Faulkenberry PO Box 2300 Tulsa OK 74192	\$2,637.76
Bank of America Attn: Joy Savino Investigation Services Unit #3259 1455 Market Street, 10th Floor San Francisco CA 94103	\$1,032.82
PNC Bank Attn: Charlotte Fletcher Security Services Citizens Plaza Louisville Kentucky 40296	\$1,329.42

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, except no further payment shall be required after the sum of the amounts actually paid by all defendants has fully covered the compensable injuries.

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

Defendant: FREDDIE LEONARD FEAGANS, IV  
Case Number: 96-CR-161-002-BU

**STATEMENT OF REASONS**

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

**Guideline Range Determined by the Court:**

Total Offense Level:	10
Criminal History Category:	III
Imprisonment Range:	10 months to 16 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 2,000 to \$ 20,000
Restitution:	\$ 25,043.07

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

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

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

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

**FILED**

JUL 28 1997

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA, )  
)  
Plaintiff, )  
)  
vs. )  
)  
DAVID WAYNE COLE, )  
)  
Defendant. )

No. 91-CR-55-B

96CV1050B

ENTERED ON DOCKET

DATE JUL 30 1997

**ORDER**

Before the Court are the Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. §2255 (Docket No. 32) and the Motion Requesting Assistance of Counsel (Docket No. 34) filed by defendant David Wayne Cole ("Cole"). Cole argues that his conviction for using and carrying a firearm during a drug trafficking offense, in violation of 18 U.S.C. §924(c), should be vacated in light of the United States Supreme Court's ruling in *Bailey v. United States*, 116 S.Ct. 501, 506 (1995).

In the case of an indigent plaintiff, the Court has discretion to appoint an attorney to represent the indigent plaintiff where, under the totality of circumstances of the case, the denial of counsel would result in a fundamentally unfair proceeding. *McCarthy v. Weinberg*, 753 F.2d 836, 839-40 (10th Cir. 1985); *Swazo v. Wyoming Dep't of Corrections State Penitentiary Warden*, 23 F.3d 332, 333 (10th Cir. 1994). The Tenth Circuit Court of Appeals recently reiterated the factors to be considered in deciding whether to appoint counsel: "the merits of the litigant's claims, the nature of the factual issues raised in the claims, the litigant's ability to present his claims, and the complexity of the legal issues raised by the claims." *Rucks v. Boergermann*, 57 F.3d 978, 979 (10th Cir. 1995) (quoting *Williams v. Meese*, 926 F.2d 994, 996 (10th Cir.1991)). The issue in this motion is not

45

complex. *Id.* All the facts necessary to adjudicate Cole's §924(c) challenge are set forth in the trial transcript, which the Court has reviewed. Further, finding the record sufficient, the Court concludes that an evidentiary hearing is not required. *Swazo*, 23 F.3d at 333 (right to counsel in §2255 proceeding when evidentiary hearing is required). Accordingly, the Court denies Cole's request for assistance of counsel in the prosecution of his §2255 motion. (Docket No. 34).

On June 27, 1991, Cole was convicted of three counts of a Superseding Indictment after a jury trial: Counts I - bank robbery in violation of 18 U.S.C. §§2113(a) and (d); Count II - using and carrying a firearm during and in relation to the bank robbery in violation of 18 U.S.C. §924(c)(1); and Count III - possession of a firearm after a former felony conviction in violation of 18 U.S.C. §§922(g) and 924(a)(2).

The contested count, Count II, specifically charged that

On or about the 26th of April, 1991, in the Northern District of Oklahoma, the defendant DAVID WAYNE COLE, knowingly **used and carried** a firearm, to wit: a handgun, during and in relation to a crime of violence for which he may be prosecuted in a court of the United States, to wit: Bank Robbery, in violation of Title 18 United States Code, Section 924(c)(1).

(emphasis added). The Court instructed the jury on the pre-*Bailey* definition of "Uses or Carries a Firearm"; to wit,

#### **Uses or Carries a Firearm - Defined**

The phrase "Uses or Carries a Firearm" means having a firearm, or firearms, available to assist or aid in the commission of the crime charged in Count One of the Indictment.

In determining whether the defendant used or carried a firearm, you may consider all of the factors received in evidence in the case including the nature of the underlying crime of violence alleged, the proximity of the defendant to the firearm in question, the usefulness of the firearm to the crime alleged, and the circumstances surrounding the presence of the firearm.

The government is not required to show that the defendant actually displayed or fired the weapon. The government is required, however, to prove beyond a reasonable doubt that the firearm was in the defendant's possession or

under the defendant's control at the time a crime of violence was committed.<sup>1</sup>

This instruction, though correct at the time of trial, is in error after *Bailey* in which the Supreme Court defined "use" of a firearm as "active employment" of a firearm. *Id.* at 506. *Bailey* requires the government to prove the defendant actively employed a firearm in the commission of a violent crime; *i.e.*, "brandishing, displaying, bartering, striking with, and most obviously, firing or attempting to fire, a firearm." *Id.* at 508.

Because Cole was charged under both the "use" and "carry" prongs of §924(c)(1), the Court must determine whether either prong may serve as a basis for upholding his conviction. *Id.* at 509; *United States v. Richardson*, 86 F.3d 1537, 1546-47 (10th Cir. 1996). The evidence that Cole "used" a firearm during the bank robbery consists of the following: when Cole approached the teller, Zina Ernstsén, he told her he had a gun while patting the area around his waist line, and demanding all the "fifties, hundreds and twenties" in her bank drawer. *Trial transcript, p. 4-5.* According to the prescriptions of *Bailey*, the Supreme Court noted that "even an offender's reference to a firearm in his possession could satisfy §924(c)(1)," if it is a reference "calculated to bring about a change in the circumstances of the predicate offense." *Id.* at 508. Although Cole did not "brandish" or "display" any firearm during the robbery, he did verbally and demonstrably refer to a firearm he was carrying under his shirt to effect the robbery. The Court believes that such would fall within the "active employment" definition of "use" set forth in *Bailey*.

However, whether or not the evidence is sufficient to support Cole's conviction under the

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<sup>1</sup>The jury was given a duplicate instruction on "Uses and Carries a Firearm -- Defined" which added the following paragraph defining "firearm":

The term "firearm" means any weapon which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; or any destructive device.

Although the definition of firearm is correct, the rest of the instruction is no longer valid after *Bailey*.

"use" prong of §924(c), it is clearly sufficient to support his conviction under the "carry" prong. To prove that Cole carried a firearm under §924(c), the government had to establish that he possessed a firearm through dominion and control and transported it during and in relation to the bank robbery. The evidence adduced at trial in support of Cole's carrying a firearm during the bank robbery includes (1) the victim teller Zina Ernstsens's testimony that Cole told her he had a gun while patting his waistline, *Trial transcript, pp. 4-5, 13, 17-18*, and (2) the testimony of Sidney Roan who observed Cole running away from the bank and down the street holding a bundle of money in one hand ("that smoke was coming out of") and a dark blue automatic .45 caliber or 9 mm gun in the other, *Trial transcript, pp. 40-56*. Based on this evidence, a reasonable jury could conclude that Cole was carrying a gun when in the bank committing the robbery and when running away from the bank. This in fact is what the Tenth Circuit concluded in affirming the conviction on appeal:

The teller testified that the robber was this defendant and identified him in court. She said he told her twice that he had a gun, and patted his stomach area as he said it. Even though all three employees identified the defendant, none actually saw a gun. The first and only person to see the gun was Roan, who testified that he saw the gun in the defendant's hand as he fled the bank. Roan stated that the gun was a blue automatic pistol, either .45 caliber or 9mm. Roan also testified that he owned a handgun. The jury was not unreasonable in believing that Roan saw a gun in the defendant's hand as he left the bank after the robbery.

The defendant contends that Roan's testimony must be discounted because the defendant had too much money to carry it all in one hand, hence he would not have had a hand free to carry the gun. However, the jury was shown the surveillance film which clearly showed the defendant reach for the door with an empty hand as he left the bank. Hence, Roan's testimony cannot be discounted by this court.

The jury was not unreasonable in believing that Roan saw a gun in the defendant's hand as he left the bank after the robbery. The jury was, then, reasonably able to find that the defendant must have had the gun with him during the robbery. The conviction appealed from is affirmed.

*United States v. Cole*, 1992 WL 139330 at \*1 and \*2 (10th Cir.1992). The Court thus finds that there was sufficient evidence for a reasonable jury to conclude that Cole carried a firearm during and in relation to the bank robbery. *Richardson*, 86 F.3d at 1549.

In accordance with the above findings, Cole's motion to vacate his conviction under §924(c)(1) is denied.

SO ORDERED THIS 28<sup>th</sup> day of July, 1997.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
Northern District of Oklahoma

ENTERED ON DOCKET

UNITED STATES OF AMERICA

DATE 7-29-97

v.

Case Number 97-CR-07-01-K

CONSTANCE L. ANDERSON  
Defendant.

**FILED**

JUL 29 1997

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

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

The defendant, CONSTANCE L. ANDERSON, was represented by Stephen B. Riley.

The defendant pleaded guilty April 8, 1997, to Count 1 of the Information. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

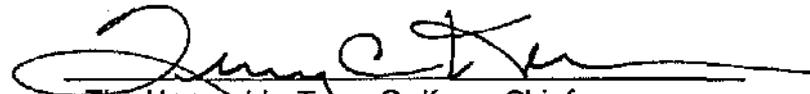
<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 1344(1)	Bank Fraud	10/30/94	1

As pronounced on July 17, 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 24 day of July, 1997.

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

Defendant's SSN: 440-40-6218

Defendant's Date of Birth: 12/2/55

Defendant's residence and mailing address: 222 Cedar Street, Neptune Beach FL 32266

Defendant: CONSTANCE L. ANDERSON  
Case Number: 97-CR-07-01-K

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 0 months.

**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: CONSTANCE L. ANDERSON  
Case Number: 97-CR-07-01-K

### 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.
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 United States 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 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: CONSTANCE L. ANDERSON  
Case Number: 97-CR-07-01-K

**RESTITUTION AND FORFEITURE**

**RESTITUTION**

The defendant shall make restitution in the total amount of \$15,000, as to 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>
Bank of Oklahoma Attn: Kyle Hart PO Box 2300 Tulsa OK 74192	\$15,000

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 supervised release.

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

Defendant: CONSTANCE L. ANDERSON  
Case Number: 97-CR-07-01-K

**STATEMENT OF REASONS**

The court adopts the factual findings and guideline application in the presentence report, except: to reduce loss amount to between \$20,000 and \$40,000. The Court found that the amount of loss was overstated, lowering loss amount to more than \$20,000 but not more than \$40,000.

**Guideline Range Determined by the Court:**

Total Offense Level:	8
Criminal History Category:	I
Imprisonment Range:	0 months to 6 months
Supervised Release Range:	3 to 5 years
Fine Range:	\$ 1,000 to \$ 1,000,000
Restitution:	\$ 52,655.25

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

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

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

UNITED STATES DISTRICT COURT  
Northern District of Oklahoma

UNITED STATES OF AMERICA

v.

Case Number 96-CR-151-004-H

ALAN DALE NUCKOLLS  
Defendant.

ENTERED ON DOCKET

DATE JUL 25 1997

FILED

JUL 23 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, ALAN DALE NUCKOLLS, was represented by John C. Harris.

On motion of the United States the court has dismissed Counts 2 & 13 of the Second Superseding Indictment.

The defendant pleaded guilty April 10, 1997, to Count 1 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 924(c)	Possession of Firearm During the Commission of a Drug Trafficking Crime	1/96	1

As pronounced on July 10, 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 23<sup>rd</sup> day of July, 1997.



The Honorable Sven Erik Holmes  
United States District Judge

Defendant's SSN: 327-58-5083  
Defendant's Date of Birth: 2/25/62  
Defendant's residence and mailing address: 2203 E. Mohawk Blvd., Tulsa OK 74110

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

204

Defendant: ALAN DALE NUCKOLLS  
Case Number: 96-CR-151-004-H

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 60 months, to run consecutively to any other term of imprisonment.

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: ALAN DALE NUCKOLLS  
Case Number: 96-CR-151-004-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: ALAN DALE NUCKOLLS  
Case Number: 96-CR-151-004-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:	n/a
Criminal History Category:	n/a
Imprisonment Range:	60 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 0 to \$ 250,000
Restitution:	\$ n/a

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

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

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

UNITED STATES OF AMERICA

v.

Case Number 96-CR-163-001-H ✓

MARIO RUVALCABA-ZAMBRANO  
Defendant.

ENTERED ON DOCKET  
JUL 25 1997  
DATE \_\_\_\_\_

**FILED**

JUL 23 1997

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

**AMENDED JUDGMENT IN A CRIMINAL CASE  
(For Offenses Committed On or After November 1, 1987)  
Correction of Clerical Mistake (Fed. R. Crim. P. 36)**

The defendant, MARIO RUVALCABA-ZAMBRANO, was represented by Craig Bryant.

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

The defendant pleaded guilty February 19, 1997, to Counts 1 & 2 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 371	Conspiracy	10/3/96	1
26 USC 7206(2)	Fraud & False Statements	4/15/96	2

As pronounced on June 27, 1997, the defendant is sentenced as provided in pages 2 through 6 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

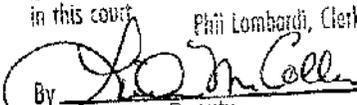
It is ordered that the defendant shall pay to the United States a special assessment of \$ 200, for Counts 1 & 2 of the Information, which shall be due immediately.

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

Signed this the 23<sup>rd</sup> day of July, 1997.

  
\_\_\_\_\_  
The Honorable Sven Erik Holmes  
United States District Judge

Defendant's SSN: 559-47-0544  
Defendant's Date of Birth: 3/7/56  
Defendant's residence and mailing address: 7471 E. 48 Street, #83-1, Tulsa OK

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

Defendant: MARIO RUVALCABA-ZAMBRANO  
Case Number: 96-CR-163-001-H

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 15 months on Counts 1 and 2, said counts to run concurrently, each with the other.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons before 9:00 a.m. on July 27, 1997.

**RETURN**

I have executed this Judgment as follows:

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

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

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

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

Defendant: MARIO RUVALCABA-ZAMBRANO  
Case Number: 96-CR-163-001-H

### SUPERVISED RELEASE

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

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

1. The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm or destructive device.
4. The defendant shall 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.
6. The defendant shall comply with all laws and regulations of the Internal Revenue Service.

### 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: MARIO RUVALCABA-ZAMBRANO  
Case Number: 96-CR-163-001-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, as to Count 1. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid during the term of supervised release.

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

This amount is the total of the fines imposed on individual counts, as follows: \$3,000 on Count 1.

Defendant: MARIO RUVALCABA-ZAMBRANO  
Case Number: 96-CR-163-001-H

**RESTITUTION AND FORFEITURE**

**RESTITUTION**

The defendant shall make restitution in Count 2 in the total amount of \$4,370.

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

<b><u>Name of Payee</u></b>	<b><u>Amount of Restitution</u></b>
Internal Revenue Service 3651 South Highway I-35 Stop 9002, AUSC Austin, TX 78767	4,370

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: MARIO RUVALCABA-ZAMBRANO  
Case Number: 96-CR-163-001-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:	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:	\$ 4,370

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

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

UNITED STATES OF AMERICA

v.

Case Number 96-CR-146-01-H ✓

DAMONN SANDERS a/k/a SPIDER  
Defendant.

ENTERED ON DOCKET

DATE Jul 25 1997

**FILED**

JUL 23 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, DAMONN SANDERS a/k/a SPIDER, was represented by James O. Goodwin.

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

The defendant pleaded guilty January 23, 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)
1 USC 841(a)(1)	Distribution of Cocaine Base	9/5/96	1

As pronounced on July 18, 1997, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 100, for count(s) 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 23<sup>rd</sup> day of July, 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 Keith M. Collins  
Deputy

Sven Erik Holmes  
The Honorable Sven Erik Holmes  
United States District Judge

Defendant's SSN: 446-74-2942

Defendant's Date of Birth: 5/23/77

Defendant's residence and mailing address: 2421 N. Yorktown Ave, Tulsa OK 74068

71

Defendant: DAMONN SANDERS a/k/a SPIDER  
Case Number: 96-CR-146-01-H

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 18 months.

The Court makes the following recommendations to the Bureau of Prisons: that the defendant be placed in the next available shock incarceration program to serve this term.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons before 10:00 a.m. on august 25, 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: DAMONN SANDERS a/k/a SPIDER  
Case Number: 96-CR-146-01-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: DAMONN SANDERS a/k/a SPIDER  
Case Number: 96-CR-146-01-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 \$ 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: DAMONN SANDERS a/k/a SPIDER  
Case Number: 96-CR-146-01-H

**STATEMENT OF REASONS**

The court adopts the factual findings and guideline application in the presentence report except USSG §2D1.1(b)(1) is not applicable. Therefore the total offense level is reduced two (2) levels to offense level 11.

**Guideline Range Determined by the Court:**

Total Offense Level:	11
Criminal History Category:	II
Imprisonment Range:	15 months to 21 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 is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

UNITED STATES DISTRICT COURT  
Northern District of Oklahoma

UNITED STATES OF AMERICA

v.

Case Number 97-CR-003-001

MARY LEE DAVID  
Defendant.

ENTERED ON DOCKET

DATE JUL 24 1997

FILED

JUL 23 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, MARY LEE DAVID, was represented by Craig Bryant.

The defendant pleaded guilty March 14, 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)
18 USC 656	Misapplication of Financial Institution Funds	04/30/95	1

As pronounced on July 16, 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 23<sup>RD</sup> day of July, 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 Kim M. Collins  
Deputy

Sven Erik Holmes  
The Honorable Sven Erik Holmes  
United States District Judge

Defendant's SSN: 496-52-7045

Defendant's Date of Birth: 07/23/46

Defendant's residence and mailing address: 14th & Washington, PO Box 332, Sarcoxie MO 64862

4

Defendant: MARY LEE DAVID  
Case Number: 97-CR-003-001-H

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 12 months and one (1) day.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons before 12:00 p.m. on August 15, 1997.

**RETURN**

I have executed this Judgment as follows:

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

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

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

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

Defendant: MARY LEE DAVID  
Case Number: 97-CR-003-001-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 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: MARY LEE DAVID  
Case Number: 97-CR-003-001-H

**RESTITUTION AND FORFEITURE**

**RESTITUTION**

The defendant shall make restitution in the total amount of \$12,000, as to 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>
Citizens Bank of Tulsa 2500 W. Edison Tulsa OK 74127	\$12,000

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: MARY LEE DAVID  
Case Number: 97-CR-003-001-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:	13
Criminal History Category:	I
Imprisonment Range:	12 months to 18 months
Supervised Release Range:	3 to 5 years
Fine Range:	\$ 3,000 to \$ 1,000,000
Restitution:	\$ 42,842

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

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

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

*LMT*

UNITED STATES DISTRICT COURT  
Northern District of Oklahoma

**FILED**  
JUL 23 1997  
Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA

v.

Case Number 97-CR-012-001-K

*EOD: 7-23-97*

MARK ALLEN DUNLAP  
Defendant.

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

The defendant, MARK ALLEN DUNLAP, was represented by Craig Bryant.

On motion of the United States the court has dismissed Counts 1, 2, 3, 5, 7, through 15 of the Indictment.

The defendant pleaded guilty April 14, 1997, to Counts 4 & 6 of the indictment. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

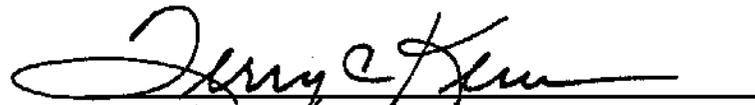
<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 924(c)	Possession of a Firearm During A Crime of Violence	1/12/97	4
18 USC 924(c)	Possession of a Firearm During A Crime of Violence	1/14/97	6

As pronounced on July 14, 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 \$ 200, for count(s) 4 & 6 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 18 day of July, 1997.

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

Defendant's SSN: 447-74-3129  
Defendant's Date of Birth: 3/22/74  
Defendant's residence and mailing address: 13042 E. 16th, Tulsa OK 74554

Defendant: MARK ALLEN DUNLAP  
Case Number: 97-CR-012-001-K

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 300 months. This term consists of 60 months as to Count 4, and 240 months as to Count 6, to run consecutively to each other and consecutively to any other term of imprisonment, for a total sentence as to both counts of 300 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: MARK ALLEN DUNLAP  
Case Number: 97-CR-012-001-K

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of five (5) years. This term consists of three (3) years as to Count 4, and two (2) years as to Count 6, to run consecutively, 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: MARK ALLEN DUNLAP  
Case Number: 97-CR-012-001-K

**FINE**

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

The defendant shall pay a fine of \$ 1,000 as to Count 4. 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: MARK ALLEN DUNLAP  
Case Number: 97-CR-012-001-K

**RESTITUTION AND FORFEITURE**  
**RESTITUTION**

The defendant shall make restitution in the total amount of \$9,726.02.

This amount is the total of the restitution imposed on individual counts, as follows: \$329.09 on Count 4, and \$9,396.93 on Count 6.

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

<u>Name of Payee</u>	<u>Amount of Restitution</u>
Mary Frederick 8135 E. 16 Street Tulsa OK 74112	\$1,500.00 as to Ct. 6
All State Insurance Co. Attn: Nick Degrosso Claim # 4854217548 5800 E. Skelly Drive Tulsa OK 74135	\$6,734.17 as to Ct. 6
Pagers-R-U's Attn: Maurice Lilley 1209 S. Memorial Tulsa OK 74112	\$212.10 as to Ct. 6
Mary Stufflebeam 1317 W. Los Angeles Street Broken Arrow OK 74011	\$260.00 as to Ct. 6
Lucky Stop Food Store Attn: Munzoor Mian 8106 E. 25th Place Tulsa OK 74129	\$289.00 as to Ct. 6
Subway Attn: George Charlton 7004-A East Admiral Place Tulsa OK 74112	\$80.00 as to Ct. 6
Subway Attn: Dave D'Arkangelo 7120 S. 92 E. Ave. #2106 Tulsa OK 74133	\$321.66 as to Ct. 6
Subway Attn: Robbie Adams 2501 S. Harvard Ave. Tulsa OK 74114	\$329.09 as to Ct. 4

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: MARK ALLEN DUNLAP  
Case Number: 97-CR-012-001-K

**STATEMENT OF REASONS**

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

**Guideline Range Determined by the Court:**

Total Offense Level:	n/a	
Criminal History Category:	n/a	
Imprisonment Range:	60 months	Count 4
	240 months	Count 6
Supervised Release Range:	2 to 3 years	Count 4
	2 to 3 years	Count 6
Fine Range:	\$ 0 to \$ 250,000	Counts 4 & 6
Restitution:	\$ 9,726.02	

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.

*W*

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

**FILED**  
JUL 23 1997

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA

v.

Case Number 97-CR-032-001-K

EOD: 7-23-97

JACK WESLEY CHAMBLEE  
Defendant.

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

The defendant, JACK WESLEY CHAMBLEE, was represented by Rick Couch.

The defendant pleaded guilty April 15, 1997, to count(s) 1 of the Indictment. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

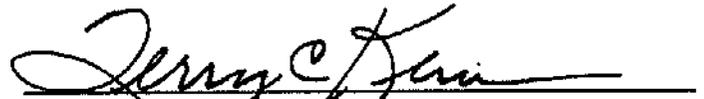
<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 371	Conspiracy	2/9/97	1

As pronounced on July 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 \$ 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 22 day of July, 1997.

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

Defendant's SSN: 448-70-0229

Defendant's Date of Birth: 10/10/62

Defendant's residence and mailing address: 200 W. 12th Street, Pawhuska OK 74056

Defendant: JACK WESLEY CHAMBLEE  
Case Number: 97-CR-032-001-K

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 13 months.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons before 12:00 p.m. on August 15, 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: JACK WESLEY CHAMBLEE  
Case Number: 97-CR-032-001-K

### 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.
6. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

### STANDARD CONDITIONS OF SUPERVISION

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

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

Defendant: JACK WESLEY CHAMBLEE  
Case Number: 97-CR-032-001-K

**RESTITUTION AND FORFEITURE****RESTITUTION**

The defendant shall make restitution in the total amount of \$13,350.96.

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

<b><u>Name of Payee</u></b>	<b><u>Amount of Restitution</u></b>
Dollar Saver Food Warehouse 1012 N. Radio Road Durant, OK 74701 Attn: Tod Huffman	\$456.95
Warehouse Market 810 N. Lynn Riggs Blvd. Claremore, OK 74017 Attn: Dan Meredith	\$298.95
Super H. Foods West Gentry Checotah, OK 74426 Attn: Chaff Soleman	\$356.95
Warehouse Market 12601 E 86th St. North Owasso, OK 74055 Attn: Mike Haines	\$356.95
Brattain Foods P.O. Box 919 Muskogee, OK 74402 Attn: Barbara Hodges	\$992.47
Apple Market 316 East Main St. Pawhuska, OK 74056 Attn: Jim Newcomb	\$285.95
Homeland #545 12572 E 21st Tulsa, OK 74129 Attn: Joe Humphrey	\$335.25
Albertson's 3328 E 51st Tulsa, OK 74135 Attn: Jack Williams	\$235.85

Defendant: JACK WESLEY CHAMBLEE  
Case Number: 97-CR-032-001-K

Judgement--Page 5 of 8

RESTITUTION AND FORFEITURE CONTINUED

Price Mart #5 9136 E 31st Tulsa, OK 74145 Attn: Becky Noah	\$285.95
Price Mart 1000 West Will Rogers Blvd. Claremore, OK 74017 Attn: Kenny McBride	\$621.80
Warehouse Market #35 250 South SH97 Sand Springs, OK 74063 Attn: Jerry Carroll	\$335.25
Warehouse Market #27 2041 W. Houston Broken Arrow, OK 74012 Attn: Bill Clak	\$285.95
Albertson's #2225 3612 S. Elm Place Broken Arrow, OK 74011 Attn: Tammy Gunnells	\$238.85
Reasor's Inc. 200 West Choctaw Tahlequah, OK 74464 Attn: Daryl Buck	\$1,963.60
Warehouse Market 1700 Wood Drive Okmulgee, OK 74447-6824 Attn: General Manager	\$285.95
Albertson's Store Comp. Office 250 Parcenter Blvd. Boise, ID 83716 Attn: Department R	\$571.10
Warehouse Market 6230 N. Peoria Tulsa, OK 74126 Attn: John Carnes	\$385.95

Defendant: JACK WESLEY CHAMBLEE

Case Number: 97-CR-032-001-K

Judgement--Page 6 of 8

RESTITUTION AND FORFEITURE CONTINUED

Stax Groceries 2301 S. Washington Bartlesville, OK 74006 Attn: Margie Lewis	\$39.96
Buy-for-Less 2415 E. Admiral Pl Tulsa, OK 74110 Attn: General Manager	\$159.57
Office Depot 7950 E. 51st Tulsa, OK 74145 Attn: Hoffman	\$928.30
Office Depot 2010 S. Sheridan Tulsa, OK 74112 Attn: Brent Harrison	\$386.64
May's Drug Store 6705 E 81st, Suite 155 Tulsa, OK 74133	\$116.29
Office Max 3605 Warrensville Center Road Shaker Heights, OH 44122	\$321.42
Price Mart #7 7114 S. Sheridan Rd. Tulsa, OK 74133	\$285.95
Kong's Korner 14591 S. Hw66 Clarmore, OK 74017 Attn: Perry	\$37.15
Payless Shoesource 998 W. Will Rogers Blvd. Claremore, OK 74017 Attn: Shelly Macom	\$57.99
Tacora Mart Rt. 5 Box 473 Clarmore, OK 74017 Attn: Esther	\$24.51

Defendant: JACK WESLEY CHAMBLEE

Case Number: 97-CR-032-001-K

Judgement—Page 7 of 8

**RESTITUTION AND FORFEITURE CONTINUED**

Stax Groceries 809 S. Wood Drive Okmulgee, OK 74447 Attn: Les Brown	\$34.01
Homeland Loss Prevention Department P.O. Box 25008 Oklahoma City, OK 73125 Attn: Ernie Deyle	\$2,320.20
Atoka Foods Center 901 Mississippi Atoka, OK 74525 Attn: Robert Powell	\$345.25

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

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

Defendant: JACK WESLEY CHAMBLEE  
Case Number: 97-CR-032-001-K

**STATEMENT OF REASONS**

The court adopts the factual findings and guideline application in the presentence report, except the Court made a finding that the defendant was an organizer or leader of the criminal activity and increased the offense level 4 points pursuant to USSG §3B1.1(a). The Court further found that more than minimal planning under USSG § 2F1.1(b)(2)(B) was not applicable when an enhancement for role in the offense is applied. Based on these findings, the Court determined that the offense level was 16, with a reduction of 3 levels for acceptance of responsibility, resulting in a total offense level of 13 with a guideline imprisonment range of 12 to 18 months.

**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:	\$ 13,350.96

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 upon motion of the government, as a result of the defendant's substantial assistance.

UNITED STATES DISTRICT COURT  
Northern District of Oklahoma

**FILED**

JUL 23 1997

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA

v.

Case Number 97-CR-013-01-K

*EOD: 7-23-97*

JASON MICHAEL STANFORD  
Defendant.

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

The defendant, JASON MICHAEL STANFORD, was represented by Charles L. Woodstock.

On motion of the United States the court has dismissed Count 1 of the Indictment.

The defendant pleaded guilty April 10, 1997, to Count 2 of the Indictment. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

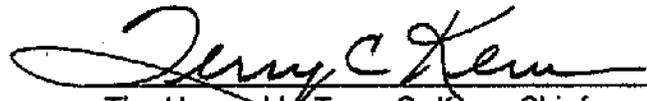
<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 924(c)	Carrying a Firearm During A Crime of Violence	12/26/96	2

As pronounced on July 14, 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) 2 of the Indictment, which shall be due immediately.

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

Signed this the 22 day of July, 1997.

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

Defendant's SSN: 444-70-7330

Defendant's Date of Birth: 12/5/74

Defendant's residence and mailing address: Tulsa County Jail, 500 S. Denver, Tulsa OK 74103

Defendant: JASON MICHAEL STANFORD  
Case Number: 97-CR-013-01-K

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 60 months. This sentence shall run consecutively to any other state for federal sentence of imprisonment.

The Court makes the following recommendations to the Bureau of Prisons: that the defendant be incarcerated at a Bureau of Prisons' facility specializing in comprehensive drug treatment, and that the defendant be incarcerated at FCI in El Reno.

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: JASON MICHAEL STANFORD  
Case Number: 97-CR-013-01-K

### 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 substance 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: JASON MICHAEL STANFORD  
Case Number: 97-CR-013-01-K

**FINE**

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

The defendant shall pay a fine of \$ 5,000, as to Count 2. 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: JASON MICHAEL STANFORD  
Case Number: 97-CR-013-01-K

**RESTITUTION AND FORFEITURE**

**RESTITUTION**

The defendant shall make restitution in the total amount of \$1,450.56.

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>
Patricia Wong 11217 E. 63rd Street Tulsa OK 74133	\$269.00
Allstate Insurance 5800 E. Skelly Drive, Ste 100 Tulsa OK 74135	\$1,181.56

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: JASON MICHAEL STANFORD  
Case Number: 97-CR-013-01-K

**STATEMENT OF REASONS**

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

**Guideline Range Determined by the Court:**

Total Offense Level:	n/a
Criminal History Category:	n/a
Imprisonment Range:	60 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 0 to \$ 250,000
Restitution:	\$ 1,450.56

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 NORTHERN DISTRICT OF OKLAHOMA

FILED

JUL 22 1997 *lw*

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 BYRON W. MATTHEWS, )  
 )  
 Defendant. )

No. 89-CR-90-C

ENTERED ON DOCKET  
JUL 23 1997  
DATE \_\_\_\_\_

ORDER

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

On August 1, 1989, Matthews was named in a three Count Indictment alleging controlled substance and firearms violations. On March 28, 1990, a jury found Matthews guilty of Count One, conspiracy to possess with intent to distribute cocaine base, in violation of 21 U.S.C. § 846; Count Two, possession with intent to distribute cocaine base, in violation of 21 U.S.C. § 841(a)(1); and Count Three, use of a firearm in a drug trafficking crime, in violation of 18 U.S.C. § 924(c). On July 11, Matthews was sentenced to 360 months imprisonment on Counts One and Two, and 60 months imprisonment on Count Three, to run consecutive to Counts One and Two. On appeal, the Circuit affirmed Matthews' convictions for conspiracy and for possession with intent to distribute cocaine base, but reversed Matthews' § 924(c) conviction, as well as Matthews' sentence insofar as it includes a kilogram of cocaine base distributed prior to his involvement. U.S. v. Matthews, 942 F.2d 779 (10th Cir.1991). Matthews was resentenced on February 7, 1992, to 210 months imprisonment on Counts One and Two. Matthews did not further appeal his sentence or conviction.

179

Prior to addressing the merits of Matthew'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 after the date on which the judgment of conviction becomes final. The Court further notes that if it were to apply this limitations period to Matthews, his present motion would be time-barred. However, the Tenth Circuit 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, 111 F.3d 737, 746 (10th Cir.1997).

Matthews' present motion was filed on April 28, 1997, four days subsequent to the expiration of the one-year grace period. In its response, the government urges that Matthews' motion is untimely and barred by the limitations period contained in § 2255. The government maintains that Matthews' conviction became final in 1992, following Matthews' resentencing and his failure to appeal the revised judgment and sentence. Thus, the government argues that since Matthews' conviction became final prior to April 24, 1996, and since he filed his motion after April 23, 1997, Matthews' motion must be time-barred.

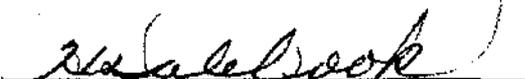
On May 19, 1997, this Court entered a minute order finding that the government failed to recognize the "prisoner mailbox rule", which provides that a prisoner motion is deemed "filed" when the prisoner delivers such motion to prison authorities for forwarding to the Court. Houston v. Lack, 487 U.S. 266 (1988). Hence, it is not the date of actual filing with the Clerk that is determinative, but rather it is the date on which the motion was delivered to prison authorities for forwarding that is relevant. The Court thus directed Matthews to show that his motion was actually delivered to prison authorities prior to April 24, 1997, and the Court further authorized the government to

supplement its response addressing the appropriate issue. The government has declined to supplement its response. Matthews subsequently requested additional time in which to make the required showing, and this Court granted Matthews until June 25 to comply. As of this date, Matthews has failed to comply with the Court's directive, and he has submitted nothing to demonstrate that his motion was timely filed.

Thus, since Matthews has failed to show that his motion was delivered to prison authorities prior to the end of the grace-period of April 24, 1997, and since § 2255 prohibits the Court from considering motions filed after the expiration of the limitations period, the Court is left with no choice but to dismiss Matthews' petition. It is also interesting to note that on Matthews' original § 2255 motion, Matthews hand-printed the date of the motion as being 4- -97. This seems to indicate that Matthews may have been aware of the limitations period, he probably knew that he was delivering the motion to prison authorities after the expiration of such limitations period, and he may have therefore purposely omitted the actual day of delivery on the motion, perhaps in an effort to mislead the Court into considering his untimely petition.

Accordingly, Matthews' motion pursuant to § 2255 is hereby DISMISSED as being time-barred.

IT IS SO ORDERED this 19<sup>th</sup> day of July, 1997.

  
H. Dale Cook  
U.S. District Judge

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

FILED

JUL 22 1997

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PAUL R. JASTRZEMBSKI,

Defendant.

No. 90-CR-74-C

FORWARDED TO PROSECUTOR

DATE JUL 22 1997

ORDER

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

On July 12, 1990, Jastrzembki was named in a three Count Indictment for violations of controlled substance laws. On October 22, 1990, Jastrzembki pled guilty to Count One, conspiracy to manufacture, possess with intent to distribute, and distribute methamphetamine, in violation of 21 U.S.C. § 846. On January 29, 1991, Jastrzembki was sentenced to 300 months imprisonment. Jastrzembki's conviction and sentence were affirmed on appeal in an unpublished opinion. U.S. v. Jastrzembki, 955 F.2d 49 (10th Cir. 1992).

On October 29, 1996, Jastrzembki's present § 2255 motion was filed. Jastrzembki moves this Court to vacate, set aside, or correct the sentence imposed upon him based on the government's failure to prove the type of methamphetamine involved in the present case during the sentencing hearing. At sentencing, Jastrzembki admitted to producing twelve pounds of pure methamphetamine. Jastrzembki was sentenced pursuant to the more severe guidelines applicable to cases involving d-methamphetamine rather than the less severe guidelines applicable to cases involving l-

186

methamphetamine. On December 2, 1996, the government conceded that, pursuant to recent Tenth Circuit precedent, a hearing was required in order to permit the government to demonstrate the type of methamphetamine involved. The government further acknowledged that it "has the burden of proof and production . . . to establish the amounts and types of controlled substances related to the offense. Because the type of methamphetamine is not an element of the crime, it need only be proved by a preponderance of the evidence at sentencing." U.S. v. Deninno, 29 F.3d 572, 580 (10th Cir.1994), cert. denied, 115 S.Ct. 1117 (1995).

A hearing was held on January 23, 1997, in which the government offered evidence related to the type of methamphetamine involved in this case. During the hearing, the Court was advised that Jastrzembski's counsel, Stuart Southerland, was not prepared to either refute the government's evidence or offer evidence in support of Jastrzembski's position. The Court thus continued the hearing, which was ultimately held on July 10, 1997.

The evidence introduced at the hearings clearly revealed that Jastrzembski acted as the "cook" for the conspiracy, a fact which Jastrzembski admitted. At the initial hearing, the government introduced the testimony of Sheriff Larry Fugate who described the laboratory which Jastrzembski utilized and testified as to its contents. Sheriff Fugate testified that he discovered the lab when he was called to investigate a homicide at the lab site. Sheriff Fugate testified that the lab contained glassware, various chemicals, and other devices necessary for preparing and packaging methamphetamine.

The government also called Steven Brookman, who is employed by the Oklahoma State Bureau of Investigation ("OSBI") and who serves as a laboratory administrator. Agent Brookman was called to the lab site by Sheriff Fugate to investigate a possible clandestine laboratory. Agent

Brookman searched the lab site, inventoried the items discovered, photographed the site, and sampled the items. Agent Brookman presented an OSBI Criminalistics Examination Report, which was prepared by Agent Brookman and which reflects the inventory and analysis of the lab. The analysis revealed methamphetamine and phenylacetone. Agent Brookman testified that, in his experience, he had previously seen the type of glassware and chemicals seized at the lab at other clandestine laboratories. Based on his training and experience as a chemist, and specifically in methamphetamine investigations, Agent Brookman testified that the specific type of glassware and chemicals seized from the lab indicated that dl-methamphetamine was being produced. That is, given the setup of the lab and the chemicals present, a dl-methamphetamine mixture resulted. Agent Brookman further testified that although he has investigated numerous methamphetamine labs, he has never found a lab that produced only l-methamphetamine.

Richard Dill, an agent with the OSBI, was called as a government witness at the initial hearing. Agent Dill acts as the supervisor of the drug testing portion of the OSBI laboratory in Oklahoma City. Agent Dill was involved in the investigation of Jastrzembski and his clandestine lab. Agent Dill testified that he performed an analysis on chemicals discovered at the lab, and phenylacetic acid was determined to be present. This particular chemical is a precursor that is utilized in the synthesis of phenylacetone.

Lastly, the government called William Glanville, a senior forensic chemist with the Drug Enforcement Agency, and an expert in methamphetamine synthesis and analysis. Agent Glanville testified that he had reviewed the OSBI reports concerning the lab site at issue in the present case. Based on the lab reports and the analysis of the chemicals seized, Agent Glanville testified that phenylacetone, or p2p, was involved in the manufacture of methamphetamine. Based upon his training

and experience, as well as a review of the items seized from the lab, Agent Glanville opined that the lab yielded a p2p-type process producing dl-methamphetamine. Moreover, Agent Glanville expressed his opinion that, based on the facts of this case, it would not have been possible to only produce l-methamphetamine. Agent Glanville testified that, given the p2p process involved in the preparation of the methamphetamine, the lab was incapable of producing a pure l-methamphetamine mixture.

When the hearing resumed on July 10, Jastrzembski introduced the testimony of Jerry Thurman, one of Jastrzembski's co-defendants in the present case. Thurman proposed to offer into evidence a recipe which he had given to Jastrzembski in 1989 to produce methamphetamine. Thurman testified that this was the only recipe that he knew Jastrzembski possessed. Thurman further testified that the methamphetamine that was produced by the recipe yielded less physiological effects than other methamphetamine; e.g., the effects only lasted eight hours rather than two or three days.

Jastrzembski took the stand and testified that the process which was introduced by Thurman was the process Jastrzembski had used in the preparation of methamphetamine. Jastrzembski testified that Thurman taught him how to make methamphetamine pursuant to such recipe. Jastrzembski further testified that although he admitted to producing twelve pounds of pure methamphetamine at sentencing, he did not really know what he was producing at the lab. Jastrzembski additionally testified that the physiological effects of the methamphetamine which he produced at the lab were weaker than those produced by other methamphetamine which he had used.

In rebuttal, the government called Jeffrey Neighbors, who is currently serving a sentence for offenses involving LSD. At the time of his arrest, Neighbors was working on a masters degree in chemistry. Neighbors testified that Thurman approached him seeking advice on the distinction between d and l-methamphetamine. Thurman inquired as to the specific methods of producing

methamphetamine. Neighbors testified that Thurman was trying to come up with a manner of making either d or l-methamphetamine specifically. Neighbors further testified that Thurman has told him that he (Thurman) liked the p2p process better. Neighbors additionally testified that Thurman was researching the manufacturing process for this case, and that Thurman was hoping to get a friend off. When Neighbors realized that Thurman was planning on perjuring himself in order to assist Jastrzembski, Neighbors contacted his attorney and the government.

After Neighbors testified, Thurman was again called to the stand. Thurman proceeded to recant his earlier testimony, and he admitted lying under oath during the hearing. Thurman testified that the recipe introduced earlier in the hearing was not given to Jastrzembski. The recipe was designed to produce an outcome solely for his testimony at the hearing. Thurman testified that all the methamphetamine processes involved p2p, and that he has never seen any process other than one involving p2p. Thurman further testified that the methamphetamine he cooked with Jastrzembski was just as strong and potent as any other methamphetamine he had used. Lastly, Thurman testified that he had perjured himself in order to help Jastrzembski receive a more lenient sentence.

Given the particular facts of this case and the evidence introduced at the hearing, the Court finds that the government clearly proved that Jastrzembski produced dl-methamphetamine by a preponderance of the evidence. The testimony and evidence introduced by the government overwhelmingly indicate the presence of dl-methamphetamine, and Jastrzembski's efforts to refute the government's evidence clearly failed. Moreover, the method employed by Jastrzembski in his unscrupulous attempt to rebut the government's evidence is shocking.<sup>1</sup> The false testimony of

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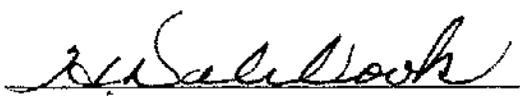
<sup>1</sup> On July 16, the Court received the attached hand-written letter, signed by Jastrzembski, in which Jastrzembski essentially admitted offering false testimony and evidence at the July 10, 1997, hearing.

Jastrzembski himself, as well as the subornation of false testimony from Thurman, is nothing less than reprehensible and constitutes a flagrant abuse of the judicial process.

Since the Court finds that dl-methamphetamine was involved in the present case, and since it is clear that dl-methamphetamine is properly treated as d-methamphetamine for sentencing purposes, U.S. v. Decker, 55 F.3d 1509 (10th Cir.1995), the Court will not disturb Jastrzembski's sentence.

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

IT IS SO ORDERED this 19<sup>th</sup> day of July, 1997.



H. Dale Cook  
U.S. District Judge

RECEIVED

JUL 16 1997

July 14th 1997

JUDGE H. DALE COOK  
U. S. DISTRICT COURT

Your Honor,

I'm terrified that the next time I appear before you that you will increase my 300 month sentence to a sentence I will be unable to complete.

I apologize for my actions in your courtroom.

All I was able to think about was getting my time reduced so I could be with my mother and father before they pass away.

My son Joshua is seventeen years old and graduates from High School next year. He is a straight "A" student and I wanted to be there for his graduation.

My daughter Tara is fifteen years old and is having problems. Tara has tried to commit suicide and is now on depression medication.

My youngest daughter Molly is eight years old and asks me constantly to come home, Molly can't understand why I have to be away from her for so long. Molly will be 24 years old when I'm released from prison.

Your Honor it was all of these thoughts and more that led me to act in a shamefull desperate way in your court room. I felt I had to fight for my freedom when it became apparent to me that even without a proper lab test I was going to be found guilty of D-methamphetamine. I stooped so low as to say anything that would reduce my sentence.

The last seven years have been so hard on my feelings and emotions, and I can't bear to think of the next seventeen years I still have to serve.

I'm truly sorry, I just wanted to go home. I can assure you that I am thru with drugs and all the pain they have caused me and others.

I'm sorry and I beg you for mercy.

Respectfully

Paul R. Jastyembski



Defendant: SHARON L. BECK a/k/a SHARON MUNOZ  
Case Number: 96-CR-161-01-BU

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 21 months.

The Court makes the following recommendations to the Bureau of Prisons: that the Bureau of Prisons designate an institution in the southern California area.

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: SHARON L. BECK a/k/a SHARON MUNOZ  
Case Number: 96-CR-161-01-BU

### 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 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: SHARON L. BECK a/k/a SHARON MUNOZ  
 Case Number: 96-CR-161-01-BU

**RESTITUTION AND FORFEITURE**

**RESTITUTION**

The defendant shall make restitution in the total amount of \$10,000, as to Count 1.

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

<u>Name of Payee</u>	<u>Amount of Restitution</u>
Bank of Oklahoma Attn: Lowell Faulkenberry PO Box 2300 Tulsa OK 74192	\$4,759.89
Bank of America Attn: Joy Savino Investigation Services Unit #3259 1455 Market Street, 10th Floor San Francisco CA 94103	\$4,029.48
Wells Fargo Bank Investigation Department/Mac 2002-036 9000 Flair Drive, 3rd Floor El Monte CA 91735	\$174.00
PNC Bank Attn: Charlotte Fletcher Security Services Citizens Plaza Louisville Kentucky 40296	\$1,036.63

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, except no further payment shall be required after the sum of the amounts actually paid by the defendant, and her codefendants, Freddie Reagans, Thomas Boggs, and Michael Galle, has fully covered all of the compensable injuries.

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

Defendant: SHARON L. BECK a/k/a SHARON MUNOZ  
Case Number: 96-CR-161-01-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:	16
Criminal History Category:	I
Imprisonment Range:	21 months to 27 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 5,000 to \$ 50,000
Restitution:	\$ 64,232.84

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

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

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

78

**FILED**

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

JUL 23 1997

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA

v.

Case Number 96-CR-083-001-B

ROGER EVANS KNOX  
Defendant.

ENTERED ON DOCKET

DATE 7-23-97

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

The defendant, ROGER EVANS KNOX, was represented by Stephen Knorr.

On motion of the United States the court has dismissed Counts 1 through 26 of the Indictment.

The defendant pleaded guilty April 17, 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>
.d USC 2113(b) first paragraph	Theft of Bank Monies	4/16/91	1

As pronounced on July 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 21<sup>st</sup> day of July, 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  
The Honorable Thomas R. Brett, Senior  
United States District Judge

Defendant's SSN: 409-70-9206  
Defendant's Date of Birth: 7/1/45  
Defendant's residence and mailing address: PO Box 320, Norman AR 71960

Defendant: ROGER EVANS KNOX  
Case Number: 96-CR-083-001-B

### PROBATION

The defendant is hereby placed on probation for a term of four (4) year(s).

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

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

### STANDARD CONDITIONS OF PROBATION

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

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

Defendant: ROGER EVANS KNOX  
Case Number: 96-CR-083-001-B

**RESTITUTION AND FORFEITURE**

**RESTITUTION**

The defendant shall make restitution in the total amount of \$6,832, as to 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>
Roger Morris PO Box 159 Big Cabin OK 74332	\$3,416
Ruby Marshall 1410 Louisville Street Claremore OK 74017	\$3,416

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

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

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

Defendant: ROGER EVANS KNOX  
Case Number: 96-CR-083-001-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:	10
Criminal History Category:	1
Imprisonment Range:	6 months to 12 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 2,000 to \$ 20,000
Restitution:	\$ 6,832

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.

WHT

**F I L E D**

JUL 17 1997

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA     )  
                                  Plaintiff     )  
                                  VS             )  
   )  
CINDI ANN GELBHAR             )  
                                  Defendant     )

Case Number: 94-CR-048001-E

**ORDER REVOKING SUPERVISED RELEASE**

Now on this 11th day of July, 1997, this cause comes on for sentencing concerning allegations that the defendant violated conditions of supervised release as set out in the Petition on Supervised Release filed on May 6, 1997. The defendant is present in person and represented by counsel, Stephen Knorr. The Government is represented by Assistant U.S. Attorney Charles McLoughlin, and the United States Probation Office is represented by Greg Johnson and Doug Burris.

The defendant was heretofore convicted on her plea of guilty to Count One of a one-count Indictment, charging Misapplication of Financial Institution Funds, in violation of 18 U.S.C. § 656. On June 3, 1994, she was sentenced to zero (0) months custody,

16

with a five (5) year term of supervised release to follow. Gelbhar was also held liable for restitution in the amount of \$10,500, and ordered to pay a special monetary assessment of \$50. The conditions of Supervised Release were modified on June 26, 1997, to include five months of home detention with electronic monitoring, and to participate in a mental health program approved by the probation office, to include inpatient if necessary.

On June 18, 1997, a revocation hearing was held regarding the allegations noted in the Petition on Supervised Release, filed on May 6, 1997, said allegations being the following: 1) the defendant failed to report as directed for the months of December 1996, and January, February, and March 1997, and April 21 and 23, 1997; 2) the defendant failed to maintain employment as ordered; and 3) the defendant failed to pay restitution as ordered. Gelbhar stipulated to the violations at the revocation hearing, and sentencing was set for July 11, 1997.

On July 11, 1997, as a result of the sentencing hearing, the Court found that the violations occurred after November 1, 1987, and that Chapter 7 of the U. S. Sentencing Guidelines is applicable. Further, the Court found that the violations of supervised release constituted Grade C violations in accordance with USSG § 7B1.1(a)(3), and that the defendant's original criminal history category of I was applicable for determining the imprisonment range. In addition, the Court found that Grade C violations and a

criminal history category of I establish a revocation imprisonment range of three to nine months. In consideration of these findings and pursuant to U.S. vs. Lee, 957 F2d 770 (10th Cir. 1992), in which the Circuit determined that the policy statements in Chapter 7 were not mandatory, but must be considered by the Court, the following was ordered:

The defendant is committed to the custody of the U. S. Bureau of Prisons to be imprisoned for a term of six months. The Court will entertain dismissing this order prior to the defendant reporting to serve this custody sentence, if such a motion is made by the defendant and not opposed by the Government or the probation office. The Court recommends that Gelbhar be placed at the Freedom Ranch Community Confinement Center to serve this term. The defendant is ordered to pay the remaining restitution of \$10,090. Gelbhar shall report to the facility designated by the Bureau of Prisons on December 10, 1997, at 10:00 a.m.

  
The Honorable James O. Ellison  
United States District Judge

7-17-97

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 ANGELINA HUFFMAN, )  
 )  
 Defendant. )

No. 97-CR-32-K ✓

**F I L E D**

JUL 16 1997 *M*

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

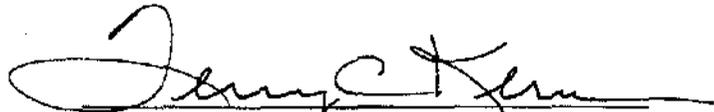
**ORDER OF DISMISSAL**

This matter comes on for consideration of the government's Motion to Dismiss the Indictment as against the defendant, Angelina Huffman, without prejudice.

For the reasons stated in the government's motion, the Court finds that the Indictment should be dismissed. Therefore, the government's request will be granted.

IT IS THEREFORE THE ORDER OF THE COURT that the Indictment in the above-styled case will be dismissed as to defendant Angelina Huffman, without prejudice.

Done this 15 day of July, 1997.



TERRY C. KERN  
PRESIDING UNITED STATES DISTRICT JUDGE

f5

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

**FILED**

JUL 14 1997

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA, )

Plaintiff, )

-vs- )

No. 96-CR-57-B ✓

DAVID THOMAS FULLER, )

Defendant. )

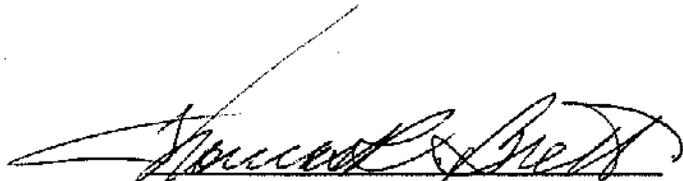
ENTERED ON DOCKET

JUL 15 1997

**ORDER**

Now on this 14<sup>th</sup> day of July, 1997, this cause comes on to be heard in the matter of the plaintiff's Motion for Leave to Dismiss, without prejudice, the Indictment against defendant DAVID THOMAS FULLER in the above styled cause. The Court finds that said request ought to be granted and the Indictment against defendant DAVID THOMAS FULLER is dismissed, without prejudice.

IT IS SO ORDERED.



THOMAS R. BRETT, Senior Judge  
United States District Court

**FILED**

JUL 10 1997

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

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

UNITED STATES OF AMERICA,	)
	)
Plaintiff,	)
	)
vs.	)
	)
ALVA SPRAGUE,	)
	)
Defendant.	)

No. 94-CR-121-C  
97-C-346

ENTERED ON DOCKET  
DATE JUL 11 1997

**ORDER**

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

On May 3, 1995, Sprague was named in a seventeen Count Second Superseding Indictment for violations of several controlled substance, firearms, and related laws. On August 21, 1995, Sprague pled guilty to Count One, continuing criminal enterprise, in violation of 21 U.S.C. § 848(a),(c), and (d), and Count Three, conspiracy to possess firearms in relation to drug trafficking crime, in violation of 18 U.S.C. § 371. On November 7, 1995, Sprague was sentenced to 360 months imprisonment on Count One and 60 months imprisonment on Count Three, to run concurrently. Sprague did not appeal his conviction or sentence.

On April 16, 1997, Sprague's present § 2255 motion was filed. Sprague moves this Court to vacate, set aside, or correct the sentence imposed upon him on the following grounds: 1) the conviction was obtained by coercion; 2) the plea of guilty was not made voluntarily or with the understanding of the charges against Sprague; 3) failure of counsel to file a requested appeal; and 4) ineffective assistance of counsel.

1/2

Prior to addressing the merits of Sprague'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 after the date on which the judgment of conviction becomes final. However, the Tenth Circuit 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, 111 F.3d 737, 746 (10th Cir.1997). Since Sprague's present motion was filed prior to April 24, the Court concludes that said motion is not time-barred.

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 Sprague 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 Sprague's claims barred unless cause and prejudice or a miscarriage of justice is shown. Id.

In order to evade this procedural bar, Sprague 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, Sprague 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, Sprague 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, Sprague must show that his counsel's performance fell below an objective standard of reasonableness. Furthermore, Sprague 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. For the reasons stated below, the Court concludes that Sprague failed to satisfy the Strickland standard for demonstrating ineffective assistance of counsel.

Sprague first attacks his conviction, maintaining that his guilty plea was the result of coercion and that he did not understand the charges against him or the consequences of his plea. The record itself, however, disputes Sprague's assertions. During the change of plea hearing held on August 21, 1995, the Court engaged in an extensive colloquy with Sprague in order to ensure that his rights were protected and that he acted completely voluntarily and without pressure or coercion. Prior to receiving Sprague's guilty plea, the Court specifically advised Sprague that he was facing imprisonment of no less than 20 years and that he could be imprisoned for life. The Court additionally advised Sprague that if he pled guilty to more than one Count, the sentences could be cumulative. Sprague represented to the Court that he did, in fact, understand what the period of imprisonment might be if he pled guilty. Sprague also represented that he understood that a very substantial fine could be imposed if he were to plead guilty. Sprague's actual sentence of 360 months imprisonment and \$1,500 fine was clearly within the range of punishment which Sprague understood he might receive. The Court therefore has difficulty understanding Sprague's argument that he entered his plea without full knowledge of the consequences.

The record also rebuts Sprague's contention that his plea was involuntary and coerced. The

Court specifically asked Sprague whether his pleas of guilty would be made freely and voluntarily. Sprague answered in the affirmative, and he advised the Court that his decision to enter pleas of guilty was based on his own free will. The Court then specifically inquired as to whether Sprague had been forced, threatened, or coerced to enter a plea of guilty to either Count One or Count Three. Sprague answered in the negative. Sprague also represented to the Court that he had read and understood the plea agreement. Further, Sprague advised the Court that he fully understood and fully appreciated the consequences of the plea agreement.

Moreover, the Court advised Sprague that he had the absolute right to plead not guilty and to persist in his plea of not guilty. Sprague represented that he understood this right. Further, the Court informed Sprague that if he were to plead guilty to Counts One and Three, he would waive all defenses and all rights to challenge the validity of those charges, and he would waive any claim that he is not guilty as to those charges. Sprague represented that he understood such waivers.

The Court proceeded to fully explain the charges against Sprague, and the Court specifically asked Sprague to state, under oath, the facts supporting such charges. Sprague admitted that he engaged in the activities giving rise to Counts One and Three, and, through a series of questions by the Court, the Court became satisfied that Sprague admitted the essential elements of the crimes charged against him and that a factual basis to support the guilty pleas existed.

The Court accepted Sprague's pleas of guilty only after fully satisfying itself that Sprague's decision was completely voluntary, that he completely understood the consequences of such a decision, and that he understood the rights he waived in making such a decision to plead guilty. The Court specifically found that the pleas of guilty were made freely and voluntarily, and that a factual basis supported the pleas. The Court further found that each plea of guilty was not made from

ignorance, fear, or coercion, and that such pleas were made with a full understanding of the accompanying consequences.

Thus, Sprague's argument that his pleas were coerced, involuntary, and made without full knowledge of the consequences is clearly refuted by the record. The Court provided Sprague with ample opportunity to dispute the voluntariness of his pleas, and the Court fully advised Sprague of the consequences of his pleas, including the rights which Sprague waived. If Sprague wished to dispute the voluntariness of the pleas or seek clarification as to the consequences of the pleas, he should have done so when given the opportunity at the hearing. Rather, Sprague represented that he understood everything that the Court said to him during the hearing, and that no coercion or pressure was placed upon him to enter his pleas. Pleading guilty "narrows the 'avenue of escape' for a defendant in that he has no right to withdraw that plea once it is knowingly and voluntarily entered."

U.S. v. Gines, 964 F.2d 972, 980 (10th Cir.1992), cert. denied, 506 U.S. 1069 (1993). The Court became satisfied during the change of plea hearing that Sprague knowingly and voluntarily desired to enter pleas of guilty to Counts One and Three. The record in this case also provides a factual basis for the pleas and indicates that Sprague understood his constitutional rights and affirmatively waived them. The record additionally demonstrates that Sprague fully understood the consequences of pleading guilty, including the potential punishment he could receive. Hence, Sprague's present argument is not well-taken, and the Court declines Sprague's request to withdraw the pleas.

Sprague claims that his counsel and the government somehow conspired to force him to plead guilty. However, Sprague cites no evidence supporting his claim. The government and Sprague's counsel have represented to the Court that no conspiracy or other agreement existed between prosecution and defense counsel in order to trick Sprague into pleading guilty, and Sprague was not

advised that he would be put to death if he refused to plead guilty. The government represents that, based on the facts of this case, the death penalty could not have been sought in any event. Further, as noted above, the record is devoid of any suggestion that Sprague was coerced to plead guilty. On the contrary, the record clearly reveals that Sprague's decision to plead guilty was entirely voluntary and free of coercion.

Sprague argues that his counsel was ineffective in failing to appeal his conviction and sentence. However, Sprague does not specifically cite any ground upon which an appeal could have been based. Moreover, Sprague makes no showing that any appeal would have been successful. As noted above, the pleas of guilty were supported by a factual basis and were knowingly and voluntarily entered. Further, the Court engaged in extensive change of plea procedures to ensure that Sprague's rights were fully and fairly protected. This Court is therefore of the opinion that any appeal attacking the conviction would have been futile. Sprague does not attack his sentence in his present motion, and he certainly cites no appealable error with respect to his sentence. The Court has undertaken a thorough review of the sentence, and the Court finds that any appeal related to his sentence would have found no success in the Circuit. The Court additionally notes that Sprague expressly waived his right to appeal the conviction and sentence in the plea agreement which Sprague personally signed and which Sprague represented to the Court that he fully read and understood. During the sentencing hearing, the waiver of appeal was specifically brought to the Court's attention, and the Court advised Sprague that any rights of appeal would have to be consistent with the waiver. Thus, the Court finds that Sprague failed to show that his counsel was ineffective for not filing an appeal in the instant case.

Sprague has requested the record and transcripts in order to cite "pertinent parts of the record that support a claim of withdrawing a plea of guilt." However, Sprague does not specifically point

to anything which may be contained in the record that could possibly support Sprague's contentions. Rather, it appears that Sprague would simply like to peruse the record with the hope of finding something that may be useful in support of his motion. Such is insufficient to justify a request for the record or transcripts. Further, the Court has fully and carefully reviewed every part of the record and has read the entire transcripts in this case, and the Court finds nothing therein that supports Sprague's petition. Thus, the Court rejects Sprague's request for the record.

Accordingly, Sprague's motions pursuant to § 2255 and for production of record are hereby DENIED.

IT IS SO ORDERED this 10<sup>th</sup> day of July, 1997.



H. Dale Cook  
U.S. District Judge

UNITED STATES DISTRICT COURT  
Northern District of Oklahoma

ENTERED ON DOCKET  
DATE 7-11-97

UNITED STATES OF AMERICA

v.

Case Number 96-CR-169-001-BU

EDWIN MERCER a/k/a TUBBY  
Defendant.

**FILED**

JUL 11 1997

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

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

The defendant, EDWIN MERCER a/k/a TUBBY, was represented by James Beckert.

The defendant pleaded guilty January 21, 1997, to Counts 1, 2, and 3 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	9/14/95	1
18 USC 1955 & 2	Illegal Gambling & Aiding & Abetting	9/14/95	2
18 USC 1511	Obstruction of Justice	9/14/95	3

As pronounced on July 1, 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 \$ 150, for count(s) 1, 2, and 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 10<sup>th</sup> day of July, 1997.

  
The Honorable Michael Burrage, Chief  
United States District Judge

Defendant's SSN: 490-48-4715  
Defendant's Date of Birth: 4/28/43  
Defendant's residence and mailing address: RR 3, Box 896, Afton OK 74331

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: EDWIN MERCER a/k/a TUBBY  
Case Number: 96-CR-169-001-BU

### PROBATION

The defendant is hereby placed on probation for a term of five (5) year(s).

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

1. If this judgment imposes a fine, special assessment, costs or restitution obligation, it shall be a condition of probation that the defendant pay any such fine, assessment, costs and restitution.
2. The defendant shall not own or possess a firearm or destructive device.
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 72 hours of sentencing date. During this time, the defendant shall remain at place of residence except for employment and other activities approved in advance by the probation office. The defendant shall maintain a telephone at place of residence without any special services, modems, answering machines, or cordless telephones for the above period. The defendant shall wear an electronic device and shall observe the rules specified by the Probation Office. The entire cost of this program shall be paid by the defendant.
5. The defendant shall perform 100 hours of community service, as directed by the Probation Office.

### 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: EDWIN MERCER a/k/a TUBBY  
Case Number: 96-CR-169-001-BU

**FINE**

The defendant shall pay a fine of \$ 5,000, as to Count 1. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid during the period 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: EDWIN MERCER a/k/a TUBBY  
Case Number: 96-CR-169-001-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:	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 sentence departs from the guideline range for the following reason(s): upon motion of the government, as a result of defendant's substantial assistance.

**FILED**

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

JUL 11 1997 *km*

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

UNITED STATES OF AMERICA

v.

Case Number 96-CR-173-001-BU ✓

ROBERT EARL CUTHBERTSON  
Defendant.

ENTERED ON DOCKET  
DATE 7-11-97

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

The defendant, ROBERT EARL CUTHBERTSON, was represented by Stanley D. Monroe.

On motion of the United States the court has dismissed Counts 1, 2, 4, & 5 of the Indictment.

The defendant pleaded guilty March 18, 1997, to Count 3 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 2423(b)	Travel With Intent to Engage in Sexual Act With A Juvenile	5/94	3

As pronounced on July 1, 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 \$ 50, for count(s) 3 of the Indictment, which shall be due immediately.

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

Signed this the 10<sup>th</sup> day of July, 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

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

By *Rosanne J. Waller*  
Deputy

Defendant's SSN: 264-87-0718

Defendant's Date of Birth: 09/21/64

Defendant's residence and mailing address: Gulf Correctional Institute, PO Box 10, Wewahitchka FL 32465

Defendant: ROBERT EARL CUTHBERTSON  
Case Number: 96-CR-173-001-BU

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 120 months, said sentence to run consecutively to Santa Rosa County District Court Case 96-392-CFA.

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: ROBERT EARL CUTHBERTSON  
Case Number: 96-CR-173-001-BU

### 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 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 is prohibited from involvement in youth groups, clubs, organizations, or activities involving children. The defendant shall have no interaction with minor children without adult supervision.

### STANDARD CONDITIONS OF SUPERVISION

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

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

Defendant: ROBERT EARL CUTHBERTSON  
Case Number: 96-CR-173-001-BU

**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, as to Count 3. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid during the term of supervised release.

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

Defendant: ROBERT EARL CUTHBERTSON  
Case Number: 96-CR-173-001-BU

**RESTITUTION AND FORFEITURE**

**RESTITUTION**

The defendant shall make restitution in the total amount of \$1,780, as to Count 3.

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>
Laura Hurst 2629 E. 8th Street Tulsa OK 74110	1,780

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: ROBERT EARL CUTHBERTSON  
Case Number: 96-CR-173-001-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:	30
Criminal History Category:	II
Imprisonment Range:	108 months to 120 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 15,000 to \$ 150,000
Restitution:	\$ 1,780

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.

*CPA*

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

FILED

JUL - 9 1997

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 JOHNNY E. GLOVER, )  
 )  
 Defendant. )

No. 91-CR-50-C  
97-C-515

FILED ON DOCKET  
JUL 10 1997

ORDER

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

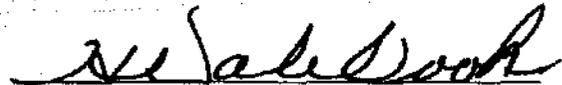
On May 9, 1991, a five Count indictment was filed against Glover and other co-defendants. On September 18, 1991, Glover pled guilty to Count One, organizing and managing a continuing criminal enterprise, devoted to the manufacture, possession, and distribution of methamphetamine, and using a telephone in furtherance of a controlled substance felony, in violation of 21 U.S.C. §§ 848(a)(c)(d), 846, 841(a)(1), 843(b), and 845(b) now 861. Glover also pled guilty to Count Three, conspiracy to launder money, in violation of 18 U.S.C. §§ 371 and 1956(a)(1). On December 10, 1991, Glover was sentenced to 150 months on Count One, and sixty months on Count Three, to run concurrently. Glover did not appeal his conviction or sentence.

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 after the date on which the judgment of conviction becomes final. However, the Tenth Circuit 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, 111 F.3d 737, 746 (10th Cir.1997). It is clear from the record that Glover's present motion was submitted on May 25, 1997, and filed on May 29, 1997, more than one month after the grace period expired. It is also apparent from the record that Glover's conviction became final prior to April 24, 1996. A judgment of conviction is final when the judgment of conviction is rendered, the availability of appeal exhausted, and the time for petition for certiorari has expired. Allen v. Hardy, 106 S.Ct. 2878 (1986). Glover was sentenced in December of 1991, and he did not appeal his sentence. His conviction thus became final well over five years prior to the filing of his present motion. As such, Glover's present motion is time-barred under § 2255.

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

IT IS SO ORDERED this 9 day of July, 1997.



H. Dale Cook  
U.S. District Judge

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

**FILED**

JUL - 9 1997

UNITED STATES OF AMERICA, )  
)  
Plaintiff, )  
)  
vs. )  
)  
PHILLIP SHERRILL OSBORN, )  
)  
Defendant. )

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

Case No. 91-CR-137-E  
97-C-480-E

ORDER

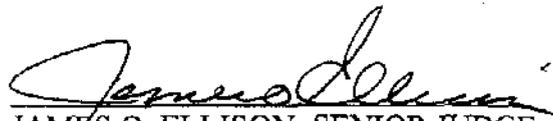
Now before the Court is the Motion Pursuant to 28 U.S.C. §2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (docket #31), of the Defendant Phillip Sherrill Osborn.

Osborn pled guilty to one count of Possession of a Firearm During Commission of a Crime (Count 1) and was sentenced to 60 months incarceration and was found guilty of one count of Possession of an Unregistered Firearm (Count 2) and sentenced to 21 months of incarceration. The sentences were to run consecutively. Osborn filed this Motion to Vacate asserting that the factual basis for his plea of guilty is insufficient under Bailey v. U.S., 116 S.Ct. 501 (1995). In its response, the government concedes defendant's motion, agreeing that the conviction as to Count 1 is inappropriate under the facts of this case pursuant to Bailey. For Good Cause Shown, the Court therefore finds that defendant's motion (docket #31) should be granted as to the sentence imposed for Count 1.

IT IS SO ORDERED THIS 9<sup>th</sup> DAY OF JULY, 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 Beverly M. Fullen  
Deputy

  
JAMES O. ELLISON, SENIOR JUDGE  
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT  
Northern District of Oklahoma

FILED

JUL 9 1997

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA

v.

Case Number 96-CR-125-001-B

TARYN MARISA OZANUS  
Defendant.

ENTERED ON DOCKET

DATE 7-9-97

**AMENDED JUDGMENT IN A CRIMINAL CASE**  
(For Offenses Committed On or After November 1, 1987)  
Correction of Sentence for Clerical Mistake (Fed. R. Crim. P. 36)

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):

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
8 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 9<sup>th</sup> day of July, 1997.

  
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 74119

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 this court.  
By  Phil Lombardi, Clerk  
Deputy

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:

<u>Name of Payee</u>	<u>Amount of Restitution</u>
AT&T Universal Mastercard 8787 Baypine Road Jacksonville, Florida 32256 ATTN: Tammy Youngblood	\$4,207.27
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:	1
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.

TRE

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

JUL -1 1997

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA )  
Plaintiff )  
VS )  
CLESTER BILLS )  
Defendant )

Case Number 93-CR-094-001-E

ENTERED ON DOCKET

DATE JUL 03 1997

**ORDER REVOKING SUPERVISED RELEASE**

Now on this 18th day of June 1997, this cause comes on for sentencing concerning allegations that the defendant violated conditions of supervised release as set out in the Petition on Supervised Release filed on March 03, 1997. The defendant is present in person and represented by counsel, Charles Whitman. The Government is represented by Assistant U.S. Attorney Neal Kirkpatrick, and the United States Probation Office is represented by J. Mark Ogle.

The defendant was heretofore convicted on his plea of not guilty to Counts One and Two of a two-count Indictment charging him with Possession Of A Firearm After Former Conviction Of A Felony and Receiving And Possessing An Unregistered Firearm in violation of 18 U.S.C. § 922(g)(1) and 26 U.S.C. §§ 5841, 5861(d) and 5871, respectively. On January 7, 1994, Bills was committed to the custody of the U.S. Bureau of Prisons to be imprisoned for a term of 41 months on each count to be followed by a 3 year term of supervised release on each count to run concurrently. In addition to the standard conditions of release, Bills was ordered to participate in substance abuse counseling, mental health treatment and submit to the special search condition.

115

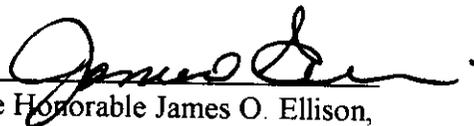
On April 15, 1997, a revocation hearing was held regarding the allegation noted in the Petition on Supervised Release, filed on March 03, 1997, said allegation being that on June 13, 1996, and June 25, 1996, Bills submitted urine specimens that tested positive for Cannabinoid 50 THC Metabolite. On June 20, 1996, he submitted a urine specimen that tested positive for Cannabinoid 50 THC Metabolite and Cocaine Metabolite Benzoyllecgonine. As a result he was required to participate in individual substance abuse counseling at CBTI in addition to the mental health counseling that he was receiving at Star Mental Health Center. On October 21, 1996, and October 30, 1996, Bills submitted urine specimens that tested positive for Cocaine Metabolite Benzoyllecgonine and as a result he was placed in the Metropolitan Tulsa Substance Abuse Detoxification program.

On November 5, 1996, Bills was transferred to the 12 & 12 in-patient substance abuse program where he remained until completing that program on December 27, 1996. On January 30, 1997, Bills submitted a urine specimen that tested positive for Cocaine Metabolite Benzoyllecgonine. The defendant stipulated to the allegation as alleged in the Petition. Sentencing was set for May 15, 1997. On May 15, 1997, the Sentencing Hearing was continued until June 18, 1997.

On June 18, 1997, as a result of the sentencing hearing, the Court found that the violation occurred after November 1, 1987, and that Chapter 7 of the U. S. Sentencing Guidelines is applicable. Further, the Court found that the violation of supervised release constitutes a Grade C violation in accordance with U.S.S.G. § 7B1.1(a)(3), and the defendant's criminal history category of III is applicable for determining the imprisonment range. In addition, the Court found that a Grade C violation and a criminal history category of III establish a revocation imprisonment range of five (5) to eleven (11) months in accordance with U.S.S.G. § 7B1.4(a). In consideration of these findings and pursuant to

U.S. vs. Lee, 757 2d 770 (10th Cir. 1992), in which the circuit determined that the policy statements in Chapter 7 were not mandatory, but must be considered by the Court, the following sentence is ordered:

It is the judgment of the Court that the defendant, Clester Bills, is hereby committed to the custody of the U.S. Bureau of Prisons to be imprisoned for a term of five months. It is further ordered that the original fine order of \$100, with a current balance of \$55, will remain in effect. The Court recommends that the defendant be placed at the Federal Correctional Center at El Reno.

  
The Honorable James O. Ellison,  
United States District Judge

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

**F I L E D**

JUN 30 1997

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LOUIS E. SANTURIO,

Defendant.

No. 92-CR-133-C  
97-C-368

FILED ON DOCKET  
JUL 01 1997

**ORDER**

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

On November 6, 1992, Santurio was named a One-Count Indictment for a violation of federal controlled substance laws. On March 9, 1993, Santurio was found guilty of possession with intent to distribute cocaine, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(A)(ii). On May 18, 1993, Santurio was sentenced to 120 months imprisonment and ordered to pay a \$3,000 fine. Santurio's conviction and sentence were affirmed on appeal. U.S. v. Santurio, 29 F.3d. 550 (10th Cir.1994).

On April 18, 1997, Santurio's present § 2255 motion was filed. Santurio moves this Court to vacate, set aside, or correct the sentence imposed upon him on several grounds of ineffective assistance of counsel.

Prior to addressing the merits of Santurio'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 Santurio, 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, 111 F.3d 737 (10th Cir.1997). Since Santurio’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 Santurio 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 Santurio’s claims barred unless cause and prejudice or a miscarriage of justice is shown. Id.

In order to evade this procedural bar, Santurio 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, Santurio 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, Santurio 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, Santurio must show that his counsel’s performance fell below an objective standard of reasonableness. Furthermore,

Santurio 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.

Santurio first asserts that his counsel was ineffective in failing to conduct investigations prior to trial. Santurio contends that counsel failed to request a court-appointed investigator, failed to hire an investigator, and failed to conduct interviews with any officer or agent involved in this case. However, Santurio’s first ground of error essentially attacks the validity of the search conducted of the vehicle which Santurio was driving on the day of his arrest. This issue has already been decided both by this Court and the Circuit. In an evidentiary hearing held prior to trial, this Court denied Santurio’s motion to suppress based on unlawful search. Given the fact that the government presented a consent form signed by Santurio to search his vehicle, and based upon other evidence and testimony elicited at the hearing, this Court concluded that the search of Santurio’s vehicle was proper. On appeal, the Circuit reviewed this Court’s findings and affirmed this Court’s determinations. The Circuit held that “it is clear that defendant consented to the search of his vehicle and that [the officer’s] search did not exceed the scope of that consent.” Santurio, 29 F.3d at 553. Hence, any issue as to the validity of the search is largely foreclosed. Santurio merely attempts to relitigate the same issue by couching it in terms of ineffective assistance. The allegations which Santurio now raise regarding circumstances surrounding the officer’s search of the vehicle and counsel’s alleged failure to properly attack certain grounds upon which the search was based do not alter the fact that this Court and the Circuit have already determined the search to be consensual, voluntary and valid. Even if Santurio is correct in arguing that the search was improperly based on a few legally insufficient factors, such as improper reliance on the officer smelling a chemical odor

or the failure of the drug dog to alert, the fact remains that Santurio voluntarily consented to the search. It is undisputed that a voluntary consent to search is a valid exception to the warrant requirement. Furthermore, the fact that the stop may have been pretextual is irrelevant. U.S. v. Botero-Ospina, 71 F.3d 783 (10th Cir.1995) (en banc), cert. denied, 116 S.Ct. 2529 (1996). As the Circuit noted in the present case, the officer stopped Santurio only after he was observed speeding in a construction zone. Given that the officer had a justifiable and lawful reason to initiate the stop, any pretext is immaterial. Additionally, the Court heard the officer testify at the suppression hearing that he intended to detain Santurio and use any means within the confines of the law to search the vehicle. Even considering the officer's adamant desire to search the vehicle, the Court found Santurio's consent to be voluntary and valid, and the Circuit agreed.

In a final attempt to establish some relevant nexus between the lawfulness of the search and counsel's alleged ineffective representation, Santurio alludes to counsel's failure to attack the validity of the consent by suggesting that no medical experts were consulted regarding Santurio's ability to think clearly without his insulin. However, aside from a mere conclusory allegation, Santurio offers absolutely no evidence that his ability to consent was in fact diminished by lack of insulin. Further, there is no indication that had his counsel presented this argument to the Court during the evidentiary hearing that the result would have been different. Apparently recognizing the futility of this argument, Santurio does not even explicitly relate his insulin or presumed lack thereof with the precise issue of consent. Merely stating that counsel failed to conduct an investigation, without a showing of prejudice, is insufficient to establish ineffective assistance. Hence, the Court finds no error respecting the search of Santurio's vehicle.

Santurio argues that he was denied effective assistance when counsel failed to call witnesses

or put on evidence at trial. Santurio argues that counsel was ineffective in failing to call Serrano, Santurio's co-defendant whose motion for judgment of acquittal was granted by the Court following the close of the government's evidence. Santurio contends that Serrano could have provided beneficial testimony, and could have been called as a defense witness once the Court granted Serrano's motion for judgment of acquittal. Santurio claims that it was error to not call a witness when that witness would present the only defense available. This may be so, but, again, Santurio relies on mere conclusions and fails to present specific, supporting facts. Santurio implies that Serrano could have presented the only defense available. Yet, Santurio utterly fails to detail precisely what defense Serrano would have provided if called as a witness during the trial, aside from assertions related to the search of the vehicle.

Santurio suggests that Serrano would have testified to incidents surrounding the search of the vehicle that would have rebutted the testimony of the arresting officer concerning the voluntariness of the search. Santurio suggests that Serrano would have testified that the officer forced Santurio to sign the consent to search form. Santurio argues that this would have corroborated his testimony that the officer had threatened him to sign the form.

However, Santurio fails to recognize that Serrano's motion for judgment of acquittal was granted well after the Court made its ruling regarding the legality of the search; as noted, the judgment of acquittal was granted following the close of the government's case during trial. Since the legality of the search was not at issue during trial, Santurio's opportunity to call Serrano as a witness following her judgment of acquittal would have had no bearing on the legality of the search. Since Santurio merely suggests that Serrano's trial testimony would have been directed to the previously resolved issue of the validity of the search, and because Santurio offers no indication that

Serrano would have provided any other information relating to his defense, the Court does not understand how counsel's failure to call Serrano during trial once such an opportunity was available could have prejudiced the defense. There is simply no indication that Serrano would have provided any beneficial evidence during trial that could have resulted in a different verdict. Moreover, no one prevented Serrano from offering testimony at the suppression hearing if she had so desired; indeed, her codefendant, Santurio, did take the stand in an attempt to refute the voluntariness of the search. Further, based on the evidence and testimony presented at the suppression hearing, the Court became satisfied that the search was consensual and voluntary. The Court found the officer's testimony regarding the search credible, and there is no indication at this time that the Court would have found otherwise had Serrano been called to testify. Because the Court found the search valid based upon proper consent, Serrano's proposed testimony and other proposed evidence regarding the odor in the van is largely immaterial. Furthermore, the Court agrees with the government that Santurio is merely speculating as to what Serrano's testimony might have been; there is no indication that Serrano would have, in fact, testified as Santurio has suggested had she been called.

Again, Santurio attacks counsel's failure to argue his ability to think clearly and to knowingly understand and waive his rights due to a supposed insulin deficiency. Santurio offers no evidence that lack of insulin prevented him from making an informed decision regarding consent. Moreover, the Court finds it very odd that Santurio did not bring this seemingly vital issue to the Court's attention during the suppression hearing when Santurio was testifying as to the voluntariness of his consent. Additionally, as this issue was resolved prior to trial, counsel's failure to present this defense to the jury during trial was not error. Santurio may be correct that a complete failure to prepare a defense may constitute deficient performance, and comments by defense counsel that she was forced to attend

the trial and forced to miss a golf game may be inappropriate and indicative of a lack of interest. However, Santurio completely fails to offer any indication of what his counsel should have presented or argued at trial with respect to Santurio's guilt or innocence. Santurio's assertions primarily concern the legality of the search of the vehicle and none tend to shed light on any other proposed defense. As noted, the validity of the search was settled prior to trial and was therefore not at issue during trial. Santurio essentially offers no specific witnesses who could have, or should have, been called to testify in his behalf at trial and whose testimony would have been directed to issues unrelated to the validity of the search. Furthermore, Santurio offers no evidence impacting issues other than the validity of the search which could have, or should have, been presented to the jury. Indeed, Santurio implies that Serrano would have presented the only available defense, although Santurio fails to detail what that defense would have been. Moreover, Santurio makes absolutely no showing of factual innocence. The Court is therefore unable to find that counsel's alleged "cumulative errors" actually prejudiced the defense.

Santurio argues that the Court erred in calculating his base level offense due to counsel's failure to file written objections to the presentence report ("PSR"). The PSR attributes 196 kilograms of cocaine to Santurio, which corresponds to a base offense level of 38, pursuant to § 2D1.1 of the Sentencing Guidelines. In arriving at this amount, the PSR cites the 74 kilograms of cocaine that was recovered from Santurio's vehicle on the day he was arrested. The PSR further indicates that Santurio admitted that the 74 kilograms of cocaine was the second part of a 200 kilogram shipment, and that he had already made one cross-country trip with 122 kilograms. The PSR combined the amount seized with the amount which Santurio admitted transporting, to arrive at 196 kilograms.

However, Santurio maintains that the Court accepted a stipulation between the parties at trial

that only 74 kilograms of cocaine were involved in the present case. Further, Santurio argues that he should have received the benefit of § 1B1.8 of the Guidelines since he and the government agreed that the information concerning the 122 kilograms would not be used in computing his sentence. Thus, Santurio argues that he should have been assigned a base offense level of 36, corresponding to 74 kilograms of cocaine, rather than a base offense level of 38, which corresponds to 196 kilograms.

In reviewing the record, the Court notes that the stipulation which Santurio cites does not purport to limit the amount of cocaine attributable to Santurio to 74 kilograms. The stipulation merely states that if a certain government witness were called to testify, he would state that he received 74 kilograms of a substance from the Oklahoma Highway Patrol, that he conducted a chemical analysis of the substance, and that it would be his expert opinion that the samples were in fact cocaine. The Court does not understand how such a stipulation could be interpreted as meaning that Santurio can only be held accountable for 74 kilograms of cocaine. Rather, the stipulation merely goes to the identity of the substance seized from Santurio as being cocaine. The stipulation in no way serves to prohibit the inclusion of the 122 kilograms of cocaine in Santurio's sentencing calculation which Santurio admitted to transporting.

The Court also disagrees with Santurio that he should have received any benefit from § 1B1.8, which provides that where a defendant agrees to cooperate with the government by providing information related to unlawful activities of others, and the government agrees that self-incriminating information provided pursuant to the agreement will not be used against the defendant, such information shall not be used in computing the defendant's sentence. Santurio maintains that he provided information related to the prior shipment of 122 kilograms of cocaine only after law

enforcement agents advised Santurio that if he cooperated, the U.S. Attorney would be informed, who would provide assistance to Santurio. The government argues that although the first part of § 1B1.8 was arguably satisfied by Santurio agreeing to cooperate with the government, the second part of that section was not fulfilled since the government never agreed not to use self-incriminating information against Santurio.

In making his argument, Santurio provides no evidence whatsoever that the government actually agreed not to use self-incriminating information against him in exchange for such information. Government agents merely agreed to inform the prosecution that Santurio provided information. From this, Santurio argues that he had a reasonable expectation that an implicit contract was entered into with the government and that the 122 kilograms would not be used against him in any manner. This argument is not supported by law. Presented with facts similar to the present case, the Tenth Circuit in U.S. v. Evans, 985 F.2d 497 (10th Cir. 1993), cert. denied, 508 U.S. 965 (1993), held that § 1B1.8(a) requires the existence of two separate agreements before taking effect: 1) the defendant agrees to provide information regarding the unlawful activities of others, and 2) the government agrees not to use self-incriminating information provided pursuant to the agreement against the defendant. As in Evans, although the agreement between Santurio and the government agent may satisfy the first requirement, it does not satisfy the second. The agent's "statement was nothing more than an offer to tell the prosecutor that [Santurio] had cooperated. No reasonable person could construe the statement as a promise not to use self-incriminating information against [Santurio]." Id. at 499. Thus, since no agreement was actually made between Santurio and the government, § 1B1.8 does not apply.

Santurio also seemingly contends that the government somehow breached a contract with

Santurio regarding the use of the information related to the 122 kilograms of cocaine. However, the Court has reviewed the record and has discovered that no plea agreements exist in this case. Santurio recognizes that government agents are not in the position to offer any plea agreement, but he insists that the agent's promise to notify the U.S. Attorney of Santurio's cooperation somehow has the effect of binding the government to a supposed implied agreement. As the Court finds that there was no agreement between the government and Santurio that incriminating statements would not be used against him, and since no plea agreement exists, Santurio's argument on this point is meritless. Thus, any objection by counsel to the PSR based either on the stipulation or the application of § 1B1.8 would have been overruled.

Santurio claims that the Court erred in failing to address an objection to the amount of drugs stated in the PSR. However, as no objection was made, the Court could not have addressed it. Santurio also argues that drug quantities in uncharged counts that appear in the PSR and with the judge failing to explain the basis upon which that information was included cannot be added to the total amount of drugs for the purposes of sentencing. Santurio points to U.S. v. Padilla, 947 F.2d 893 (10th Cir.1991), cert. denied, 508 U.S. 954 (1993), for support. However, Santurio misstates Padilla's holding. The Circuit actually held that the trial court erred in considering an amount of heroin contained in an uncharged count when determining the amount of aggregate drugs for sentencing purposes absent any indication in the PSR or record as to the basis for the additional amount of drugs. Id. at 896. In the present case, paragraph 9 of the PSR clearly provides the basis for the additional 122 kilograms of cocaine, and the record in this case does not lack "any indication of reliability" as to the 122 kilograms of cocaine. Thus, this argument is meritless.

The government also provides an interesting footnote, calling the Court's attention to the fact

that this Court actually departed downward from a guideline minimum of 168 months to the statutory minimum of 120 months. The Court found that the statutory minimum of 120 months adequately addressed Santurio's involvement in the offense, and also recognized Santurio's cooperation upon his arrest. Thus, in essence, the Court disregarded the effect of the additional 122 kilograms of cocaine. Indeed, the statutory sentence of 120 months is also fifteen months less than the guideline range applicable to an offense level of 33, which Santurio now argues should be applied. Hence, the Court finds no prejudice.

Santurio next argues that counsel was ineffective in failing to request a downward departure based on role in the offense. Santurio argues that he simply moved the drugs from one place to another and was paid a small fee for his part in the transfer. Santurio contends that the evidence shows that he was a mere courier. Santurio thus argues that he "clearly qualifies" for a downward departure based on his mitigating role in the offense, pursuant to § 3B1.2.

The Court, however, finds no error. Santurio bears the burden of establishing by a preponderance of the evidence that he was a minimal or minor participant. U.S. v. Caruth, 930 F.2d 811, 812 (10th Cir.1991). Given the large amount of cocaine which Santurio was found to have transported or attempted to transport, the Court does not find that Santurio was a minor or minimal participant. Thus, even if a request for a mitigating role had been made, the Court would have rejected such a request in this case. Note 2 following § 3B1.2 states that the downward adjustment for a minimal participant is intended to be used infrequently, and usually only in cases involving a single act of carrying drugs for a small smuggling operation. Rather than being recruited as a courier for a single smuggling transaction involving a small amount of drugs, Santurio was involved in a smuggling operation involving a large amount of cocaine, and personally transported at least two

shipments totaling 196 kilograms of cocaine. It cannot be seriously argued that such involvement constitutes minimal participation. Moreover, the Circuit has recognized the importance of couriers to drug conspiracies, and has not reacted favorably to arguments raised by couriers seeking a downward departure based on minimal or minor participation. See, U.S. v. Williamson, 53 F.3d 1500, 1524 (10th Cir.1995), cert. denied, 116 S.Ct. 218 (1995) (recognizing the important function of couriers in drug distribution networks, and acknowledging prior opinions denying requests for offense level reductions under § 3B1.2 on that basis alone); U.S. v. Ayers, 84 F.3d 382, 384 (10th Cir.1996) (given the important function of couriers in drug distribution networks, they often are not minor participants); and U.S. v. Carter, 971 F.2d 597, 600 (10th Cir.1992), cert. denied, 506 U.S. 1009 (1992) (defendant's services as courier were as indispensable to the completion of the criminal activity as those of the seller and the buyer and to debate which one is less culpable than the others is not productive; a courier is an essential cog in any drug distribution scheme). In light of the facts revealed by the PSR and the authorities addressing the issue, the Court finds that Santurio was not a minimal participant, and the Court would therefore have not awarded any downward departure on that basis. Nonetheless, the Court also noted at sentencing that Santurio was forthcoming and cooperative after his arrest, and he had a criminal history score of zero. The Court took these factors into consideration, and departed downward to the statutory minimum of 120 months. Thus, even if the Court agreed that Santurio was a minor participant and therefore decreased his offense level by two points, which would yield a total offense level of 33 with a corresponding range of 135 to 168 months imprisonment, Santurio's sentence would still be below the guideline range. Hence, the Court finds no prejudice.

Santurio next contends that he was denied effective assistance of counsel when counsel failed

to request a downward departure based on acceptance of responsibility. The Court is utterly perplexed by this argument, as paragraph 20 of the PSR clearly awards a three point reduction for acceptance of responsibility. This argument is an example of an attempt to throw out every conceivable defense in order to see what might stick without adequately examining the merit of such an argument. The Court therefore finds this argument both frivolous and highly inappropriate.

Lastly, Santurio argues for application of the "safety valve" contained in 18 U.S.C. § 3553(f), which provides that the statutory minimum sentence is to be disregarded in favor of the guidelines range in certain cases. Section 5C1.2 is the corresponding guideline provision. However, the safety valve is not applied to sentences imposed prior to September 23, 1994. U.S. v. Torres, 99 F.3d 360, 362 (10th Cir.1996), cert. denied, 117 S.Ct. 1273 (1997). Since Santurio was sentenced in May of 1993, he does not qualify for the safety valve. Even if Santurio qualified for § 5C1.2's safety valve, the Court has trouble understanding exactly what benefit Santurio would receive. Santurio was sentenced to the statutory minimum of 120 months imprisonment, which is far less than the 168 to 210 months provided by the Guidelines.

The Court finds that Santurio failed to demonstrate that he received ineffective assistance of counsel under the standard pronounced in Strickland. The Court does not agree that the result of the proceedings would have been different but for the alleged errors of counsel. That is, the Court finds that Santurio failed to show that "there is a reasonable probability that, but for counsel's [alleged] unprofessional errors, the result of the proceeding would have been different." Strickland at 694.

Santurio requests a hearing on the issues raised herein. Section 2255 provides that unless the motion and records conclusively show that Santurio is entitled to no relief, the Court shall grant a hearing. In the present case, the Court concludes that the record conclusively shows that Santurio

is entitled to no relief, and a hearing would be nonproductive. Hence, Santurio's request for a hearing is denied.

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

IT IS SO ORDERED this 27<sup>th</sup> day of June, 1997.



H. Dale Cook  
U.S. District Judge

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

FILED

JUN 30 1997

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BOBBY GENE RICHARDSON,

Defendant.

No. 94-CR-3-C  
97-C-353

FILED ON DOCKET  
DATE JUL 01 1997

ORDER

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

On January 5, 1994, Richardson was named in an eleven Count Indictment for a violation of various federal controlled substance and firearms laws. On July 28, 1994, a jury found Richardson guilty on eight Counts. On October 3, 1994, Richardson was sentenced to 228 months imprisonment. Richardson's conviction and sentence were affirmed on appeal. U.S. v. Richardson, 86 F.3d. 1537 (10th Cir.1996), cert. denied, 117 S.Ct. 588 (1996).

On April 17, 1997, Richardson's present § 2255 motion was filed. Richardson moves this Court to vacate, set aside, or correct the sentence imposed upon him on the following grounds: 1) the government failed to prove the type of methamphetamine at sentencing; 2) the Court erred in its drug quantity determination; 3) double jeopardy bars proof of type of methamphetamine; and 4) ineffective assistance of counsel.

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

85

appeal acts as a bar to raising the issue in a § 2255 motion, unless Richardson 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 Richardson's claims barred unless cause and prejudice or a miscarriage of justice is shown. Id.

In order to evade this procedural bar, Richardson 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, Richardson 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, Richardson 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, Richardson must show that his counsel's performance fell below an objective standard of reasonableness. Furthermore, Richardson 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.

Richardson first asserts that his counsel was ineffective in failing to object to the Court's application of the offense level for d-methamphetamine rather than l-methamphetamine, when the government failed to offer proof at sentencing that the substance was, in fact, d-methamphetamine.

On appeal, the Circuit addressed the issue regarding type of methamphetamine and held that since Richardson failed to object to the type of methamphetamine prior to appeal, his argument must fail, as factual disputes do not rise to the level of plain error. Richardson, 86 F.3d at 1554. However, the Circuit did not consider Richardson's present argument in the context of ineffective assistance of counsel. Although the Circuit dismissed this argument without actually considering its merit, the Circuit noted that, contrary to Richardson's present assertion, the government did introduce evidence at sentencing that the methamphetamine found at Richardson's apartment was d-methamphetamine. Id. at n.11.

The "government has the burden of proof and production during the sentencing hearing to establish the amounts and types of controlled substances related to the offense. Because the type of methamphetamine is not an element of the crime, it need only be proved by a preponderance of the evidence at sentencing." U.S. v. Deninno, 29 F.3d 572, 580 (10th Cir.1994), cert. denied, 115 S.Ct. 1117 (1995). The Court notes that Richardson does not allege that he possessed l-methamphetamine rather than d-methamphetamine. He simply alleges that his counsel erred in failing to require the government to carry its burden of proof as to this issue during sentencing. Given the government's alleged failure to prove the type of methamphetamine at sentencing, Richardson argues that the rule of lenity requires that the Court impose punishment in accord with l-methamphetamine rather than d-methamphetamine.

The record reveals, however, that at sentencing, the government offered into evidence a copy of a lab report in order to establish that d-methamphetamine was recovered from Richardson. The Court understood the offer as supporting the government's claim that d-methamphetamine was involved in the present case, and the Court accepted it. Furthermore, the government, in response

to Richardson's present motion, provided the Court with a copy of the lab report relating to the identification of the methamphetamine involved in the present case. The report clearly reveals that the substance attributable to Richardson was identified as d-methamphetamine.

Thus, even if the Court were to find that counsel's failure to raise the issue regarding the type of methamphetamine involved in the present case fell below the standard of reasonable assistance, the Court nevertheless finds that Richardson was not thereby prejudiced. The Court finds that the laboratory report shows, by a preponderance of the evidence, that d-methamphetamine is attributable to Richardson. Hence, even if an objection had been made, the result in this case would have been the same. Richardson has therefore failed to demonstrate that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland, 466 U.S. at 694.

Richardson contends that his sentence should be corrected due to improper use of drug quantities in calculating his sentence. However, on appeal, the Circuit considered and rejected this argument, holding that the record "clearly supplies sufficient evidence to support the drug quantity finding." Richardson, 86 F.3d at 1553. Thus, this argument is moot.

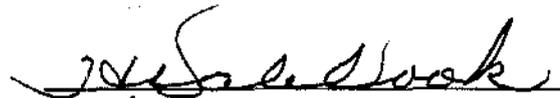
Richardson lastly asserts that it is a violation of double jeopardy to provide the government with a second opportunity to present evidence relating to the type of methamphetamine which was in its custody and at its disposal for testing at the time of sentencing. However, as the Court found that the government did, in fact, offer evidence at sentencing via a lab report relating to the type of methamphetamine involved herein, and since the Court found that the report established the presence of d-methamphetamine by a preponderance of the evidence, this argument is moot. Further, the Court notes that this argument has no basis in law. See, U.S. v. Glover, 97 F.3d 1345 (10th

Cir. 1996) (in § 2255 proceeding, remanding case to district court for determination of type of methamphetamine following government's failure to introduce such proof at initial sentencing).

Richardson requests a hearing on the issues raised herein. Section 2255 provides that unless the motion and records conclusively show that Richardson is entitled to no relief, the Court shall grant a hearing. In the present case, the Court concludes that the record conclusively shows that Richardson is entitled to no relief, and a hearing would be nonproductive. Hence, Richardson's request for a hearing is denied.

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

IT IS SO ORDERED this 26<sup>th</sup> day of June, 1997.



H. Dale Cook  
U.S. District Judge

ENTERED ON DOCKET  
DATE 7-1-97

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**F I L E D**

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 SCOTT EDWARD PERRY, )  
 )  
 Defendant. )

JUN 30 1997

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

Case No. 96-CR-134-K ✓

**F I L E D**

JUL 01 1997

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

ORDER DISMISSING INDICTMENT

Plaintiff, the United States, by and through Stephen C. Lewis, United States Attorney, by F. L. Dunn, III, Assistant United States Attorney, applies to the court for an order dismissing the Indictment now pending against the defendant in the above styled and numbered cause, for the reason that the defendant previously has been charged with, plead guilty to, and sentenced for committing an offense within the jurisdiction of the District Court of Tulsa County, State of Oklahoma, which offense involves substantially the same conduct as that which is alleged within the Indictment now pending against the defendant in the above styled and numbered cause. Plaintiff attached to its Application to Dismiss a copy of each of the following:

- A. Information filed in Case No. CF-96-2357, District Court of Tulsa County, Oklahoma;
- B. Affidavit for arrest warrant filed in Case No. CF-96-2357, District Court of Tulsa County, Oklahoma; and,
- C. Criminal Action Docket, District Court Clerk, Tulsa County, Oklahoma, Case No. CF-96-2357.

6

THE COURT FINDS, based upon the facts and circumstances outlined above, that (1) continued prosecution of the defendant for the offense alleged within the Indictment would constitute a dual or successive prosecution of the defendant for an act for which the defendant previously has been charged with, convicted of, and sentenced for in the District Court of Tulsa County, Oklahoma, (2) there has been no objection to the application filed on behalf of the defendant, and (3) it is in the interests of justice for the Indictment to be dismissed.

THEREFORE, THE COURT ORDERS, in the interests of justice, that the Indictment now pending against the defendant, **SCOTT EDWARD PERRY**, in the above styled and numbered cause, be and the same is hereby dismissed.

A handwritten signature in black ink that reads "Terry C. Kern". The signature is written in a cursive style with a horizontal line underneath the name.

TERRY C. KERN, Chief  
United States District Judge