

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

FILED

JAN 27 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LAQUITA LUELLEN

Defendant.

No. 90-CR-97-E

ENTERED ON DOCKET

DATE JAN 29 1998

ORDER

Now before the Court is the Motion for Sentence Modification under 3582 Title 18 of the defendant Laquita Luellen.

The Court specifically notes that none of the provisions of 18 U.S.C. §3582 apply to this case. Although Luellen requests relief under §3582, her motion more appropriately is brought under 28 U.S.C. §2255. In the interest of justice, and noting that Luellen is appearing pro se, the Court will treat this motion as one brought pursuant to 28 U.S.C. §2255. However, since Luellen has previously filed a §2255 motion, due to the Anti-terrorism and Effective Death Penalty Act amendments to §2255, Luellen must seek permission from the Court of Appeals to file this successive motion. The Court of Appeals, in Coleman v. United States, 106 F.3d 339, 341 (10th Cir. 1997), has held: "when a . . . successive . . . §2255 motion is filed in the district court without the required authorization by this court, the district court should transfer the . . . motion to this court in the interest of justice pursuant to §1631."

Accordingly, Luellen's Motion is transferred to the court of

27

appeals for consideration of whether she can proceed with a successive motion under §2255.

ORDERED this 22^d day of January, 1998.



JAMES O. ELLISON, Senior Judge
UNITED STATES DISTRICT COURT

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

FILED

JAN 28 1998

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 JAVIER DIAZ, aka)
 Javier Diaz Cervantes, aka)
 Arturo Diaz,)
)
 Defendant.)

Phil Lombardi, Clerk
U.S. DISTRICT COURT

No. 95-CR-53-B

ENTERED ON DOCKET

DATE JAN 29 1998

ORDER

Now on this 28th day of ~~October~~ January, 1998 this cause comes on to be heard in the matter of the plaintiff's Motion for Leave to Dismiss, without prejudice, the Complaint against defendant Javier Diaz aka Javier Diaz Cervantes aka Arturo Diaz in the above styled cause. The Court finds that said request ought to be granted and the Indictment against defendant Javier Diaz aka Javier Diaz Cervantes aka Arturo Diaz be dismissed, without prejudice, and the warrant shall be recalled.

IT IS SO ORDERED.

for James Elliott
THOMAS R. BRETT
United States District Judge

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 YVONNE LEAH HOUSTON,)
)
 Defendant.)

ENTERED ON DOCKET
DATE JAN 29 1998

No. 97-CR-134-H ✓

FILED

JAN 29 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORDER

Now on this 28th day of January, 1998 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 Yvonne Leah Houston in the above styled cause as the defendant is successfully undergoing mental health treatment. The Court finds that said request ought to be granted and the Indictment against defendant Yvonne Leah Houston is dismissed, without prejudice.

IT IS SO ORDERED.


SVEN E. HOLMES
United States District Judge

④

SPC
1/26/98

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 EUGENE O. PAIR and)
 DIANE LOUISE PAIR,)
)
 Defendants.)

ENTERED ON DOCKET
DATE JAN 29 1998

CASE NO. 97 CR 132 H ✓

FILED

JAN 29 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORDER DISMISSING

This matter came on for a pretrial and motion hearing on the 4th day of December, 1997, the United States was represented by John Russell, Defendant Eugene O. Pair was represented by attorney Stanley D. Monroe and Defendant Diane Louise Pair was represented by attorney David C. Phillips, III. The parties reached an agreement whereby Defendant Eugene O. Pair has entered into an agreement to enter a plea of guilty pursuant to Rule 11(e) (c) 2 and the United States moves to dismiss the federal indictment against Defendant Diane Louise Pair in exchange for the entrance of a plea of guilty to an Oklahoma State charge.

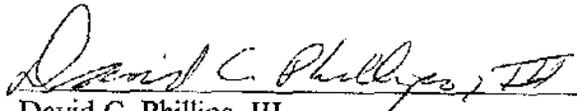
IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED by the Court that the indictment against Diane Louise Pair in the United States District Court in and for the Northern District of Oklahoma filed on September 9, 1997, is dismissed without prejudice.



JUDGE OF THE U.S. DISTRICT COURT

15

APPROVED BY:



David C. Phillips, III

OBA No. 13551

D. C. PHILLIPS & ASSOCIATES, P.C.

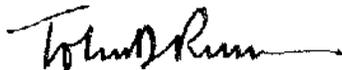
115 W. 3rd St., Ste. 525

Tulsa, OK 74103

Ph: (918) 584-5062

Fax: (918) 585-1005

ATTORNEY FOR DEFENDANT DIANE PAIR



John Russell, OBA # 13343

Asst. U.S. District Attorney

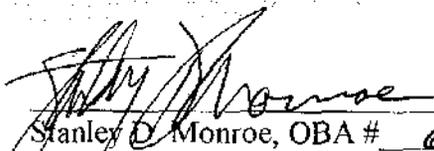
and

Stephen C. Lewis, U.S. District Attorney

333 W. 4th Street, 3rd Floor

Tulsa, OK 74103

ATTORNEYS FOR PLAINTIFF



Stanley D. Monroe, OBA # 6305

525 S. Main St., Ste. 600

Tulsa, OK 74103-4509

ATTORNEY FOR DEFENDANT EUGENE PAIR

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

FILED

JAN 27 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA)
)
Plaintiff,)
)
v.)
)
JAMES LEVI EDMONDSON, aka)
"Black James", "Fat Man" aka "Jim Leigh",)
)
Defendant.)

No. 97-CR-171-C ✓

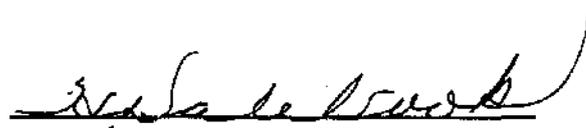
ENTERED ON DOCKET
DATE JAN 28 1998

ORDER

Now on this 26 day of January, 1998, this cause comes on to be heard in the matter of the plaintiff's Motion for Leave to Dismiss, without prejudice, Count Seven of the Indictment against defendant James Levi Edmondson in the above styled cause. The Court finds that said request ought to be granted and Count Seven of the Indictment against defendant James Levi Edmondson is dismissed, without prejudice.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that pursuant to the motion filed by the government on January 16, 1998 and to best meet the ends of justice, Count Seven of the Indictment in the above styled case is hereby dismissed.

IT IS SO ORDERED.


United States District Judge

20

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

JAN 22 1998

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 RODNEY ALAN SMITH,)
)
 Defendant.)

Phil Lombardi, Clerk
U.S. DISTRICT COURT

Case No. 89-CR-149-E
96-C-1120-E

ENTERED ON DOCKET
DATE JAN 27 1998

ORDER

Now before the Court is the Motion Pursuant to 28 U.S.C. §2255 to Vacate, Correct, or Set Aside Sentence Pursuant to 28 U.S.C. §2255 (Docket #16) of the Defendant Rodney Alan Smith.

Smith was charged with Count 1, possession with intent to distribute methamphetamine, Count 2, maintaining a house for the purpose of distributing a controlled substance, Count 3, possession of a firearm during the commission of a drug trafficking crime, and Counts 4 and 5, unlawful possession of firearms. On March 22, 1990, Smith entered a guilty plea as to each of the crimes with which he was charged. He was sentenced to 168 months imprisonment on Counts 1, 2, 4, and 5, and 60 months imprisonment Count 3, to run consecutively to the rest of the sentence.

Smith, in this motion, argues that his sentence on Count 3 is illegal in light of Bailey v. United States, ___ U.S. ___, 116 S.Ct. 501, 133 L.Ed.2d 472 (1995). In Bailey, the Supreme Court held that conviction of a defendant for "use of a firearm" under section 924(c) requires "evidence sufficient to show an active employment of the firearm by a defendant." He also argues that his counsel was ineffective with respect to the sentencing on methamphetamine charges because he failed to object to the type of methamphetamine for which he was sentenced, and because he failed to make certain

objections with regard to proof of the amount of methamphetamine. The government confesses as to the Bailey argument on Count 3, agrees that a hearing is necessary to determine the type of methamphetamine, and argues that Smith's counsel was effective with respect to the amount of methamphetamine.

Smith's remaining arguments center around the alleged ineffectiveness of counsel in failing to require the government to prove the amount of methamphetamine, in failing to object to the use of hearsay evidence on the issue of amount, and in failing to file a motion for discovery. The ineffective assistance of counsel claims must be viewed under the Strickland test: 1) whether defendant's attorney's performance was not reasonably effective and 2) whether defendant's defense was prejudiced thereby. Strickland v. Washington, 466 U.S. 668, 693, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Further, the Court must presume that counsel's performance was reasonably effective, "the burden rests on the accused to demonstrate a constitutional violation." U.S. v. Cronin, 104 S.Ct. 2039, 2046 (1984). Under the Strickland rule the presumption of effective representation is a strong one. Indeed, "[j]udicial scrutiny of counsel's performance must be highly deferential." Strickland, 104 S.Ct. at 2065. The Court must "presume that the challenged action might be considered sound trial strategy." Hatch v. State of Oklahoma, 58 F.3rd 1447, 1459 (10th Cir. 1995). Moreover, the two part Strickland test applies to ineffective assistance of counsel arguments involving guilty pleas. Hill v. Lockhart, 474 U.S. 52 (1985).

Smith's first challenge to his counsel is "predicated on counsel's failure to object to the findings based on a miscalculation of the amounts and dates this Court did find credible, and did use to find that the thirty-six (36) ounce figure was accurate for sentencing purposes." The Court does not find that the representation of Smith with regard to the methamphetamine amounts was

"objectively unreasonable." Counsel vigorously opposed the evidence put on by the government, and in fact put on evidence on behalf of Smith. The Court made a credibility finding, and a finding of amount, and defense counsel was in no way deficient. In addition, the amount was upheld on appeal.

The same is true with respect to the failure to object to the use of hearsay testimony when the government's witness testified about a "confidential informant." A sentencing judge is not restricted to information that would be admissible at trial. 18 U.S.C. §3661.

Lastly, the failure to file a motion for discovery does not constitute ineffective assistance of counsel. Smith fails to identify what evidence he thinks would have been produced with that motion. Moreover, he does not demonstrate that the result of the sentencing would have been different if a motion for discovery had been filed.

Smith's Motion to Vacate, Set Aside, or Correct Sentence Pursuant to 28 U.S.C. §2255 (Docket #16) is granted with respect to Count 3. With respect to the other charges, this matter is set for hearing on Thursday, the 26 day of February, 1998, at 10:00 to determine the type of methamphetamine involved. The Court rejects Smith's arguments regarding amount. Smith will only be entitled to resentencing on Counts 1, 2, 4 and 5 if the government is unable to prove that the substance involved was D-methamphetamine. The Court appoints the Federal Public Defender to represent Smith on these issues relating to resentencing.

IT IS SO ORDERED THIS 22nd DAY OF JANUARY, 1998.


JAMES O. ELLISON, SENIOR JUDGE
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT
Northern District of Oklahoma

ENTERED ON DOCKET
DATE 1-27-98

UNITED STATES OF AMERICA

v.

Case Number 97-CR-131-001-K ✓

FILED

RICHARD B. ALLEN
Defendant.

JAN 27 1998 *CS*

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

Phil Lombardi, Clerk
U.S. DISTRICT COURT

The defendant, RICHARD B. ALLEN, was represented by Jim Fransein.

The defendant pleaded guilty October 20, 1997, to Count 1 of the Indictment. Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

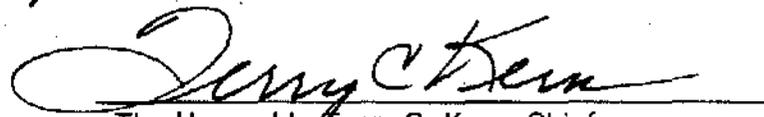
Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
21 USC 841(a)(1)	Possession of a Controlled Dangerous Substance With Intent to Distribute	10/15/96	1

As pronounced on January 15, 1998, 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 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 day of January, 1998.


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

Defendant's SSN: 333-38-5861

Defendant's Date of Birth: 04/26/46

Defendant's residence and mailing address: 138 W. Kent, Broken Arrow OK 74012

Defendant: RICHARD B. ALLEN
Case Number: 97-CR-131-001-K

IMPRISONMENT

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

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons before 12:00 p.m. on February 16, 1998.

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: RICHARD B. ALLEN
Case Number: 97-CR-131-001-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 as soon as possible, but in no event, later than 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, destructive device, or other dangerous weapon.
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: RICHARD B. ALLEN
Case Number: 97-CR-131-001-K

FINE

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

The defendant shall pay a fine of \$ 4,000, 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.

Defendant: RICHARD B. ALLEN
Case Number: 97-CR-131-001-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:	15
Criminal History Category:	I
Imprisonment Range:	18 months to 24 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 4,000 to \$ 40,000
Restitution:	\$ n/a

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

BJJ

UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA)
Plaintiff)
VS)
EARLINE MARIE O'NEAL)
Defendant)

Case Number 92-CR-127-001-C

ENTERED ON DOCKET

FILED

DATE 1/27/98

JAN 27 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORDER REVOKING SUPERVISED RELEASE

Now on this 9th day of January 1998, this cause comes on for sentencing concerning allegations that O'Neal violated conditions of supervised release as set out in the Petition on Supervised Release filed on November 26, 1997. O'Neal is present in person and represented by counsel, Jack Short. The Government is represented by Assistant United States Attorney, James Swartz, and the United States Probation Office is represented by Belinda Ashley.

On December 18, 1997, a Revocation Hearing was held regarding the allegations noted in the Petition on Supervised Release, filed on November 26, 1997, said allegations being that rules were violated at the Community Sanction Center on October 17, 18, 19, 22 and November 10, 1997.

The Court found that O'Neal was in violation of the conditions of her release and supervised release was revoked. Sentencing was held on January 9, 1998, at which time the Court found that the conviction 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 constituted a Grade C violation in accordance with USSG § 7B1.1(a)(3)(B), and O'Neal's Criminal History Category of I is applicable for determining the imprisonment range. In addition, the Court found that a Grade C violation and a Criminal History Category of I establish a revocation imprisonment range.

United States District Court)
Northern District of Oklahoma) ss
I hereby certify that the foregoing)
is a true copy of the original as filed)
in this court.

Phil Lombardi, Clerk
By Beau McLaugh
Deputy

of three (3) to nine (9) months in accordance with USSG § 7B1.4(a). However, the statutes allow a three year maximum in accordance with U.S.C. § 3583(e)(3). In consideration of these findings and pursuant to U.S. vs. Lee, 757 F.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. Because O'Neal is in need of intensive drug abuse treatment which would exceed the nine month guideline range, the following sentence is ordered:

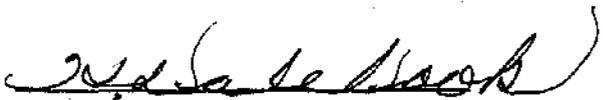
It is the judgment of the Court that the defendant, Earline Marie O'Neal, is hereby committed to the custody of the U.S. Bureau of Prisons to be imprisoned for a term of eighteen (18) months. The Court recommends that, classification provisions permitting, O'Neal be confined in a facility capable of providing substance abuse treatment. The Court further recommends that O'Neal receive drug abuse treatment as soon as possible.

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of one year. While on supervised release, the defendant shall not commit another federal, state, or local crime. You are prohibited, during the period of supervised release, or afterward, from possessing a firearm, destructive devices, or other dangerous weapons. Further, while on supervised release you shall not illegally possess a controlled substance, shall comply with the standard conditions that have been adopted by this court, and shall comply with the following additional conditions:

1. O'Neal shall participate in a program of testing and treatment (to include inpatient) as directed by the U.S. Probation Office.
2. O'Neal shall participate in an educational and/or vocational training program, as directed by the U.S. Probation Office.

3. Upon release from custody, the defendant shall pay any remaining unpaid balance of the fine during the term of supervised release.

O'Neal shall report to the facility of designation as determined by the Bureau of Prisons on February 9, 1998, at 9:00 a.m.


The Honorable H. Dale Cook
United States District Judge

UNITED STATES DISTRICT COURT
Northern District of Oklahoma

FILED

JAN 21 1998

UNITED STATES OF AMERICA

v.

Case Number 96-CR-067-001-H

Phil Lombardi, Clerk
U.S. DISTRICT COURT

PAUL J. MAYS, JR.
Defendant.

E00 1/23/98

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, PAUL J. MAYS, JR., was represented by James Clinton Garland.

On motion of the United States the court has dismissed Counts 1, 2, & 3 of the Information.

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

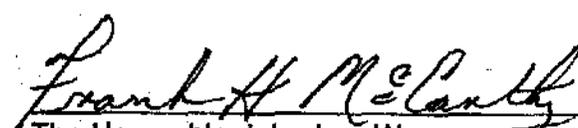
<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
26 USC 7203	Willful Failure to File Tax Return or Pay Tax	04/15/91	1

As pronounced on July 25, 1996, the defendant is sentenced as provided in pages 2 through 4 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 25.00, for Count 1 of the Superseding Information, which shall be due immediately.

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

Signed this the 20th day of JAN, 1998.

for

The Honorable John Leo Wagner
Chief United States District Judge
MAG.

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

12

ct

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

PROBATION

The defendant is hereby placed on probation for a term of 3 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 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.
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.
5. The defendant shall pay the cost of supervision at a rate of \$195.30 per month for 36 months, for a total of \$7,030.80.

STANDARD CONDITIONS OF PROBATION

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

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

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

FINE

The defendant shall pay a fine of \$ 10,000.00. This fine shall be paid in full immediately. Any amount not paid during the period of probation.

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

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

STATEMENT OF REASONS

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

Guideline Range Determined by the Court:

Total Offense Level:	10
Criminal History Category:	I
Imprisonment Range:	6 months to 12 months - Ct. 1
Supervised Release Range:	1 year - Ct. 1
Fine Range:	\$ 2,000 to \$ 20,000 - Ct. 1
Restitution:	N/A

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

12/20

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

F I L E D

JAN 20 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
GARY J. PHILLIPS,)
)
Defendant.)

Case No. 92-CR-105-E
~~96~~-C-948-E

ENTERED ON DOCKET

DATE JAN 23 1998

ORDER

Now before the Court is the Motion Pursuant to 28 U.S.C. §2255 to Vacate, Set Aside, or Correct Sentence (Docket #116) of the Defendant Gary J. Phillips.

Phillips was charged with Count One, conspiracy to possess with intent to distribute a controlled substance between June 1, 1992 and July 13, 1992, Count Three, carrying a firearm during and in relation to a drug trafficking crime in violation of 18 U.S.C. §924(c) on June 8, 1992, Count Six, carrying a firearm during and in relation to a drug trafficking crime in violation of 18 U.S.C. §924(c) on July 13, 1992, and Count Seven, possession with intent to distribute approximately 2030 milligrams of Crack Cocaine on or about July 13, 1992, in violation of 21 U.S.C. §841(a)(1). On December 23, 1992, after a two day jury trial, Phillips was found guilty of Counts One and Three. On January, 21, 1993, after a two day jury trial, Phillips was found guilty of Counts Six and Seven. Phillips was sentenced to 35 months incarceration on the conspiracy, and possession charges, and 60 months incarceration, to run consecutively, on each of the §924(c) charges, for a total of 155 months.

Phillips, who was charged and convicted of two counts of carrying a firearm during a drug

trafficking crime, argues that his sentences on these firearms charges are illegal in light of Bailey v. United States, ___ U.S. ___, 116 S.Ct. 501, 133 L.Ed.2d 472 (1995). In Bailey, the Supreme Court held that conviction of a defendant for "use of a firearm" under section 924(c) requires "evidence sufficient to show an active employment of the firearm by a defendant."

The instructions to the jury on the 924 (c) charge were as follows:

The Nature of the Offense Charged

Count three of the Indictment charges that on or about the 8th day of June, 1992, within the Northern District of Oklahoma, the Defendant, Gary J. Phillips, used or carried a firearm, namely, an Intratec Tech-22 Skorpion .22 caliber pistol, serial number 039668; Count four of the Indictment charges that on or about the 8th day of June, 1992, within the Northern District of Oklahoma, the Defendant, Elijah Bullard, used or carried a firearm, namely, a North American Arms .22 caliber revolver, serial number obliterated both during and in relation to the commission or a drug trafficking crime, namely, possessing with intent to distribute cocaine base (crack cocaine), a schedule II controlled substance.

* * * * *

The Statute Defining the Offense Charged

Section 924(c) of Title 18 of the United States Code Provides, in part, that "whoever, during and in relation to any crime of violence or drug trafficking crime . . . , uses or carries a firearm, shall, . . ." be guilty of an offense against the United States.

* * * * *

The Essential Elements of the Offense Charged

In order to sustain its burden of proof for the crime of using or carrying a firearm during and in relation to a crime of violence or drug trafficking crime, as charged in count one of the indictment, the government must prove the following two essential elements beyond a reasonable doubt:

- 1) The Defendant committed the crime of possession of a firearm while in the commission of a drug trafficking crime as charged in the indictment, and
- 2) During and in relation to the commission of that crime, the Defendant

knowingly used or carried a firearm.

* * * * *

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 drug trafficking crime 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 a firearm was in the Defendant's possession or under the Defendant's control at the time the drug trafficking crime was committed.

Phillips argues that the instructions regarding the "use" prong of §924(c) are incorrect under Bailey because Bailey requires the government prove that the defendants "actively employed" the firearm during and in relation to the drug trafficking crime in order to secure a conviction. He also argues that a new trial is required even if the evidence is sufficient to support a conviction under the "carry" prong of §924(c). The government admits that the sentence "The government is not required to show that the Defendant actually displayed or fired the weapon," is incorrect under Bailey, but argues that particular sentence is irrelevant because Phillips was not actually charged under the "use" prong of §924(c), and the instruction is, in all other respects, correct.

In the Indictment in this case, Phillips was charged only under the "carry" prong of §924(c). Although the instructions referred to "use" of a firearm, neither the evidence nor the indictment supports these instructions. Moreover, Phillips did not appeal based on the inclusion of instructions

on "use" of a firearm. In United States v. Pineda-Ortuno, 952 F.2d 98 (5th Cir. 1992), the Court held that error in instructing on "use", when the defendant was indicted only for "carrying" a firearm, was harmless error. That court stated:

However, those words in the charge caused no harm under the record of this case because the only evidence of "use" of the firearms established carrying of the firearms. In other words, Appellants were necessarily convicted of carrying the weapons as charged in the indictment. Therefore, whether that same conduct also constituted "use" of the weapons under §924(c) is immaterial. The minor variation between the words of the indictment and the trial court's instruction to the jury was harmless error.

The Court finds, as in Pineda-Ortuno, that the error in the instruction to include "use or carry" despite the fact that Phillips was indicted only for carrying a firearm, was harmless.

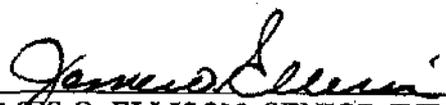
Moreover, the Court finds that a new trial is not necessitated by the holding of United States v. Smith, 82 F.3rd 1564 (10th Cir. 1996) and United States v. Simpson, 94 F.3d 1373 (10th Cir. 1996). In those cases, the Tenth Circuit held that if a jury instruction defining one of two alternative grounds for conviction is legally erroneous, the court must reverse the conviction unless the court can determine with 'absolute certainty' that the jury based its verdict on the ground on which it was correctly instructed. That standard is met here. First, Phillips was not charged with using a firearm in violation of §924(c). Secondly, notwithstanding the incorrect language in the instruction regarding "use of a firearm," the instruction unequivocally states that the government is required "to prove beyond a reasonable doubt that a firearm was in the Defendant's possession or under the Defendant's control at the time the drug trafficking crime was committed." This is a correct instruction on "carrying a firearm." United States v. Cardenas, 864 F.2d 1528 (10th Cir 1989) (carrying involves two elements: actual or constructive possession of the firearm through the exercise of dominion or control and transportation or movement of the same). Moreover, the evidence, which is essentially

undisputed in this case, is sufficient for a jury to find that Phillips "carried" a firearm.

The issue with respect to Count Six, on July 13, 1992, is the same. The evidence is sufficient for a jury to find that Phillips carried a firearm in relation to a drug trafficking crime on July 13, 1992. The undisputed evidence is that on July 13, 1992, Phillips was found in an apartment sitting in a chair facing the door, he had a pink plastic tray in his lap and appeared to be cutting a large piece of crack cocaine with a razor blade. He had a .25 caliber pistol next to him in the chair in which he was sitting, and, as the officers entered the room, he tossed the pistol and tray under a nearby bed.

Phillips Motion pursuant to 28 U.S.C. §2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (Docket #116) is denied.

IT IS SO ORDERED THIS 20th DAY OF JANUARY, 1998.


JAMES O. ELLISON, SENIOR JUDGE
UNITED STATES DISTRICT COURT

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

FILED

JAN 20 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 ELIJAH BULLARD,)
)
 Defendant.)

Case No. 92-CR-105-E
96-C-544-E

ENTERED ON DOCKET
DATE JAN 23 1998

ORDER

Now before the Court is the Motion Pursuant to 28 U.S.C. §2255 to Vacate, Set Aside, or Correct Sentence (Docket #107) of the Defendant Elijah Bullard.

Bullard was charged with Count One, conspiracy to possess with intent to distribute a controlled substance, Count Two, possession of a controlled substance with intent to distribute, Count Four, carrying a firearm during and in relation to a drug trafficking crime in violation of 18 U.S.C. §924(c), and Count Five, possession of a firearm with an obliterated serial number. On December 23, 1992, after a two day jury trial, Bullard was found guilty of all counts for which he was charged, Counts One, Two, Four, and Five. Bullard was sentenced to 33 months incarceration on Counts One, Two, and Five, and 60 months incarceration, to run consecutively, on count Four, for a total of 93 months.

Bullard, in this motion, argues that his sentence on the carrying a firearm during a drug trafficking crime charge is illegal in light of Bailey v. United States, ___ U.S. ___, 116 S.Ct. 501, 133 L.Ed.2d 472 (1995). In Bailey, the Supreme Court held that conviction of a defendant for "use of a firearm" under section 924(c) requires "evidence sufficient to show an active employment of the

firearm by a defendant.”

The instructions to the jury Bullard’s 924 (c) charge were as follows:

The Nature of the Offense Charged

Count three of the Indictment charges that on or about the 8th day of June, 1992, within the Northern District of Oklahoma, the Defendant, Gary J. Phillips, used or carried a firearm, namely, an Intratec Tech-22 Skorpion .22 caliber pistol, serial number 039668; Count four of the Indictment charges that on or about the 8th day of June, 1992, within the Northern District of Oklahoma, the Defendant, Elijah Bullard, used or carried a firearm, namely, a North American Arms .22 caliber revolver, serial number obliterated both during and in relation to the commission or a drug trafficking crime, namely, possessing with intent to distribute cocaine base (crack cocaine), a schedule II controlled substance.

The Statute Defining the Offense Charged

Section 924(c) of Title 18 of the United States Code Provides, in part, that “whoever, during and in relation to any crime of violence or drug trafficking crime . . . , uses or carries a firearm, shall, . . .” be guilty of an offense against the United States.

The Essential Elements of the Offense Charged

In order to sustain its burden of proof for the crime of using or carrying a firearm during and in relation to a crime of violence or drug trafficking crime, as charged in count one of the indictment, the government must prove the following two essential elements beyond a reasonable doubt:

- 1) The Defendant committed the crime of possession of a firearm while in the commission of a drug trafficking crime as charged in the indictment, and
- 2) During and in relation to the commission of that crime, the Defendant knowingly used or carried a firearm.

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 drug trafficking crime 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 a firearm was in the Defendant's possession or under the Defendant's control at the time the drug trafficking crime was committed.

Bullard argues that the instructions regarding the "use" prong of §924(c) are incorrect under Bailey because Bailey requires the government prove that the defendants "actively employed" the firearm during and in relation to the drug trafficking crime in order to secure a conviction. He also argues that a new trial is required even if the evidence is sufficient to support a conviction under the "carry" prong of §924(c). The government admits that the sentence "The government is not required to show that the Defendant actually displayed or fired the weapon," is incorrect under Bailey, but argues that particular sentence is irrelevant because Bullard was not actually charged under the "use" prong of §924(c), and the instruction is, in all other respects, correct.

In the Indictment in this case, Bullard was charged only under the "carry" prong of §924(c). Although the instructions referred to "use" of a firearm, neither the evidence nor the indictment supports these instructions. Moreover, Bullard did not appeal based on the inclusion of instructions on "use" of a firearm. In United States v. Pineda-Ortuno, 952 F.2d 98 (5th Cir. 1992), the Court held that error in instructing on "use", when the defendant was indicted only for "carrying" a firearm, was harmless error. That court stated:

However, those words in the charge caused no harm under the record of this case

because the only evidence of "use" of the firearms established carrying of the firearms. In other words, Appellants were necessarily convicted of carrying the weapons as charged in the indictment. Therefore, whether that same conduct also constituted "use" of the weapons under §924(c) is immaterial. The minor variation between the words of the indictment and the trial court's instruction to the jury was harmless error.

The Court finds, as in Pineda-Ortuno, that the error in the instruction to include "use or carry" despite the fact that Bullard was indicted only for carrying a firearm, was harmless.

Moreover, the Court finds that a new trial is not necessitated by the holding of United States v. Smith, 82 F.3d 1564 (10th Cir. 1996) and United States v. Simpson, 94 F.3d 1373 (10th Cir. 1996). In those cases, the Tenth Circuit held that if a jury instruction defining one of two alternative grounds for conviction is legally erroneous, the court must reverse the conviction unless the court can determine with 'absolute certainty' that the jury based its verdict on the ground on which it was correctly instructed. That standard is met here. First, Bullard was not charged with using a firearm in violation of §924(c). Secondly, notwithstanding the incorrect language in the instruction regarding "use of a firearm," the instruction unequivocally states that the government is required "to prove beyond a reasonable doubt that a firearm was in the Defendant's possession or under the Defendant's control at the time the drug trafficking crime was committed." This is a correct instruction on "carrying a firearm." United States v. Cardenas, 864 F. 2d 1528 (10th Cir 1989) (carrying involves two elements: actual or constructive possession of the firearm through the exercise of dominion or control and transportation or movement of the same). Moreover, the evidence, which is essentially undisputed in this case, is sufficient for a jury to find that Bullard "carried" a firearm, in that he was arrested while driving a car with the firearm in his pocket.

Bullard's Motion pursuant to 28 U.S.C. §2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (Docket #107) is denied.

IT IS SO ORDERED THIS 20TH DAY OF JANUARY, 1998.


JAMES O. ELLISON, SENIOR JUDGE
UNITED STATES DISTRICT COURT

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

F I L E D

JAN 23 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 ANTONIO BURKHALTER,)
)
 Defendant.)

Case No. 90-CR-37-E
97-C-330-E

ENTERED ON DOCKET

DATE JAN 23 1998

ORDER

Now before the Court is the Motion under 28 U.S.C. §2255 to Vacate, Set Aside, or Correct Sentence Pursuant by a Person in Federal Custody (Docket #22) of the Defendant Antonio Burkhalter.

Burkhalter, pursuant to a plea agreement, pleaded guilty to two armed robberies, one in Tulsa, Oklahoma, and one in Wichita, Kansas, in violation of 18 U.S.C. §§2113(a) and (d). Burkhalter was sentenced to 240 months imprisonment for the Wichita robbery and 262 months imprisonment for the Tulsa Robbery, with the terms to run concurrently. The government did not file, at the time of sentencing, or afterward, a motion for a reduction of sentence based on "substantial assistance" under Section 5K1.1 of the Sentencing Guidelines. Because Burkhalter identified persons who helped him in the robberies, and provided the government with details concerning numerous other unsolved robberies, he believed he was entitled to a reduction in sentence, and appealed the sentence he was given. The Court of Appeals affirmed, finding that the record did not warrant review of the government's refusal to file a section 5K1.1 motion.

25

Burkhalter now seeks collateral relief, arguing that he received ineffective assistance of counsel in that counsel inadequately investigated and researched his case, that he allowed Burkhalter to plead guilty despite his history of psychiatric problems and drug use, that he did not properly advise Burkhalter of the effect of his guilty plea and sentencing exposure, and that he had a "secret agreement" with the United States Attorney's office. These ineffective assistance of counsel claims must be viewed under the Strickland test: 1) whether defendant's attorney's performance was not reasonably effective and 2) whether defendant's defense was prejudiced thereby. Strickland v. Washington, 466 U.S. 668, 693, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Further, the Court must presume that counsel's performance was reasonably effective, "the burden rests on the accused to demonstrate a constitutional violation." U.S. v. Cronin, 104 S.Ct. 2039, 2046 (1984). Under the Strickland rule the presumption of effective representation is a strong one. Indeed, "[j]udicial scrutiny of counsel's performance must be highly deferential." Strickland, 104 S.Ct. at 2065. The Court must "presume that the challenged action might be considered sound trial strategy." Hatch v. State of Oklahoma, 58 F.3rd 1447, 1459 (10th Cir. 1995). Moreover, the two part Strickland test applies to ineffective assistance of counsel arguments involving guilty pleas. Hill v. Lockhart, 474 U.S. 52 (1985). In those cases, the prejudice requirement is satisfied by demonstrating that, but for counsel's deficient performance, a reasonable probability exists that the defendant would not have pleaded guilty and would have insisted on a trial. Id., at p. 59.

Burkhalter first asserts that his counsel was ineffective for failing to adequately investigate and research his case. Burkhalter asserts that his arrest was illegal, and that there were no witnesses and no evidence to support his conviction. In this case, however, counsel did file a motion contesting the illegality of the arrest, and that motion was denied. Moreover, Burkhalter confessed to the

robberies prior to his plea of guilty, and, at the change of plea hearing, provided a factual basis for his plea. Burkhalter fails to show how the result would have been different, but for his counsel's ineffective representation.

Next Burkhalter argues that Counsel was "negligent in reviewing [his] psychiatric evaluation." Burkhalter is apparently arguing that he was not competent to plead guilty because he had smoked crack cocaine and because he had been under psychiatric evaluation from 1987 through October, 1989. Burkhalter confessed to the two robberies for which he was sentenced in February, 1990, and pled guilty in June, 1990. He was incarcerated from the time of his arrest to the time of his guilty plea. There is no evidence that he was suffering from psychological problems during this time frame, or that he was under the influence of drugs at the time of his confession or his guilty plea. Under these facts, the Court does not find that counsel's failure to make an issue of Burkhalter's competence to plead guilty rendered him "ineffective."

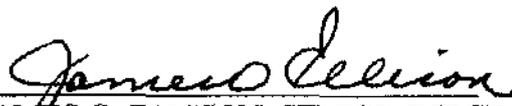
Burkhalter's remaining allegations of ineffectiveness are connected with the government's failure to file a section 5K1.1 motion. He argues that he was not adequately advised of the consequences of his guilty plea, and that his counsel and the government entered into a "secret agreement" by which he was prejudiced. The Petition to Enter Plea of Guilty and the plea letter defeat the first claim. With respect to the "secret agreement," the Court assumes that Burkhalter is complaining that there was only an oral agreement that the government would file a section 5K1.1 motion if it determined that Burkhalter provided substantial assistance to state or federal authorities. Burkhalter is apparently complaining that the attorney did not make the filing of a section 5K1.1 motion a prerequisite to the plea agreement. Burkhalter's argument, however, does not meet the Stickland test. He is completely unable to demonstrate that the government would have entered into

a plea agreement on those terms.

Burkhalter's Motion to Vacate, Set Aside, or Correct Sentence Pursuant to 28 U.S.C. §2255

(Docket #22) is denied.

IT IS SO ORDERED THIS 22nd DAY OF JANUARY, 1998.


JAMES O. ELLISON, SENIOR JUDGE
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT
 Northern District of Oklahoma

UNITED STATES OF AMERICA

v.

Case Number 97-CR-155-001-H

JOHN STEVEN TORBERT
 Defendant.

FILED

JAN 22 1998

Phil Lombardi, Clerk
 U.S. DISTRICT COURT

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

The defendant, JOHN STEVEN TORBERT, was represented by Michael Abel.

The defendant pleaded guilty December 5, 1997, to Count 1 of the Information.
 Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

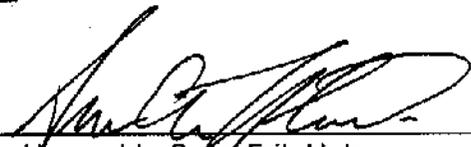
<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 2113(a)	Bank Robbery	6/28/96	1

As pronounced on January 9, 1998, 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 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 22nd day of January, 1998.



 The Honorable Sven Erik Holmes
 United States District Judge

Defendant's SSN: 441-74-7136
 Defendant's Date of Birth: 2/14/67
 Defendant's residence and mailing address: 3352 S. 121 E. Avenue, Tulsa OK 74146

Defendant: JOHN STEVEN TORBERT
Case Number: 97-CR-155-001-H

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 66 months. Said term to run concurrently with cases 97-CR-076-001-H, 97-CR-118-001-H, 97-CR-158-001-H, 97-CR-160-001-H, 97-CR-161-001-H, and 97-CR-162-001-H.

The Court makes the following recommendations to the Bureau of Prisons: The Court recommends that the defendant be placed in the Intensive Substance Abuse Treatment program.

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

RETURN

I have executed this Judgment as follows:

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

United States Marshal

By _____
Deputy Marshal

Defendant: JOHN STEVEN TORBERT
Case Number: 97-CR-155-001-H

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years. Said term to run concurrently with terms imposed in Cases 97-CR-076-001-H, 97-CR-118-001-H, 97-CR-158-001-H, 97-CR-160-001-H, 97-CR-161-001-H, and 97-CR-162-001-H.

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 as soon as possible, but in no event, later than 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, destructive device, or other dangerous weapon.
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: JOHN STEVEN TORBERT
Case Number: 97-CR-155-001-H

RESTITUTION AND FORFEITURE

RESTITUTION

The defendant shall make restitution in the total amount of \$11,515.

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

<u>Name of Payee</u>	<u>Amount of Restitution</u>
AmSouth Bank PO Box 370465 Birmingham Alabama 35237 Attn: Lawrence T. Oden	\$11,515

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 actually paid by all defendants John Steven Torbert, Wilbur Criss and Christina Wallace, has fully covered the compensable injury.

If a victim has received compensation from insurance or any other source with respect to a loss, any restitution ordered shall be paid to the person who is a victim before any restitution is paid to any such provider of compensation.

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

Defendant: JOHN STEVEN TORBERT
Case Number: 97-CR-155-001-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:	25
Criminal History Category:	I
Imprisonment Range:	57 months to 71 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 10,000 to \$ 100,000
Restitution:	\$ 11,515

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.

ENTERED ON DOCKET

DATE 1/22/98

cu

FILED

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

JAN 22 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA

v.

Case Number 97-CR-118-001-H

JOHN STEVEN TORBERT
Defendant.

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

The defendant, JOHN STEVEN TORBERT, was represented by Michael Abel.

The defendant pleaded guilty December 5, 1997, to Count 1 of the Superseding Information. Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 2113(a)	Bank Robbery	6/17/96	1

As pronounced on January 9, 1998, 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 1 of the Superseding Information, which shall be due immediately.

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

Signed this the 22ND day of JANUARY, 1998.



The Honorable Sven Erik Holmes
United States District Judge

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

Phil Lombardi, Clerk

Defendant's SSN: 441-74-7136
Defendant's Date of Birth: 2/14/67
Defendant's residence and mailing address: 3352 S. 121 E. Avenue, Tulsa OK 74146

Defendant: JOHN STEVEN TORBERT
Case Number: 97-CR-118-001-H

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 66 months. Said term to run concurrently with cases 97-CR-076-001-H, 97-CR-155-001-H, 97-CR-158-001-H, 97-CR-160-001-H, 97-CR-161-001-H, and 97-CR-162-001-H.

The Court makes the following recommendations to the Bureau of Prisons: The Court recommends that the defendant be placed in the Intensive Substance Abuse Program.

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

RETURN

I have executed this Judgment as follows:

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

United States Marshal
By _____
Deputy Marshal

Defendant: JOHN STEVEN TORBERT
Case Number: 97-CR-118-001-H

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years. Said term to run concurrently with the term imposed in cases 97-CR-076-001-H, 97-CR-155-001-H, 97-CR-158-001-H, 97-CR-160-001-H, 97-CR-161-001-H, and 97-CR-162-001-H.

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 as soon as possible, but in no event, later than 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, destructive device, or other dangerous weapon.
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-12B, 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: JOHN STEVEN TORBERT
Case Number: 97-CR-118-001-H

RESTITUTION AND FORFEITURE

RESTITUTION

The defendant shall make restitution in the total amount of \$5,344.

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

<u>Name of Payee</u>	<u>Amount of Restitution</u>
South Trust Bank Attn: Security Case # 96-08 500 Office Park Drive Birmingham, Alabama 35223	\$5,344

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 actually paid by all defendants, John Steven Torbert, Wilbur Criss and Christina Wallace, has fully covered the compensable injury.

If a victim has received compensation from insurance or any other source with respect to a loss, any restitution ordered shall be paid to the person who is a victim before any restitution is paid to any such provider of compensation.

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

Defendant: JOHN STEVEN TORBERT
Case Number: 97-CR-118-001-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:	25
Criminal History Category:	1
Imprisonment Range:	57 months to 71 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 10,000 to \$ 100,000
Restitution:	\$ 5,344

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.

ENTERED ON DOCKET
DATE 1/22/98 *cu*

UNITED STATES DISTRICT COURT
Northern District of Oklahoma

FILED
JAN 22 1998
Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA

v.

Case Number 97-CR-161-001-H

JOHN STEVEN TORBERT
Defendant.

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

The defendant, JOHN STEVEN TORBERT, was represented by Michael Abel.

The defendant pleaded guilty to Count 1 of the Indictment, December 5, 1997.
Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 2113(a)	Bank Robbery	5/5/96	1

As pronounced on January 9, 1998, 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 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 22ND day of January, 1998.


The Honorable Sven Erik Holmes
United States District Judge

Defendant's SSN: 441-74-7136
Defendant's Date of Birth: 2/14/67
Defendant's residence and mailing address: 3352 S. 121 E. Avenue, Tulsa OK 74146

6

Defendant: JOHN STEVEN TORBERT
Case Number: 97-CR-161-001-H

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 66 months. Said term to run concurrently with cases 97-CR-076-001-H, 97-CR-118-001-H, 97-CR-155-001-H, 97-CR-158-001-H, 97-CR-160-001-H, and 97-CR-162-001-H.

The Court makes the following recommendations to the Bureau of Prisons: The Court recommends that the defendant be placed in the Intensive Substance Abuse Treatment program.

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

RETURN

I have executed this Judgment as follows:

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

United States Marshal

By _____
Deputy Marshal

Defendant: JOHN STEVEN TORBERT
Case Number: 97-CR-161-001-H

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years. Said term to run concurrently with the terms imposed in cases 97-CR-076-001-H, 97-CR-118-001-H, 97-CR-155-001-H, 97-CR-158-001-H, 97-CR-160-001-H, and 97-CR-162-001-H.

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 as soon as possible, but in no event, later than 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, destructive device, or other dangerous weapon.
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: JOHN STEVEN TORBERT
Case Number: 97-CR-161-001-H

RESTITUTION AND FORFEITURE

RESTITUTION

The defendant shall make restitution in the total amount of \$4,404.

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

<u>Name of Payee</u>	<u>Amount of Restitution</u>
California Federal Bank 830 Stillwater Road West Sacramento CA 95605 Attn: Security Department	\$4,404

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 actually paid by all defendants, John Steven Torbert, Wilbur Criss and Christina Wallace, has fully covered the compensable injury.

If a victim has received compensation from insurance or any other source with respect to a loss, any restitution ordered shall be paid to the person who is a victim before any restitution is paid to any such provider of compensation.

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

Defendant: JOHN STEVEN TORBERT
Case Number: 97-CR-161-001-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:	25
Criminal History Category:	I
Imprisonment Range:	57 months to 71 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 10,000 to \$ 100,000
Restitution:	\$ 4,404

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.

ENTERED ON DOCKET *aw*
 DATE 1/22/98

FILED

UNITED STATES DISTRICT COURT
 Northern District of Oklahoma

JAN 22 1998

Phil Lombardi, Clerk
 U.S. DISTRICT COURT

UNITED STATES OF AMERICA

v.

Case Number 97-CR-158-001-H

JOHN STEVEN TORBERT
 Defendant.

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

The defendant, JOHN STEVEN TORBERT, was represented by Michael Abel.

The defendant pleaded guilty to Count 1 of the Indictment, December 5, 1997. Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 2113(a)	Bank Robbery	5/29/96	1

As pronounced on January 9, 1998, the defendant is sentenced as provided in pages 2 through ___ 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 22nd day of JANUARY, 1998.



 The Honorable Sven Erik Holmes
 United States District Judge

Defendant's SSN: 441-74-7136
 Defendant's Date of Birth: 2/14/67
 Defendant's residence and mailing address: 3352 S. 121 E. Avenue, Tulsa OK 74146

6

Defendant: JOHN STEVEN TORBERT
Case Number: 97-CR-158-001-H

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 66 months. Said term to run concurrently with Cases 97-CR-076-001-H, 97-CR-118-001-H, 97-CR-155-001-H, 97-CR-160-001-H, 97-CR-161-001-H, and 97-CR-162-001-H.

The Court makes the following recommendations to the Bureau of Prisons: The Court recommends that the defendant be placed in the Intensive Substance Abuse Treatment program.

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

RETURN

I have executed this Judgment as follows:

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

United States Marshal

By _____
Deputy Marshal

Defendant: JOHN STEVEN TORBERT
Case Number: 97-CR-158-001-H

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years. Said term to run concurrently with the terms imposed in Cases 97-CR-076-001-H, 97-CR-118-001-H, 97-CR-155-001-H, 97-CR-160-001-H, 97-CR-161-001-H, and 97-CR-162-001-H.

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 as soon as possible, but in no event, later than 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, destructive device, or other dangerous weapon.
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: JOHN STEVEN TORBERT
Case Number: 97-CR-158-001-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:	25
Criminal History Category:	1
Imprisonment Range:	57 months to 71 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 10,000 to \$ 100,000
Restitution:	\$ n/a

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

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

ENTERED ON DOCKET
 DATE 1/22/98 *cu*
FILED

UNITED STATES DISTRICT COURT
 Northern District of Oklahoma

JAN 22 1998 *OK*

Phil Lombardi, Clerk
 U.S. DISTRICT COURT

UNITED STATES OF AMERICA

v.

Case Number 97-CR-076-001-H

JOHN STEVEN TORBERT
 Defendant.

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

The defendant, JOHN STEVEN TORBERT, was represented by Michael Abel.

The defendant pleaded guilty December 5, 1997, to Count 1 of the Indictment. Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

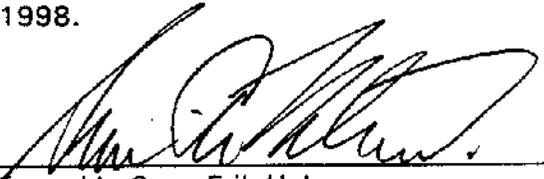
<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 2113(a)	Bank Robbery	1/17/97	1

As pronounced on January 9, 1998, 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 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 22ND day of JANUARY, 1998.


 The Honorable Sven Erik Holmes
 United States District Judge

Defendant's SSN: 441-74-7136
 Defendant's Date of Birth: 2/14/67
 Defendant's residence and mailing address: 3352 S. 121 E. Avenue, Tulsa OK 74146

15

Defendant: JOHN STEVEN TORBERT
Case Number: 97-CR-076-001-H

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 66 months. Said term to run concurrently with cases 97-CR-118-001-H, 97-CR-155-001-H, 97-CR-158-001-H, 97-CR-160-001-H, 97-CR-161-001-H, and 97-CR-162-001-H.

The Court makes the following recommendations to the Bureau of Prisons: The Court recommended that the defendant be placed in the Intensive Substance Abuse Treatment program.

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

RETURN

I have executed this Judgment as follows:

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

United States Marshal

By _____
Deputy Marshal

Defendant: JOHN STEVEN TORBERT
Case Number: 97-CR-076-001-H

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years. Said term to run concurrently with the term of supervised release imposed in cases 97-CR-118-001-H, 97-CR-155-001-H, 97-CR-158-001-H, 97-CR-160-001-H, 97-CR-161-001-H, and 97-CR-162-001-H.

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 as soon as possible, but in no event, later than 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, destructive device, or other dangerous weapon.
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: JOHN STEVEN TORBERT
Case Number: 97-CR-076-001-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:	25
Criminal History Category:	I
Imprisonment Range:	57 months to 71 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 10,000 to \$ 100,000
Restitution:	\$ n/a

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

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

ENTERED ON DOCKET *ew*

DATE 1/22/98

FILED

JAN 22 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

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

UNITED STATES OF AMERICA

v.

Case Number 97-CR-162-001-H

JOHN STEVEN TORBERT
Defendant.

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

The defendant, JOHN STEVEN TORBERT, was represented by Michael Abel.

The defendant pleaded guilty to Count 1 of the Information, December 5, 1997. Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 2113(a) & 18 USC 2	Bank Robbery Aiding & Abetting	6/3/96 6/3/96	1 1

As pronounced on January 9, 1998, 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 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 22ND day of JANUARY, 1998.



The Honorable Sven Erik Holmes
United States District Judge

Defendant's SSN: 441-74-7136
Defendant's Date of Birth: 2/14/67
Defendant's residence and mailing address: 3352 S. 121 E. Avenue, Tulsa OK 74146

Defendant: JOHN STEVEN TORBERT
Case Number: 97-CR-162-001-H

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 66 months. Said term to run concurrently with cases 97-CR-076-001-H, 97-CR-118-001-H, 97-CR-155-001-H, 97-CR-158-001-H, 97-CR-160-001-H, and 97-CR-161-001-H.

The Court makes the following recommendations to the Bureau of Prisons: The Court recommends that the defendant be placed in the Intensive Substance Abuse Treatment program.

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

RETURN

I have executed this Judgment as follows:

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

United States Marshal

By _____
Deputy Marshal

Defendant: JOHN STEVEN TORBERT
Case Number: 97-CR-162-001-H

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years. Said term to run concurrently with the terms imposed in cases 97-CR-076-001-H, 97-CR-118-001-H, 97-CR-155-001-H, 97-CR-158-001-H, 97-CR-160-001-H, and 97-CR-161-001-H.

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 as soon as possible, but in no event, later than 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, destructive device, or other dangerous weapon.
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: JOHN STEVEN TORBERT
Case Number: 97-CR-162-001-H

RESTITUTION AND FORFEITURE

RESTITUTION

The defendant shall make restitution in the total amount of \$3,206.

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

<u>Name of Payee</u>	<u>Amount of Restitution</u>
Union Planters Bank 401 Union Street (9th Floor) Nashville TN 37219 Case # 96-104	\$3,206

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 actually paid by all defendants, John Steven Torbert, Wilbur Criss and Christina Wallace, has fully covered the compensable injury.

If a victim has received compensation from insurance or any other source with respect to a loss, any restitution ordered shall be paid to the person who is a victim before any restitution is paid to any such provider of compensation.

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

Defendant: JOHN STEVEN TORBERT
Case Number: 97-CR-162-001-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:	25
Criminal History Category:	I
Imprisonment Range:	57 months to 71 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 10,000 to \$ 100,000
Restitution:	\$ 3,206

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.

ENTERED ON DOCKET

DATE 1/22/98

FILED

JAN 22 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

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

UNITED STATES OF AMERICA

v.

Case Number 97-CR-160-001-H

JOHN STEVEN TORBERT
Defendant.

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

The defendant, JOHN STEVEN TORBERT, was represented by Michael Abel.

The defendant pleaded guilty December 5, 1997, to Count 1 of the Indictment. Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 2113(a) &	Bank Robbery	5/17/96	1
18 USC 2	Aiding & Abetting	5/17/96	1

As pronounced on January 9, 1998, 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 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 22ND day of January, 1998.



The Honorable Sven Erik Holmes
United States District Judge

Defendant's SSN: 441-74-7136

Defendant's Date of Birth: 2/14/67

Defendant's residence and mailing address: 3352 S. 121 S. Avenue, Tulsa OK 74146

5

Defendant: JOHN STEVEN TORBERT
Case Number: 97-CR-160-001-H

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 66 months. Said terms to run concurrently with cases 97-CR-076-001-H, 97-CR-118-001-H, 97-CR-155-001-H, 97-CR-158-001-H, 97-CR-161-001-H, and 97-CR-162-001-H.

The Court makes the following recommendations to the Bureau of Prisons: The Court recommends that the defendant be placed in the Intensive Substance Abuse Treatment program.

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

RETURN

I have executed this Judgment as follows:

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

United States Marshal

By _____
Deputy Marshal

Defendant: JOHN STEVEN TORBERT
Case Number: 97-CR-160-001-H

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years. Said term to run concurrently with the terms imposed in cases 97-CR-076-001-H, 97-CR-118-001-H, 97-CR-155-001-H, 97-CR-158-001-H, 97-CR-161-001-H, and 97-CR-162-001-H.

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 as soon as possible, but in no event, later than 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, destructive device, or other dangerous weapon.
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: JOHN STEVEN TORBERT
Case Number: 97-CR-160-001-H

RESTITUTION AND FORFEITURE

RESTITUTION

The defendant shall make restitution in the total amount of \$15,300.

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

<u>Name of Payee</u>	<u>Amount of Restitution</u>
SunTrust Bank, N.A. PO Box 1638 Chatanooga TN 37401 Attn: Comptroller, case # 0510	\$15,300

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 actually paid by all defendants, John Steven Torbert, Wilbur Criss, and Christina Wallace, has fully covered the compensable injury.

If a victim has received compensation from insurance or any other source with respect to a loss, any restitution ordered shall be paid to the person who is a victim before any restitution is paid to any such provider of compensation.

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

Defendant: JOHN STEVEN TORBERT
Case Number: 97-CR-160-001-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:	25
Criminal History Category:	I
Imprisonment Range:	57 months to 71 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 10,000 to \$ 100,000
Restitution:	\$ 15,300

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.

ENTERED ON DOCKET

DATE 1-22-98

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

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

No. 97-CR-90-K ✓

GREGORY A. SCHLENKER)

Defendant.)

FILED

JAN 21 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORDER

On January 14, 1998, the Court sentenced the Defendant to a forty-six month term of imprisonment for violating 21 U.S.C. § 846 and 841(a)(1). The Court now corrects that sentence for clear error pursuant to Federal Rule of Criminal Procedure 35(c). During the sentencing hearing, the Assistant United States Attorney stated that the Defendant was a minor participant in the conspiracy to manufacture and distribute methamphetamine. Minor participant status would have entitled the Defendant to a two level decrease under United States Sentencing Guidelines Section 3B1.2. The Court failed to consider the Assistant United States Attorney's admission when it pronounced sentence on January 14, 1998.

The seven day time limit for a correction of sentence under Federal Rule of Criminal Procedure 35(c) having not lapsed, the Court now reduces Defendant's offense level two levels to an offense level of 21. The Defendant, Gregory A. Schlenker, is hereby sentenced to a corrected term of imprisonment of thirty-seven (37) months.

The Court further recommends to the Bureau of Prisons that Defendant be placed into a shock incarceration program upon becoming eligible for such program.

ORDERED this 20 day of January, 1998.


TERRY C. KERN
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET

DATE 1-22-98

UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA)
Plaintiff)
VS)
HERBERT JAMES JOHNSON)
Defendant)

97-CR-54-001-K

FILED

JAN 21 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORDER REVOKING SUPERVISED RELEASE

Now on this 12th day of January 1998, this cause comes on for sentencing after revocation of Supervised Release after Johnson stipulated to violations of supervised release as set out in the Petition on Supervised Release filed on August 15, 1996, in the District of South Carolina and the Addendum to that Petition filed on September 15, 1997, in the Northern District of Oklahoma, after the original case, previously South Carolina Case #2:94-111-001 was transferred to the Northern District of Oklahoma and given Northern District of Oklahoma Case #97-CR-54-001-K. Johnson is present in person and represented by counsel, Keith Ward. The Government is represented by Assistant United States Attorney, Charles McLoughlin, and the United States Probation Office is represented by Robert E. Boston.

On September 19, 1997, a Revocation Hearing was held regarding the allegations noted in

the aforesaid Petition on Supervised Release and Addendum to that Petition citing the following violations:

(As alleged in the original Petition on Supervised Release)

1. VIOLATION OF GENERAL CONDITIONS OF SUPERVISED RELEASE:

"While on supervised release, you shall not commit another Federal, state or local crime, and shall not illegally possess a controlled substance. Revocation of probation and supervised release is mandatory for possession of a controlled substance."

2. VIOLATION OF STANDARD CONDITION #7 OF SUPERVISED RELEASE:

"You shall refrain from excess use of alcohol, and shall not purchase, possess, use, distribute, or administer any other narcotic or other controlled substance, or any paraphernalia related to such substance except as prescribed by a physician."

(As to VIOLATIONS 1 AND 2)

On July 8, and July 18, 1996, Johnson tested positive for the use of cocaine.

3. VIOLATION OF SPECIAL CONDITION OF THE COURT: "The defendant shall pay restitution of \$5,000 to the various victims noted within the restitution section of the presentence report commencing within sixty (60) days of his release from incarceration, to be paid at the rate of \$100.00 per month initially, which shall be

increased proportionally by the U.S. Probation Office as permitted by the defendant's financial means."

To date, Johnson has made one \$50.00 payment and is presently delinquent in his restitution payments.

4. VIOLATION OF STANDARD CONDITION #3 OF SUPERVISED RELEASE:

"You shall answer truthfully all inquiries by the Probation Officer and follow instructions of the Probation Officer."

Because of Johnson's prior sex offenses, he was instructed to register as a sex offender, which he has failed to do.

5. VIOLATION OF STANDARD CONDITION #11 OF SUPERVISED RELEASE: "You shall notify the Probation Office within seventy-two hours of being arrested or questioned by a law enforcement officer."

Johnson was questioned by law enforcement officers in Arizona on August 6, 1996, at which time he was found in possession of brillo pads, which are commonly used for smoking crack cocaine. Mr. Johnson failed to advise the

Probation Officer of having contact with a law enforcement officer.

6. VIOLATION OF STANDARD CONDITION #6 OF SUPERVISED RELEASE:

"You shall notify the Probation Officer within seventy-two hours of any change of residence or employment."

From on or about August 12, 1996, until on or about October 30, 1996, Mr. Johnson's whereabouts was unknown. He had not been living at the address which he provided to the Probation Officer.

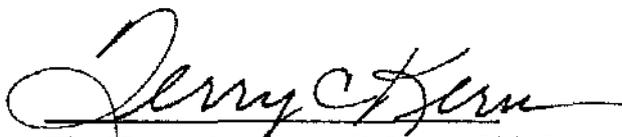
(As alleged in the Addendum to the original Petition of Supervised Release)

VIOLATION OF FEDERAL LAW: "Beginning on or about August 19, 1996, and continuing until on or about October 30, 1996, in the Northern District of Oklahoma and elsewhere, the defendant knowingly and with intent to defraud used unauthorized access devices to obtain money, services, goods, and other things of value, in the aggregate amount of \$46,652.78, which affected interstate commerce, in violation of Title 18, United States Code, Section 1029(a)(2).

After Johnson stipulated to the violations, the Court found that he was in violation of the conditions of his release and supervised release was revoked. The Court found that the

conviction occurred after November 1, 1987, and that Chapter 7 of the U. S. Sentencing Guidelines is applicable. Further, the Court found that the most serious violation of supervised release constituted a Grade B violation in accordance with USSG § 7B1.1(a)(2), and Johnson's Criminal History Category of V is applicable for determining the imprisonment range. In addition, the Court found that a Grade B violation and a Criminal History Category of V establish a revocation imprisonment range of eighteen (18) to twenty-four (24) months in accordance with USSG § 7B1.4(a) and 18 U.S.C. § 3583(e). In consideration of these findings and pursuant to U.S. vs. Lee, 757 F.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, Herbert James Johnson, is hereby committed to the custody of the U.S. Bureau of Prisons to be imprisoned for a term of twenty-four (24) months. It is further ordered that the defendant shall pay the balance of the original restitution order, \$4,950. This sentence shall be served consecutive to the sentence imposed in Northern District of Oklahoma Case #96-CR-162-K.


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

W
FILED

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

JAN 20 1998

ALC
Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA

v.

Case Number 97-CR-078-001-BU

ENTERED ON DOCKET

PHILLIP TROY STEVENS
Defendant.

DATE JAN 21 1998

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

The defendant, PHILLIP TROY STEVENS, was represented by Keith Ward.

The defendant pleaded guilty August 20, 1997, to Counts 1 and 2 of the Information. Accordingly, the defendant is adjudged guilty of such counts, involving the following offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 1341 & 18 USC 2	Mail Fraud & Causing a Criminal Act	11/30/94	1
18 USC 1341 & 18 USC 2	Mail Fraud & Causing a Criminal Act	10/31/94	2

As pronounced on January 12, 1998, 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 Counts 1 & 2 of the Information, for a total of \$100, 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 20th day of January, 1998.

United States District Court
Northern District of Oklahoma
55
Archie M. Collins

Michael Burrage
The Honorable Michael Burrage
United States District Judge

Defendant's SSN: 442-54-0577

Defendant's Date of Birth: 7/12/49

Defendant's residence and mailing address: 7209 S. Peach, Broken Arrow OK 74011

⑧

Defendant: PHILLIP TROY STEVENS
Case Number: 97-CR-078-001-BU

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 12 months and one (1) day, as to each count. Said terms shall run concurrently, each with the other.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons before 12:00 p.m. on March 16, 1998.

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: PHILLIP TROY STEVENS
 Case Number: 97-CR-078-001-BU

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years, as to each count. Said terms 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 as soon as possible, but in no event, later than 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, destructive device, or other dangerous weapon.
4. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.
5. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

STANDARD CONDITIONS OF SUPERVISION

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

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

Defendant: PHILLIP TROY STEVENS
Case Number: 97-CR-078-001-BU

FINE

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.

Defendant: PHILLIP TROY STEVENS
Case Number: 97-CR-078-001-BU

RESTITUTION AND FORFEITURE

RESTITUTION

The defendant shall make restitution in the total amount of \$17,419.90.

This amount is the total of the restitution imposed on individual counts, as follows: \$16,656.24 on Count 1, and \$763.66 on Count 2.

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

<u>Name of Payee</u>	<u>Amount of Restitution</u>
Oklahoma Gas & Electric Company Attn: Glenn Robinson (Acct. of Phil Stevens dba Credit Data Services in Sapulpa, Oklahoma) PO Box 321 Oklahoma City, OK 73101	\$16,656.24
Bartlett Memorial Medical Center Attn: Fern Kelin, Director of Patient Financial Services (Acct. of Phil Stevens dba Credit Data Services in Sapulpa, Oklahoma) PO Box 1368 Sapulpa, OK 74067-1368	\$763.66

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.

The total amount of restitution ordered shall be reduced by any restitution payments made prior to sentencing.

If a victim has received compensation from insurance or any other source with respect to a loss, any restitution ordered shall be paid to the person who is a victim before any restitution is paid to any such provider of compensation.

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

Defendant: PHILLIP TROY STEVENS
Case Number: 97-CR-078-001-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:	III	
Imprisonment Range:	18 months to 24 months	Cts. 1 & 2
Supervised Release Range:	2 to 3 years	Cts. 1 & 2
Fine Range:	\$ 3,000 to \$ 30,000	Cts. 1 & 2
Restitution:	\$ 17,419.90	

The sentence departs from the guideline range for the following reason(s): The Criminal History Category overstates the seriousness of the defendant's actual criminal record. The two felonies that provided a total of six criminal history points were imposed in 1979 and involved the theft of property. Both felonies barely fell with the 15-year time period that permits the assignment of criminal history points. After his release from prison in 1979 and the expiration of his parole in 1980, the defendant sustained no additional felony convictions until this instant offense. The 1979 felonies were property crimes and involved relatively small financial losses. Therefore, the Court finds a Criminal History Category of I more adequately reflects his criminal history. Combined with the applicable total offense level of 13, the guideline range for this downward departure is 12 to 18 months. The Court has relied upon USSG § 4A1.3, Adequacy of Criminal History Category, and the commentary to that guideline, as the authority and basis for this departure.

cw

UNITED STATES DISTRICT COURT
Northern District of Oklahoma

ENTERED ON DOCKET
DATE 1-21-98

UNITED STATES OF AMERICA

v.

Case Number 96-CR-162-001-K

HERBERT JAMES JOHNSON
Defendant.

FILED

JAN 21 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

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

The defendant, HERBERT JAMES JOHNSON, was represented by Keith Ward.

The defendant pleaded guilty to Count 1 of the Indictment, February 13, 1997. Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

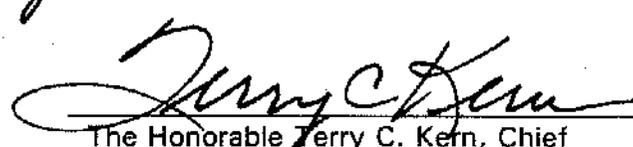
<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 1029(a)(2)	Use of Unauthorized Access Device	10/30/96	1

As pronounced on January 12, 1998, 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 1 of the Indictment, which shall be due immediately.

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

Signed this the 21 day of January, 1998.


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

Defendant's SSN: 527-55-7816

Defendant's Date of Birth: 1/14/60

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

Defendant: HERBERT JAMES JOHNSON
Case Number: 96-CR-162-001-K

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 24 months. Said term to run consecutively to term imposed in Case 97-CR-054-001-K.

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: HERBERT JAMES JOHNSON

Case Number: 96-CR-162-001-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 as soon as possible, but in no event, later than 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, destructive device, or other dangerous weapon.
4. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
5. The defendant shall participate in a program of mental health treatment (to include inpatient), as directed by the Probation Officer, until such time as the defendant is released from the program by the Probation Officer.
6. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency. 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.
8. The defendant is prohibited from involvement with youth groups, clubs, organizations or activities involving children. The defendant shall have no interaction with minor children.
9. The defendant shall comply with the Oklahoma Sex Offender Registration Act within 10 days of release.

STANDARD CONDITIONS OF SUPERVISION

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

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

Defendant: HERBERT JAMES JOHNSON

Case Number: 96-CR-162-001-K

RESTITUTION AND FORFEITURE**RESTITUTION**

The defendant shall make restitution in the total amount of \$46,151.27, 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>
AT&T Universal Card Services PO Box 45253 Jacksonville FL 32232-9858	\$6,274
Providian Bancorp Attn: Marilyn Fontana PO Box 5249 Pleasanton CA 94566	\$2,672.16
Citicorp Credit Services, Inc. 2323 N. Central Expressway #101 Richardson TX 75080	\$17,111.39
First USA Bank Attn: Fraud Investigations PO Box 5650 Wilmington Delaware 19801	\$4,945.67
USAA Federal Savings Bank Attn: Fraud Control Dept. PO Box 659532 San Antonio TX 78265-9532	\$2,792.80
Discover Attn: Restitution PO Box 29024 Phoenix AZ 85038-9024	\$8,599.25
NationsBank Attn: Betsy Feely 910 N. 11th Street, 2nd Floor Mail Station L-NC0202 St. Louis MO 63101	\$3,756

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.

If a victim has received compensation from insurance or any other source with respect to a loss, any restitution ordered shall be paid to the person who is a victim before any restitution is paid to any such provider of compensation.

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

Defendant: HERBERT JAMES JOHNSON
Case Number: 96-CR-162-001-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:	11
Criminal History Category:	VI
Imprisonment Range:	27 months to 33 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 2,000 to \$ 20,000
Restitution:	\$ 46,151.27

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

The sentence departs from the guideline range for the following reason(s): upon motion of the government, as a result of defendant's substantial assistance, pursuant to USSG § 5K1.1.

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

ENTERED ON DOCKET
DATE 1-21-98

UNITED STATES OF AMERICA

v.

Case Number 97-CR-112-001-K

CHARLES H. ROSENBERGER
Defendant.

FILED

JAN 21 1998

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

Phil Lombardi, Clerk
U.S. DISTRICT COURT

The defendant, CHARLES H. ROSENBERGER, was represented by Jack Schisler.

On motion of the United States the court has dismissed Counts 1 through 19, and 21 of the Indictment.

The defendant pleaded guilty October 15, 1997, to Count 20 of the Indictment.

Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

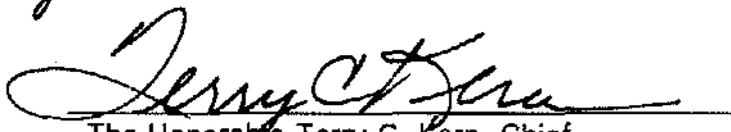
<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 510	Forging Endorsements on and Passing Treasury Checks	10/31/96	20

As pronounced on January 15, 1998, 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 20 of the Indictment, which shall be due immediately.

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

Signed this the 20 day of January, 1998.


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

Defendant's SSN: 440-28-6399

Defendant's Date of Birth: 3/25/31

Defendant's residence and mailing address: 3137 E. 66 Place, Tulsa OK 74136

Defendant: CHARLES H. ROSENBERGER
 Case Number: 97-CR-112-001-K

PROBATION

The defendant is hereby placed on probation for a term of five (5) 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, destructive device, or other dangerous weapon.
3. The defendant shall be placed on home detention to include electronic monitoring at the discretion of the U. S. Probation Office for a period of 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 U.S. Probation Office.
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.
5. The Court suspends the requirements for mandatory urine screening as dictated by 18 USC § 3608, but specifically retains the probations officer's authority to administer such tests for cause as permitted by the standard conditions of supervision.

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: CHARLES H. ROSENBERGER
 Case Number: 97-CR-112-001-K

RESTITUTION AND FORFEITURE

RESTITUTION

The defendant shall make restitution in the total amount of \$24,613, as to Count 20.

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

<u>Name of Payee</u>	<u>Amount of Restitution</u>
Department of Veterans Affairs Regional Office Attn: Agent Cashier 125 S. Main Street Muskogee OK 74401-7025	\$15,449
Social Security Administration OIG Attn: Special Agent Beverly Carter 100 Commence Street, Room 4B-13 Dallas TX 75242	\$9,164

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.

The interest is waived on the restitution.

If a victim has received compensation from insurance or any other source with respect to a loss, any restitution ordered shall be paid to the person who is a victim before any restitution is paid to any such provider of compensation.

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

Defendant: CHARLES H. ROSENBERGER
Case Number: 97-CR-112-001-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:	10
Criminal History Category:	I
Imprisonment Range:	6 months to 12 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 2,000 to \$ 20,000
Restitution:	\$ 24,613

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**

EX-103 ON DOCKET
1-21-98

UNITED STATES OF AMERICA

v.

Case Number 97-CR-122-001-K

WASEEM AZHAR
Defendant.

FILED

JAN 21 1998

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

Phil Lombardi, Clerk
U.S. DISTRICT COURT

The defendant, WASEEM AZHAR, was represented by Stephen J. Knorr.

On motion of the United States the court has dismissed Counts 1 through 5, 7 & 8 of the Indictment.

The defendant pleaded guilty November 4, 1997, to Count 6 of the Indictment. Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

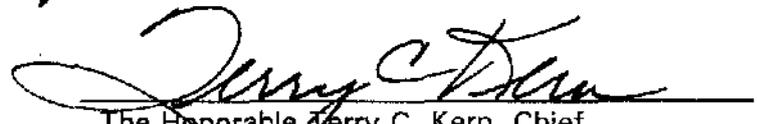
<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 1343	Wire Fraud	8/4/97	6

As pronounced on January 13, 1998, 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 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 20 day of January, 1998.


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

Defendant's SSN: None
Defendant's Date of Birth: 10/6/72
Defendant's residence and mailing address: Faisalabad, Pakistan

Defendant: WASEEM AZHAR
Case Number: 97-CR-122-001-K

IMPRISONMENT

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

The Court makes the following recommendations to the Bureau of Prisons: The Court recommends that the Defendant, a deportable alien, be remanded to the custody of the Immigration and Naturalization Service upon completion of the term of imprisonment imposed.

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: WASEEM AZHAR
Case Number: 97-CR-122-001-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 as soon as possible, but in no event, later than 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, destructive device, or other dangerous weapon.
4. The defendant shall participate in a program of mental health treatment (to include inpatient), as directed by the Probation Officer, until such time as the defendant is released from the program by the Probation Officer.
5. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.
6. All employment secured by the Defendant shall be approved, in advance, by the Probation Officer.

STANDARD CONDITIONS OF SUPERVISION

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

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

Defendant: WASEEM AZHAR
Case Number: 97-CR-122-001-K

RESTITUTION AND FORFEITURE

RESTITUTION

The defendant shall make restitution in the total amount of \$98,124, as to 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>
AT&T Attn: Pat Thiede 685 Route 202/206 Bridgewater, New Jersey 08807	\$28,066.69
Cherry Communications 2205 Enterprise Drive, Ste 501 Westchester IL 60154	\$38,195.52
World-X-Change Communications Telesystems International 9999 Willow Creek Road San Diego CA 92131	\$788.16
Vartec Communications Attn: Billing Department 3200 W. Pleasant Run Road Lancaster TX 75146	\$3,118.89

Remaining restitution in the total amount of \$27,954.74 is also owed to Southwestern Bell Telephone, Sprint, and MCI Communications.

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.

If a victim has received compensation from insurance or any other source with respect to a loss, any restitution ordered shall be paid to the person who is a victim before any restitution is paid to any such provider of compensation.

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

Defendant: WASEEM AZHAR
Case Number: 97-CR-122-001-K

STATEMENT OF REASONS

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

Guideline Range Determined by the Court:

Total Offense Level:	12
Criminal History Category:	I
Imprisonment Range:	10 months to 16 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 3,000 to \$ 30,000
Restitution:	\$ 98,124

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.

BJS

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FILED

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

JAN 20 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA

v.

Case Number 97-CR-100-001-K

WILLIAM A. MORGAN
Defendant.

ENTERED ON DOCKET
DATE 1-21-98

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

The defendant, WILLIAM A. MORGAN, was represented by J. David Ogle & Mack K. Martin.

The defendant was found guilty September 30, 1997, on Counts 1 through 6 of the Indictment after a plea of not guilty. Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

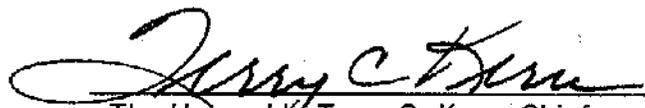
<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 1344(1) &	Bank Fraud & Causing a Criminal Act	9/1/95	1-6

As pronounced on January 12, 1998, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 300, for Counts 1 through 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 20 day of January, 1998.


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

Defendant's SSN: 430-42-7257

Defendant's Date of Birth: 2/14/31

Defendant's residence and mailing address: 2722 S. 137 E. Avenue, Tulsa OK 74134

Defendant: WILLIAM A. MORGAN
Case Number: 97-CR-100-001-K

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of zero (0) months, as to each of Counts 1 through 6.

RETURN

I have executed this Judgment as follows:

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

United States Marshal

By _____
Deputy Marshal

Defendant: WILLIAM A. MORGAN
Case Number: 97-CR-100-001-K

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of five (5) years, as to each of Counts 1 through 6. Said terms 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 as soon as possible, but in no event, later than 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, destructive device, or other dangerous weapon.
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 cost of the electronic monitoring program shall be paid by the defendant at the rate of \$150 per month.
5. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.
6. The defendant shall perform 400 hours of community service, as directed by the Probation Office.

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: WILLIAM A. MORGAN
Case Number: 97-CR-100-001-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 \$ 20,000, 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, and 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: WILLIAM A. MORGAN
Case Number: 97-CR-100-001-K

STATEMENT OF REASONS

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

Guideline Range Determined by the Court:

Total Offense Level:	8	
Criminal History Category:	I	
Imprisonment Range:	0 months to 6 months	Cts. 1-6
Supervised Release Range:	3 to 5 years	Cts. 1-6
Fine Range:	\$ 1,000 to \$ 6,000,000	Cts. 1-6
Restitution:	\$ n/a	

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

W

UNITED STATES DISTRICT COURT
Northern District of Oklahoma

ENTERED ON DOCKET
DATE 1/20/98

UNITED STATES OF AMERICA

v.

Case Number 97-CR-093-001-H

TALMAGE R. HUEY
Defendant.

FILED
JAN 15 1998
Phil Lombardi, Clerk
U.S. DISTRICT COURT

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

The defendant, TALMAGE R. HUEY, was represented by Mack K. Martin & David Ogle.

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

The defendant pleaded guilty October 3, 1997, to Count 2 of the Indictment. Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

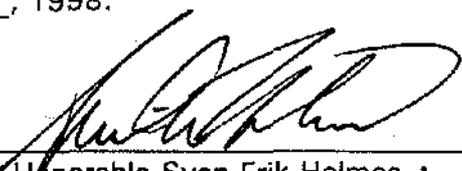
Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 USC 408(a)(7)(B)	Use of False Social Security Number	12/1/94	2

As pronounced on January 8, 1998, the defendant is sentenced as provided in pages 2 through 3 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 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 15TH day of JANUARY, 1998.

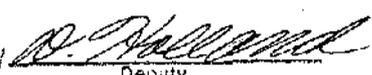

The Honorable Sven Erik Holmes
United States District Judge

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

Defendant's SSN: 430-76-3815

Defendant's Date of Birth: 2/4/42

Defendant's residence and mailing address: 4508 S. Hickory Avenue, Broken Arrow OK 74011

By 
Deputy

Defendant: TALMAGE R. HUEY
Case Number: 97-CR-093-001-H

PROBATION

The defendant is hereby placed on probation for a term of two (2) 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, destructive device, or other dangerous weapon.
3. 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: TALMAGE R. HUEY
Case Number: 97-CR-093-001-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:	7
Criminal History Category:	1
Imprisonment Range:	0 months to 6 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 500 to \$ 5,000
Restitution:	\$ n/a

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

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

UNITED STATES DISTRICT COURT
Northern District of Oklahoma

FILED
JAN 15 1998
Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA

v.

Case Number 97-CR-071-001-H

BILLY RAY SIMS
Defendant.

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

The defendant, BILLY RAY SIMS, was represented by Stephen J. Knorr.

The defendant pleaded guilty October 10, 1997, to Count 1 of the Indictment. Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 228	Failure to Pay Legal Child Support Obligation (A Misdemeanor)	4/29/94	1

As pronounced on January 13, 1998, 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 \$ 10, for Count 1 of the Indictment, which shall be due immediately.

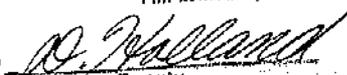
It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 15TH day of JANUARY, 1998.


The Honorable Sven Erik Holmes
United States District Judge

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

Defendant's SSN: 495-62-2836
Defendant's Date of Birth: 9/18/55
Defendant's residence and mailing address: 3104 Caddo Lane, Norman OK 73072

By 
Deputy

Defendant: BILLY RAY SIMS
Case Number: 97-CR-071-001-H

IMPRISONMENT

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

The Court makes the following recommendations to the Bureau of Prisons: The Court recommends that the defendant be placed in a jail-type facility.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons before 12:00 p.m. on February 27, 1998.

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: BILLY RAY SIMS
Case Number: 97-CR-071-001-H

RESTITUTION AND FORFEITURE

RESTITUTION

The defendant shall make restitution in the total amount of \$14,025.85, 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>
Vicki R. Smith 2304 W. Newton Court Tulsa OK 74127	\$14,025.85

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 over the course of the next five (5) years.

If a victim has received compensation from insurance or any other source with respect to a loss, any restitution ordered shall be paid to the person who is a victim before any restitution is paid to any such provider of compensation.

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

Defendant: BILLY RAY SIMS
Case Number: 97-CR-071-001-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:	n/a
Criminal History Category:	n/a
Imprisonment Range:	n/a
Supervised Release Range:	n/a
Fine Range:	n/a
Restitution:	\$ 14,025.85

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

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

UNITED STATES OF AMERICA

v.

Case Number 97-CR-074-001-H

SHELLY D. BOYD
Defendant.

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1984)

FILED
JAN 16 1998
Phil Lombardi, Clerk
U.S. DISTRICT COURT

The defendant, SHELLY D. BOYD, was represented by Craig Bryant.

On motion of the United States the court has dismissed Counts 1 through 7 & 9 through 13 of the Superseding Indictment.

The defendant pleaded guilty October 8, 1997, to Count 8 of the Superseding Indictment. Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 1001(a)(3)	False Statement to Government	6/13/95	8

As pronounced on January 13, 1998, 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.

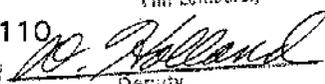
It is ordered that the defendant shall pay to the United States a special assessment of \$ 50, for Count 8 of the Superseding Indictment, which shall be due immediately.

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

Signed this the 16TH day of JANUARY, 1998.


The Honorable Sven Erik Holmes
United States District Judge

Defendant's SSN: 448-66-7015
Defendant's Date of Birth: 11/08/65
Defendant's residence and mailing address: 3146 E. Woodrow Place, 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

Defendant: SHELLY D. BOYD
Case Number: 97-CR-074-001-H

PROBATION

The defendant is hereby placed on probation for a term of five (5) 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, destructive device, or other dangerous weapon.
3. The defendant shall be placed on home detention to include electronic monitoring at the discretion of the U. S. Probation Office for a period of 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.
4. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

STANDARD CONDITIONS OF PROBATION

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

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

Defendant: SHELLY D. BOYD
Case Number: 97-CR-074-001-H

RESTITUTION AND FORFEITURE

RESTITUTION

The defendant shall make restitution in the total amount of \$6,000, as to Count 8.

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

<u>Name of Payee</u>	<u>Amount of Restitution</u>
Oklahoma Department of Human Services Attn: Revenue Processing Unit Acct # 77597 PO Box 53306 Oklahoma City OK 73152	\$5,040
Tulsa Housing Authority 415 E. Independence Tulsa OK 74106	\$960

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.

If a victim has received compensation from insurance or any other source with respect to a loss, any restitution ordered shall be paid to the person who is a victim before any restitution is paid to any such provider of compensation.

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

Defendant: SHELLY D. BOYD
Case Number: 97-CR-074-001-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:	9
Criminal History Category:	I
Imprisonment Range:	4 months to 10 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 1,000 to \$ 10,000
Restitution:	\$ 19,413

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.

BJS

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
) Plaintiff,)
)
 v.)
)
 RICHARD CLARK GARDNER,)
)
) Defendant.)

ENTERED ON DOCKET

DATE 1-14-98

Case No. 97-CR-34-H ✓

FILED

JAN 12 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORDER DISMISSING CASE

The Court has before it the motion of the Government, filed January 5, 1998, to dismiss without prejudice the remaining counts of the Superseding Indictment as well as the Indictment in this case. The Court also has before it the oral motion of the Defendant, presented in open court on January 5, 1998, that the remaining counts of the Superseding Indictment and the Indictment be dismissed with prejudice. In addition, the Court has before it the motion filed by Defendant on December 18, 1997 to dismiss Counts One, Two and Three of the Superseding Indictment for failure to allege a crime.

In open Court on January 5, 1998, the Court inquired of the Government as to the nature of the persons identified as "taxpayers" in Counts One, Two and Three of the Superseding Indictment. The Government represented to the Court that the person named as "taxpayer" in Count One is the real name of an agent of the Internal Revenue Service, but the matters presented to the Defendant by that person were fictitious in nature, and did not concern the taxes of such person. The Government further

72

represented to the Court that the persons named in Counts Two and Three of the Superseding Indictment as "taxpayers" are fictitious names and that the matters presented to the Defendant by those persons were fictitious in nature, and did not concern the taxes of such persons.

The Court finds that Counts One, Two and Three of the Superseding Indictment alleged the Defendant aided and assisted in the preparation of false tax returns in violation of 26 U.S.C. Section 7206(2). The Court further finds that in order for there to be a violation of 26 U.S.C. Section 7206(2) in circumstances involving a tax adviser where a "return" is prepared by that tax adviser, there must exist actual tax matters in respect of an individual who is subject to the requirements of the Internal Revenue Code to present a tax return under the Internal Revenue Code, and the consultation with the tax adviser must be regarding the contents of the return so required. The Court further finds that when the requirements of the preceding sentence are not met, as they are not on the facts of Counts One, Two or Three as represented to the Court by the Government, the requirements of 26 U.S.C. Section 7206(2) are not implicated.

Accordingly, the Defendant's motion to dismiss Counts One, Two and Three of the Superseding Indictment with prejudice is granted, for the reasons set forth above. The findings of the Court herein in respect of Counts One, Two and Three of the Superseding Indictment apply with equal force to the identical Counts One, Two and Three of the Indictment.

The remaining counts of the Superseding Indictment, Counts Four through Twenty One, are dismissed without prejudice. The Indictment is dismissed without prejudice, except as to Counts One, Two and Three thereof, which are dismissed with prejudice.

Done this 5th day of January, 1998.

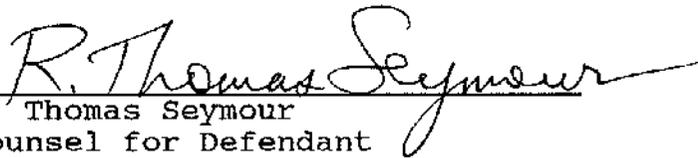


SVEN ERIK HOLMES
United States District Judge

APPROVED AS TO FORM:



John D. Russell
Assistant U.S. Attorney
Counsel for Plaintiff



R. Thomas Seymour
Counsel for Defendant

gardner.92

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

UNITED STATES OF AMERICA

v.

DOUGLAS ALAN LYNCH
Defendant.

EOD: 1-13-98
Case Number 97-CR-057-001-K

FILED

JAN 13 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

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

The defendant, DOUGLAS ALAN LYNCH, was represented by Michael McGuire.

On motion of the United States the court has dismissed Counts 2 through 10 of the Indictment.

The defendant pleaded guilty September 19, 1997, to Count 1 of the Indictment. Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

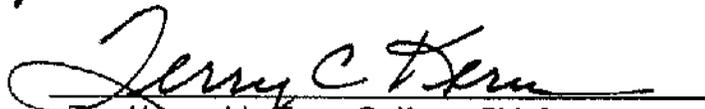
<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 371	Conspiracy to Commit Bank Fraud	12/9/94	1

As pronounced on January 6, 1998, 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 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 day of January, 1998.


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

Defendant's SSN: 558-08-6058
Defendant's Date of Birth: 11/22/56
Defendant's residence and mailing address: Tulsa County Jail, c/o US Marshals Service, 500 S. Denver, Tulsa OK 74103

(3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

In this case, the date on which the conviction became final is January 5, 1993, and none of the other provisions apply to the facts of this case. Therefore, under the rule of United States v. Simmonds, 111 F.3d 737, 746 (10th Cir. 1997), Sprouts, as a prisoner "whose conviction[] became final on or before April 24, 1996" must, in order to be timely, file his §2255 motion before April 25, 1997.

It is undisputed that Sprouts missed the deadline of April 25, 1997 as established by Simmonds. Sprouts argues, however, that the one year deadline should be "equitably tolled" because of extraordinary circumstances. The circumstances cited by Sprouts for this "equitable tolling" are ineffective assistance of counsel, failure of counsel to file an appeal as promised, lack of legal knowledge or assistance, and ignorance of the one-year time period. The courts are split as to whether the one-year time period of the AEDPA can be equitably tolled, and the Tenth Circuit has not yet decided the issue. See, e.g., Calderon v. U.S. District Court for Central District of California, 112 F.3d 386 (9th Cir. 1997) (one-year time limit can be equitably tolled), United States v. Eubanks, Crim. No. 92-392, 1997 WL 115647 (S.D.N.Y. 1997) (AEDPA limitation period is a statute of limitations which cannot be modified by the court).

Assuming, without deciding, that the limitation period is subject to equitable

Defendant: DOUGLAS ALAN LYNCH
Case Number: 97-CR-057-001-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 as soon as possible, but in no event, later than 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, destructive device, or other dangerous weapon.
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: DOUGLAS ALAN LYNCH
Case Number: 97-CR-057-001-K

RESTITUTION AND FORFEITURE

RESTITUTION

The defendant shall make restitution in the total amount of \$4,935.00.

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 Re: Acct # 857006292	\$4,935.00

Payments of restitution are to be made to the Clerk of the Court for the Northern District of Oklahoma or 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 actually paid by all defendants has fully covered the compensable injury.

If a victim has received compensation from insurance or any other source with respect to a loss, any restitution ordered shall be paid to the person who is a victim before any restitution is paid to any such provider of compensation.

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

Defendant: DOUGLAS ALAN LYNCH
Case Number: 97-CR-057-001-K

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report, except the Court finds the application of USSG § 2F1.1(b)(2), more than minimal planning, does not exist in this case. Therefore the total offense level should be a level 7 rather than level 9 reported in the Presentence Investigation Report.

Guideline Range Determined by the Court:

Total Offense Level:	7
Criminal History Category:	V
Imprisonment Range:	12 months to 18 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 500 to \$ 5,000
Restitution:	\$ 4,935.00

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

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

BJS

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

FILED

JAN 12 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
LEONARD HAROLD BUNCH,)
)
Defendant.)

Case No. 92-CR-54-04-E
97-CV-962-E

ENTERED ON DOCKET

DATE JAN 13 1998

ORDER

Now before the Court is the Motion Under 28 U.S.C. §2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (Docket # 207) of the Defendant Leonard Harold Bunch filed on October 23, 1997.

Before the Court can address the merits of Bunch's §2255 motion, the Court must examine the issue of whether it was timely filed under the 1-year period of limitation imposed by the AEDPA amendments to 28 U.S.C. §2255. Section 2255 provides:

A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of--

- (1) the date on which the judgment of conviction becomes final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

In this case, the date on which the conviction became final is January 5, 1993, and none of the other provisions apply to the facts of this case. Therefore, under the rule of United States v. Simmonds, 111 F.3d 737, 746 (10th Cir. 1997), Bunch, as a prisoner "whose conviction[] became final on or before April 24, 1996" must, in order to be timely, file his §2255 motion before April 25, 1997.

It is undisputed that Bunch missed the deadline of April 25, 1997 as established by Simmonds. Bunch argues, however, that the one year deadline should be "equitably tolled" because of extraordinary circumstances. The circumstances cited by Bunch for this "equitable tolling" are ineffective assistance of counsel, failure of counsel to file an appeal as promised, lack of legal knowledge or assistance, and ignorance of the one-year time period. The courts are split as to whether the one-year time period of the AEDPA can be equitably tolled, and the Tenth Circuit has not yet decided the issue. See, e.g., Calderon v. U.S. District Court for Central District of California, 112 F.3d 386 (9th Cir. 1997) (one-year time limit can be equitably tolled), United States v. Eubanks, Crim. No. 92-392, 1997 WL 115647 (S.D.N.Y. 1997) (AEDPA limitation period is a statute of limitations which cannot be modified by the court).

Assuming, without deciding, that the limitation period is subject to equitable tolling, the Court finds that equitable tolling is not appropriate under the circumstances presented in this case. Under the law of this Circuit, equitable tolling

is available in circumstances where the complainant has been misled by the other party or in "extraordinary circumstances." Gatewood v. Railroad Retirement Board, 88 F.3d 886, 889-90 (10th Cir. 1996). Specifically, the Court in Gatewood held that equitable tolling is not warranted by ignorance of the law. The court finds in these circumstances that neither the failure of Bunch's attorney to file an appeal nor Bunch's ignorance of the one-year limitations period are sufficient "extraordinary circumstances" to warrant equitable tolling.

Accordingly, Bunch's Motion Under 28 U.S.C. §2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (Docket # 207) is dismissed for failure to file it within the one-year limitations period.

IT IS SO ORDERED THIS 12TH DAY OF JANUARY, 1998.


JAMES O. ELLISON, SENIOR JUDGE
UNITED STATES DISTRICT COURT

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

FILED

JAN 12 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
KEITH ANTON SPROUTS,)
)
Defendant.)

Case No. 92-CR-54-003-E
~~97-CV-908-E~~

ENTERED ON DOCKET
DATE JAN 13 1998

ORDER

Now before the Court is the Motion Under 28 U.S.C. §2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (Docket # 201) of the Defendant Keith Anton Sprouts filed on October 3, 1997, and his corresponding Motion to Equitably Toll One Year Deadline for Filing Habeas Petition Under the Antiterrorism and Effective Death Penalty Act (AEDPA) (Docket # 217).

Before the Court can address the merits of Sprouts' §2255 motion, the Court must examine the issue of whether it was timely filed under the 1-year period of limitation imposed by the AEDPA amendments to 28 U.S.C. §2255. Section 2255 provides:

A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of--

- (1) the date on which the judgment of conviction becomes final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;

(3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

In this case, the date on which the conviction became final is January 5, 1993, and none of the other provisions apply to the facts of this case. Therefore, under the rule of United States v. Simmonds, 111 F.3d 737, 746 (10th Cir. 1997), Sprouts, as a prisoner "whose conviction[] became final on or before April 24, 1996" must, in order to be timely, file his §2255 motion before April 25, 1997.

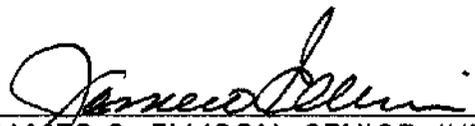
It is undisputed that Sprouts missed the deadline of April 25, 1997 as established by Simmonds. Sprouts argues, however, that the one year deadline should be "equitably tolled" because of extraordinary circumstances. The circumstances cited by Sprouts for this "equitable tolling" are ineffective assistance of counsel, failure of counsel to file an appeal as promised, lack of legal knowledge or assistance, and ignorance of the one-year time period. The courts are split as to whether the one-year time period of the AEDPA can be equitably tolled, and the Tenth Circuit has not yet decided the issue. See, e.g., Calderon v. U.S. District Court for Central District of California, 112 F.3d 386 (9th Cir. 1997) (one-year time limit can be equitably tolled), United States v. Eubanks, Crim. No. 92-392, 1997 WL 115647 (S.D.N.Y. 1997) (AEDPA limitation period is a statute of limitations which cannot be modified by the court).

Assuming, without deciding, that the limitation period is subject to equitable

tolling, the Court finds that equitable tolling is not appropriate under the circumstances presented in this case. Under the law of this Circuit, equitable tolling is available in circumstances where the complainant has been misled by the other party or in "extraordinary circumstances." Gatewood v. Railroad Retirement Board, 88 F.3d 886, 889-90 (10th Cir. 1996). Specifically, the Court in Gatewood held that equitable tolling is not warranted by ignorance of the law. The court finds in these circumstances that neither the failure of Sprouts' attorney to file an appeal nor Sprouts' ignorance of the one-year limitations period are sufficient "extraordinary circumstances" to warrant equitable tolling.

Sprouts' Motion to Equitably Toll the One-Year Limitations Period (Docket #217) is denied. Accordingly, Sprouts' Motion Under 28 U.S.C. §2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (Docket # 201) is dismissed for failure to file it within the one-year limitations period.

IT IS SO ORDERED THIS 12th DAY OF JANUARY, 1998.


JAMES O. ELLISON, SENIOR JUDGE
UNITED STATES DISTRICT COURT

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

FILED

JAN 12 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
STEVEN CARTER DOTTS,)
)
Defendant.)

Case No. 92-CR-54-06-E
97-CV-933-E

ENTERED ON DOCKET

ORDER

DATE JAN 13 1998

Now before the Court is the Motion Under 28 U.S.C. §2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (Docket # 203) of the Defendant Steven Carter Dotts filed on October 14, 1997, and his corresponding Motion to Equitably Toll One Year Deadline for Filing Habeas Petition Under the Antiterrorism and Effective Death Penalty Act (AEDPA) (Docket # 225).

Before the Court can address the merits of Dotts' §2255 motion, the Court must examine the issue of whether it was timely filed under the 1-year period of limitation imposed by the AEDPA amendments to 28 U.S.C. §2255. Section 2255 provides:

A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of--

- (1) the date on which the judgment of conviction becomes final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;

(3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

In this case, the date on which the conviction became final is January 5, 1993, and none of the other provisions apply to the facts of this case. Therefore, under the rule of United States v. Simmonds, 111 F.3d 737, 746 (10th Cir. 1997), Dotts, as a prisoner "whose conviction[] became final on or before April 24, 1996" must, in order to be timely, file his §2255 motion before April 25, 1997.

It is undisputed that Dotts missed the deadline of April 25, 1997 as established by Simmonds. Dotts argues, however, that the one year deadline should be "equitably tolled" because of extraordinary circumstances. The circumstances cited by Dotts for this "equitable tolling" are ineffective assistance of counsel, failure of counsel to file an appeal as promised, lack of legal knowledge or assistance, and ignorance of the one-year time period. The courts are split as to whether the one-year time period of the AEDPA can be equitably tolled, and the Tenth Circuit has not yet decided the issue. See, e.g., Calderon v. U.S. District Court for Central District of California, 112 F.3d 386 (9th Cir. 1997) (one-year time limit can be equitably tolled), United States v. Eubanks, Crim. No. 92-392, 1997 WL 115647 (S.D.N.Y. 1997) (AEDPA limitation period is a statute of limitations which cannot be modified by the court).

Assuming, without deciding, that the limitation period is subject to equitable

tolling, the Court finds that equitable tolling is not appropriate under the circumstances presented in this case. Under the law of this Circuit, equitable tolling is available in circumstances where the complainant has been misled by the other party or in "extraordinary circumstances." Gatewood v. Railroad Retirement Board, 88 F.3d 886, 889-90 (10th Cir. 1996). Specifically, the Court in Gatewood held that equitable tolling is not warranted by ignorance of the law. The court finds in these circumstances that neither the failure of Dotts' attorney to file an appeal nor Dotts' ignorance of the one-year limitations period are sufficient "extraordinary circumstances" to warrant equitable tolling.

Dotts' Motion to Equitably Toll the One-Year Limitations Period (Docket #225) is denied. Accordingly, Dotts' Motion Under 28 U.S.C. §2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (Docket # 203) is dismissed for failure to file it within the one-year limitations period.

IT IS SO ORDERED THIS 12th DAY OF JANUARY, 1998.


JAMES O. ELLISON, SENIOR JUDGE
UNITED STATES DISTRICT COURT

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

FILED

JAN 12 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
PHILLIP OMAR JACKSON,)
)
Defendant.)

Case No. 92-CR-54-05-E
97-CV-958-E

ENTERED ON DOCKET

DATE JAN 13 1998

ORDER

Now before the Court is the Motion Under 28 U.S.C. §2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (Docket # 205) of the Defendant Steven Carter Dotts filed on October 22, 1997, and his corresponding Motion to Equitably Toll One Year Deadline for Filing Habeas Petition Under the Antiterrorism and Effective Death Penalty Act (AEDPA) (Docket # 219).

Before the Court can address the merits of Jackson's §2255 motion, the Court must examine the issue of whether it was timely filed under the 1-year period of limitation imposed by the AEDPA amendments to 28 U.S.C. §2255. Section 2255 provides:

A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of--

- (1) the date on which the judgment of conviction becomes final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;

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(3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

In this case, the date on which the conviction became final is January 5, 1993, and none of the other provisions apply to the facts of this case. Therefore, under the rule of United States v. Simmonds, 111 F.3d 737, 746 (10th Cir. 1997), Jackson, as a prisoner "whose conviction[] became final on or before April 24, 1996" must, in order to be timely, file his §2255 motion before April 25, 1997.

It is undisputed that Jackson missed the deadline of April 25, 1997 as established by Simmonds. Jackson argues, however, that the one year deadline should be "equitably tolled" because of extraordinary circumstances. The circumstances cited by Jackson for this "equitable tolling" are ineffective assistance of counsel, failure of counsel to file an appeal as promised, lack of legal knowledge or assistance, and ignorance of the one-year time period. The courts are split as to whether the one-year time period of the AEDPA can be equitably tolled, and the Tenth Circuit has not yet decided the issue. See, e.g., Calderon v. U.S. District Court for Central District of California, 112 F.3d 386 (9th Cir. 1997) (one-year time limit can be equitably tolled), United States v. Eubanks, Crim. No. 92-392, 1997 WL 115647 (S.D.N.Y. 1997) (AEDPA limitation period is a statute of limitations which cannot be modified by the court).

Assuming, without deciding, that the limitation period is subject to equitable

tolling, the Court finds that equitable tolling is not appropriate under the circumstances presented in this case. Under the law of this Circuit, equitable tolling is available in circumstances where the complainant has been misled by the other party or in "extraordinary circumstances." Gatewood v. Railroad Retirement Board, 88 F.3d 886, 889-90 (10th Cir. 1996). Specifically, the Court in Gatewood held that equitable tolling is not warranted by ignorance of the law. The court finds in these circumstances that neither the failure of Jackson's attorney to file an appeal nor Jackson's ignorance of the one-year limitations period are sufficient "extraordinary circumstances" to warrant equitable tolling.

Jackson's Motion to Equitably Toll the One-Year Limitations Period (Docket #219) is denied. Accordingly, Jackson's Motion Under 28 U.S.C. §2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (Docket # 205) is dismissed for failure to file it within the one-year limitations period.

IT IS SO ORDERED THIS 12th DAY OF JANUARY, 1998.


JAMES O. ELLISON, SENIOR JUDGE
UNITED STATES DISTRICT COURT

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

FILED

JAN 12 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
KEIR DULLEA SPROUTS,)
)
Defendant.)

Case No. 92-CR-54-001-E
97-CV-988-E

ENTERED ON DOCKET
DATE JAN 13 1998

ORDER

Now before the Court is the Motion Under 28 U.S.C. §2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (Docket # 210) of the Defendant Keir Dullea Sprouts filed on November 3, 1997, and his corresponding Motion to Equitably Toll One Year Deadline for Filing Habeas Petition Under the Antiterrorism and Effective Death Penalty Act (AEDPA) (Docket # 218).

Before the Court can address the merits of Sprouts' §2255 motion, the Court must examine the issue of whether it was timely filed under the 1-year period of limitation imposed by the AEDPA amendments to 28 U.S.C. §2255. Section 2255 provides:

A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of--

- (1) the date on which the judgment of conviction becomes final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;

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(3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

In this case, the date on which the conviction became final is December 19, 1995, and none of the other provisions apply to the facts of this case. Therefore, under the rule of United States v. Simmonds, 111 F.3d 737, 746 (10th Cir. 1997), Sprouts, as a prisoner "whose conviction[] became final on or before April 24, 1996" must, in order to be timely, file his §2255 motion before April 25, 1997.

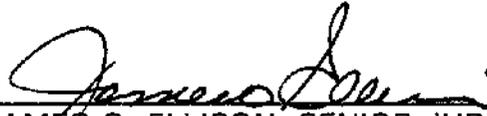
It is undisputed that Sprouts missed the deadline of April 25, 1997 as established by Simmonds. Sprouts argues, however, that the one year deadline should be "equitably tolled" because of extraordinary circumstances. The circumstances cited by Sprouts for this "equitable tolling" are ineffective assistance of counsel, failure of counsel to file an appeal as promised, lack of legal knowledge or assistance, and ignorance of the one-year time period. The courts are split as to whether the one-year time period of the AEDPA can be equitably tolled, and the Tenth Circuit has not yet decided the issue. See, e.g., Calderon v. U.S. District Court for Central District of California, 112 F.3d 386 (9th Cir. 1997) (one-year time limit can be equitably tolled), United States v. Eubanks, Crim. No. 92-392, 1997 WL 115647 (S.D.N.Y. 1997) (AEDPA limitation period is a statute of limitations which cannot be modified by the court).

Assuming, without deciding, that the limitation period is subject to equitable

tolling, the Court finds that equitable tolling is not appropriate under the circumstances presented in this case. Under the law of this Circuit, equitable tolling is available in circumstances where the complainant has been misled by the other party or in "extraordinary circumstances." Gatewood v. Railroad Retirement Board, 88 F.3d 886, 889-90 (10th Cir. 1996). Specifically, the Court in Gatewood held that equitable tolling is not warranted by ignorance of the law. The court finds in these circumstances that neither the failure of Sprouts' attorney to file an appeal nor Sprouts' ignorance of the one-year limitations period are sufficient "extraordinary circumstances" to warrant equitable tolling.

Sprouts' Motion to Equitably Toll the One-Year Limitations Period (Docket #218) is denied. Accordingly, Sprouts' Motion Under 28 U.S.C. §2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (Docket # 210) is dismissed for failure to file it within the one-year limitations period.

IT IS SO ORDERED THIS 12th DAY OF JANUARY, 1998.


JAMES O. ELLISON, SENIOR JUDGE
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT
Northern District of Oklahoma

UNITED STATES OF AMERICA

v.

Case Number 97-CR-092-001 H

FILED

JAN 12 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ENTERED ON DOCKET
DATE JAN 12 1998

KYMBERLI DENISE MANNIS
Defendant.

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

The defendant, KYMBERLI DENISE MANNIS, was represented by Keith Ward.

On motion of the United States the court has dismissed Counts 1 through 11 of the Indictment.

The defendant pleaded guilty to Count 12 of the Indictment, October 7, 1997. Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
8 USC 1029(a)(2)	Unauthorized Use of an Access Device	9/27/96	12

As pronounced on January 7, 1998, 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 12 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 12TH day of JANUARY, 1998.

is a true copy of the original case in this court. Phil Lombardi, Clerk

By Shirley M. Collins
Deputy


The Honorable Sven Erik Holmes
United States District Judge

Defendant's SSN: 447-66-8444
Defendant's Date of Birth: 11/15/70
Defendant's residence and mailing address: 13654 S. 285th E. Avenue, Coweta OK 74429

15

Defendant: KYMBERLI DENISE MANN
Case Number: 97-CR-092-001-H

PROBATION

The defendant is hereby placed on probation for a term of five (5) 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, destructive device, or other dangerous weapon.
3. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
4. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.
5. The defendant shall perform 100 hours of community service, as directed by the Probation Officer, at the Tulsa Volunteer Center.

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: KYMBERLI DENISE MANNS
Case Number: 97-CR-092-001-H

RESTITUTION AND FORFEITURE

RESTITUTION

The defendant shall make restitution in the total amount of \$4,954.37.

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 Boston Attn: Restitution 100 Federal Street Boston MA 02106	\$4,954.37

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.

If a victim has received compensation from insurance or any other source with respect to a loss, any restitution ordered shall be paid to the person who is a victim before any restitution is paid to any such provider of compensation.

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

Defendant: KYMBERLI DENISE MANN
Case Number: 97-CR-092-001-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:	7
Criminal History Category:	I
Imprisonment Range:	0 months to 6 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 500 to \$ 5,000
Restitution:	\$ 4,954.37

The fine is waived as it 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.

BJS

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

FILED

JAN 9 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

CHARLES FREDRICK LEONARD,)

Defendant.)

ENTERED ON DOCKET

No. 90-CR-74-C DATE JAN 12 1998
Appellate No. 91-5021
Appellate No. 93-5085

97 C 359 C

ORDER

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

On July 12, 1990, Leonard was named in Counts One and Two of a three-Count Indictment for violation of controlled substance laws. Although Leonard was only named in Counts One and Two of the Indictment, Paul Jastrzembki, Russ Burnett, Michael McNeil, Jerry Thurman, and Harold Martin were also named as co-defendants in Count I, conspiracy. The same controlled substance, methamphetamine, was attributable to all six defendants charged in the Indictment. Leonard was also charged with homicide by the State of Oklahoma on substantially the same conduct arising from a murder in relation to the operation of the methamphetamine lab. On October 22, 1990, Leonard pled guilty to Count Two, continuing criminal enterprise, in violation of 21 U.S.C. § 848. The State court murder charge was subject to dismissal pursuant to Leonard's guilty plea. On January 23, 1991, Leonard was sentenced to 327 months imprisonment, five years supervised release, and ordered to pay a special assessment of \$50. Leonard appealed on the grounds of ineffective assistance of

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counsel, and the Circuit remanded the case for an evidentiary hearing. U.S. v. Leonard, 977 F.2d 597 (10th Cir. 1992). On February 11, 1993, the Court held an evidentiary hearing and subsequently dismissed Leonard's ineffective assistance of counsel claim. Leonard again appealed, and the Circuit affirmed the Court's dismissal of his claim in an unpublished opinion. U.S. v. Leonard, 16 F.3d 418 (10th Cir. 1994).

On April 18, 1997, Leonard's present § 2255 was filed. Leonard moves this Court to vacate, set aside, or correct the sentence imposed upon him. He seeks such relief on 27 grounds comprising of ineffective assistance of counsel, perjured testimony, prosecutorial misconduct, judicial interference with his Fifth Amendment right to fair trial, and commission of plain error by the Court. Leonard also requests that this Court recuse itself from adjudicating his § 2255 motion.

As an initial matter, the Court notes that Leonard essentially raises herein the same assertion in every claim: he should not have faced federal prosecution. Leonard has been unsuccessfully arguing this very contention, through various tactical approaches, since his federal indictment. Indeed, this issue was at the very heart of his suppression hearing and direct appeal which resulted in the Circuit remanding this case for an evidentiary hearing on a claim of ineffective assistance of counsel. After conducting a thorough hearing on that issue, at which both Leonard and his former attorney Mr. John Echols testified, the Court found that Leonard had not been misled or informed that he was immune from federal prosecution. Leonard subsequently appealed this finding and the Circuit affirmed. Leonard now argues the same contention, that his federal prosecution was improper, by couching it in various other claims of ineffective assistance of counsel. Although seemingly redundant, the Court will summarily address every issue raised herein and conclude that Leonard's newly raised claims of ineffective assistance are frivolous and without merit.

The Court will first address Leonard's request for recusal. As proper jurisdiction to adjudicate the present motion rests with the Court, Leonard must show bias to successfully petition the Court for recusal. Lucero v. U.S., 425 F.2d 172, 173 (10th Cir. 1970). However, Leonard cites no bias in support of his request. Rather, he only complains of adverse rulings at his evidentiary hearing and other proceedings. These allegations alone are insufficient to warrant a recusal as a "recusal must be predicated on extrajudicial conduct." U.S. v. Prichard, 875 F.2d 789, 791 (10th Cir. 1989)(citing Maves v. Leipziger, 729 F.2d 605 (9th Cir. 1984)). As Leonard fails to cite any bias, his request for recusal is denied.

In addressing the merits of Leonard's motion, the Court notes that 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 Leonard 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 Leonard's claims barred unless cause and prejudice or a miscarriage of justice is shown. Id.

In order to evade this procedural bar, eleven of Leonard's assertions rely in part 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, 341 (10th Cir.1996). To succeed on a claim of ineffective

assistance of counsel, Leonard 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, Leonard 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, Leonard must show that his counsel's performance fell below an objective standard of reasonableness. Furthermore, Leonard 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.

Leonard's first three claims allege ineffective assistance of counsel on the part of his state trial counsel, Mr. Robert Durbin. Leonard asserts that his Sixth Amendment right to representation was violated because Mr. Durbin allowed him to enter into an "immunity" agreement with Creek County, Oklahoma, officials in relation to the state murder charge. Under this agreement, defendant was to give a statement in return for "immunity" from prosecution. This statement was the basis of Leonard's subsequent federal indictment. Leonard alleges that he gave said statement because Mr. Durbin promised him that, in return, he would receive "immunity" from "any prosecution" including federal action. This Court held a suppression hearing to determine whether the "immunity" agreement was binding on the Federal Government. At that hearing, the evidence showed that Mr. Durbin inquired into the possibility of federal immunity and was told that the State had no such authority. The evidence further showed that Mr. Durbin had apprised Leonard that his statement did not avail him of immunity from federal prosecution. After considering the evidence, the Court found that the "immunity" was a promise not to prosecute by the State and in no way binding against the

Federal Government. The Court further notes that the State complied with its agreement and dismissed the murder charge. Because he received the immunity promised by the State, Leonard has failed to show any prejudice. The Court therefore denies Leonard's First claim.

Leonard next alleges ineffective assistance of counsel claiming that Mr. Durbin made false promises which caused him to waive his Fifth Amendment right against self-incrimination. Defendant argues that Mr. Durbin promised him that the "immunity" agreement would immunize him from both state and federal prosecution. This is contrary to the record which clearly indicates that Leonard was apprised of his right to remain silent. (Statement of Confession of Charles Leonard, Feb. 5, 1990, p.1). Further, Leonard was well aware that his "immunity" did not extend to federal prosecution. (Presentence Hearing Tr. of Charles Leonard, Sept. 20, 1990, pp. 70-84). Hence, Leonard's present claim is denied as his right to silence was not violated.

In his Third claim, Leonard asserts that Mr. Durbin allowed State officials to coerce the statement. This argument is without foundation. The record clearly indicates that Mr. Durbin apprised defendant of his right to remain silent. (Statement of Confession, at p.1). The record also reflects that the statement was given after a "fairly extensive preliminary discussion" regarding the positions of the various parties. (*Id.*). Further, the State complied with the agreement and dismissed the homicide charge. Defendant cannot show prejudice as he received the benefit of the bargain: "immunity" from state prosecution. Therefore, the Court denies Leonard's Third ground for relief.

Leonard's next seven claims center on the performance of his federal trial counsel, Mr. Echols. Leonard alleges ineffective assistance of counsel because Mr. Echols did not request a Kastigar hearing to determine whether the "immunized" statement could be used against defendant. See, U.S. v. Kastigar, 406 U.S. 441 (1972). This is the very issue addressed in the suppression

hearing, which renders a Kastigar hearing redundant and nonproductive. Hence, Leonard fails to show prejudiced, and thus, his Fourth claim is denied.

Next, Leonard contends that Mr. Echols failed to properly research and prepare for the pretrial motions hearing. Leonard claims that Mr. Echols cited no case law and specifically failed to mention the Kastigar case. In support, Leonard quotes Mr. Echols out of context, but fails to mention the motions themselves which were fully researched and contained ample authority. Further, a Kastigar hearing would be repetitive and nonproductive. Therefore, Leonard's Fifth claim for relief is denied because he suffered no prejudice as a result of Mr. Echols' preparations for the pretrial hearing.

Leonard next alleges that Mr. Echols failed to provide effective assistance because he did not investigate the "link" between State and Federal authorities. Defendant claims that there was a "link" between the State and Federal prosecutions which violated double jeopardy. This argument is baseless as jeopardy never attached at the State level.¹ Rather, the State murder charge was dismissed pursuant to the "immunity" agreement. Further, there is clearly no prohibition on subsequent federal prosecution, provided that the subsequent prosecution is made in good faith. U.S. v. Raymer, 941 F.2d 1031, 1037 (10th Cir. 1991)(citing Abbate v. U.S., 359 U.S. 187 (1959) & Bartkus v. Illinois, 359 U.S. 121 (1959)). That is, the subsequent prosecution may not be a "sham"

¹ For jeopardy to attach, the jury must be impanelled, or the first witness must be sworn in a bench trial. Crist v. Bretz, 437 U.S. 28, 37-38 (1978).

prosecution.² Id. at 1037. There is no danger of a “sham” prosecution in this case because Leonard’s federal indictment alleged violation of controlled substance law, while the State brought homicide charges. The Court therefore denies Leonard’s claim of ineffective assistance of counsel based on a federal and state “link.”

In his next claim, defendant alleges that Mr. Echols coerced the guilty plea by promising that this Court’s ruling on the “immunized” statement could be appealed. This issue has been brought on direct appeal, No. 93-5085. Accordingly, Leonard’s Seventh claim is procedurally barred from review under § 2255.

As his Eighth claim, Leonard asserts that Mr. Echols’ failure to challenge the sufficiency of the federal indictment constituted ineffective assistance of counsel. Leonard’s argument lacks substance because his informed guilty plea fully admits the existence of all the material elements of the crime charged. U.S. v. Broce, 488 U.S. 563, 570 (1989). Further, it is reasonable for counsel not to “spotlight the state’s case during the plea proceedings.” Thomas v. Kerby, 44 F.3d 884, 887 (10th Cir. 1995). Hence, Leonard’s claim must fail because he does not show unreasonable conduct by Mr. Echols.

Leonard’s Ninth claim of ineffective assistance of counsel is baseless. He alleges that Mr. Echols failed to object to the quantity of drugs attributed to Leonard in his presentence report. However, the record clearly indicates that Mr. Echols made that very objection. (Addendum to

² A “sham” prosecution occurs when one sovereign allows the other to prosecute a case because prosecution is otherwise barred by the first sovereign’s law. For example, a state may not prosecute a federal case just because the federal government’s prosecution is barred on federal constitutional grounds. The reciprocal is true for the federal government. Raymer at 1037.

Presentence Report of Charles Leonard, Objection No. 24). The Court therefore rejects Leonard's Ninth claim as wholly frivolous and without merit.

Leonard next claims ineffective assistance of counsel asserting that Mr. Echols failed to require the government to prove the controlled substance was d-methamphetamine. As noted, the same controlled substance, methamphetamine, served as the basis for the Indictment and specifically Count Two, continuing criminal enterprise, to which Leonard plead guilty.

To date, Jastrzembki, a co-defendant, has moved the Court pursuant to § 2255, challenging his sentence by alleging that the government failed to prove the type of methamphetamine involved in the Indictment. On July 10, 1997, a hearing was held on the matter. The Court found that the evidence introduced by the government "overwhelmingly indicate[d] the presence of dl-methamphetamine," which is properly treated as d-methamphetamine for sentencing purposes. U.S. v. Decker, 55 F.3d 1509 (10th Cir. 1995). Further, on July 16, 1997, the Court received a hand written letter from Jastrzembki in which he essentially admits to perjury and that he and his co-defendants produced dl-methamphetamine. Consequently, the Court denied Jastrzembki's motion.

Similarly, Leonard claims ineffective assistance of counsel asserting that Mr. Echols should have required the government to prove the type of methamphetamine involved. The burden of proving the type of methamphetamine involved lies with the government. U.S. v. Deninno, 29 F.3d 572, 580 (10th Cir. 1994). However, the Court has held a hearing in regard to this particular issue and found dl-methamphetamine involved. Further, Rule 4(b) of the Rules Governing § 2255 Proceedings provides that, "[i]f it plainly appears from the face of the motion . . . and the prior proceedings in the case that the movant is not entitled to relief in the district court, the judge shall

make an order for its summary dismissal” The evidentiary hearing held with regard to Jastrzembski’s attack on the type of methamphetamine may be considered a “prior proceeding in the case,” and thus, the Court’s finding at the evidentiary hearing may be extended to Jastrzembski’s codefendants, especially since the Court found that the government “clearly proved” that dl-methamphetamine was involved. Moreover, Jastrzembski’s letter of July, 16, 1997, admits that dl-methamphetamine was produced. Accordingly, Leonard’s Tenth ground for relief is denied.

In his Eleventh claim for relief, defendant alleges that Mr. Echols perjured himself while testifying at defendant’s evidentiary hearing. In support, Leonard cites testimony taken out of context and makes only conclusory allegations with no factual support which is insufficient to make a showing of prejudice. See, Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991)(stating that conclusory allegations do not state a claim upon which relief may be granted). The Court therefore denies Leonard’s present claim.

Leonard next asserts that his Fifth Amendment rights were violated when Mr. Echols’ secretary remained in the courtroom, at the evidentiary hearing, after the rule of sequestration was invoked. However, Leonard fails to show prejudice because the secretary was not an anticipated witness, and thus, she was not required to be sequestered. Further, the government asked her to leave the courtroom when it became apparent that she might be called to testify. Moreover, she was never called as a witness, and the Court did not find a violation of the Order of Sequestration at that time. For the foregoing reasons, Leonard’s instant claim is denied.

Leonard’s Thirteenth and Fourteenth claims allege that the government committed prosecutorial misconduct through the knowing use of perjured testimony. Leonard relies on conclusory allegations and cites no factual foundation to show prejudice; he only cites the testimony

of Agent Hawkins and Officer Fugate out of context. Therefore, Leonard's claims of prosecutorial misconduct are denied for lack of support.

Next, Leonard claims that he plead guilty to an insufficient indictment. However, Leonard plead guilty which admits each material element of the crime charged and waives any deficiencies or shortcomings in the case against him. Broce, at 570. Therefore, Leonard's claim is dismissed.

In his Sixteenth claim, Leonard contends that his plea agreement was unenforceable and thus unconstitutional. Leonard argues that the plea agreement was unconstitutional as the government could not guarantee its promises because the plea agreement required the Court's approval. See, Brady v. U.S., 397 U.S. 742, 755 (1970)(stating that an unfulfillable promise is subject to challenge the same as an unfulfilled valid promise). This argument lacks foundation as Leonard did, in fact, receive a two level decrease at sentencing. (Sentencing Hearing Tr. of Charles Leonard, Jan. 23, 1991, p. 29). Accordingly, this claim is procedurally barred.

Leonard next argues that the government committed prosecutorial misconduct by allowing Mr. Echols' secretary to remain in the courtroom after the rule of sequestration was invoked. This is the same ground for relief advanced in Leonard's Twelfth claim which the Court fully addressed and found to be without merit. Hence, Leonard's instant claim is denied.

Leonard asserts, in his Eighteenth claim, that his first appellate counsel, Ms. Jensen, provided ineffective assistance of counsel. Defendant argues that Ms. Jensen provided ineffective assistance because she failed to raise essentially the same claims raised in this present § 2255 motion. This contention is wholly unfounded.³ Ms. Jensen specifically addressed Leonard's requests and presented

³ Leonard's subsequent appellate counsel filed an motion to withdraw pursuant to Anders v. California, 386 U.S. 738, 744 (1967). In the Anders brief, Leonard's counsel asked to withdraw because he reviewed the record and found the appeal to be frivolous. In an unpublished

an effective appeal which resulted in the case being remanded. Further, failure to raise an issue deemed to be without merit does not constitute ineffective assistance of counsel. See generally, U.S. v. Dixon, 1 F.3d 1080, 1082 (10th Cir. 1993). Therefore, this claim is denied as Leonard has failed to show Ms. Jensen's conduct to be unreasonable.

Leonard next complains that the Court intimidated and humiliated his attorney, Mr. Echols, thereby violating his Fifth Amendment due process rights. Again, Leonard makes no factual averments. He only cites the normal interplay between the Court and counsel, in making and ruling on objections, and concludes that Mr. Echols was intimidated. Without a showing of prejudice, the Court holds Leonard's present claim procedurally barred.

In his next seven claims, Issues Twenty through Twenty-six, Leonard asserts that this Court committed plain error at various times. As his Twentieth claim, Leonard alleges that this Court erred by accepting his guilty plea. This contention is without foundation. For a plea to stand, the Court need only be subjectively satisfied that there is a factual basis for the plea. U.S. v. Ammirato, 670 F.2d 552, 555 (5th Cir. 1982). The Court was satisfied as to the basis of Leonard's plea, and accordingly accepted defendant's plea. Further, this claim should have been brought at direct appeal. Therefore, the procedural bar applies, and Leonard's present claim is denied.

Leonard next alleges that the Court committed plain error by not requiring the government to prove the type of methamphetamine at trial. As discussed in Leonard's Tenth claim, the matter has been adjudged and to hold another hearing would be nonproductive. Further, Leonard provides

opinion, the Circuit granted counsel's motion to withdraw on the grounds set forth. U.S. v. Leonard, 16 F.3d 418 (10th Cir. 1994).

no new evidence that would give rise to prejudice. This issue should have been raised on direct appeal. Consequently, it is procedurally barred at this time.

As his Twenty-second and Twenty-third claims, Leonard contends that this Court erred by failing to comply with Rules 11(c)(1) and 11(e)(2) of the Federal Rules of Criminal Procedure by not advising him of the applicable penalties or his right to withdraw his plea had the Court rejected it. Leonard's claims pursuant to the Federal Rules of Criminal Procedure are procedurally barred. First, his allegations under Rule 11(c)(1) are completely unfounded. The record clearly reflects this Court's calculated and conscientious effort to apprise Leonard of the penalties associated with his plea. (Change of Plea Tr. of Charles Leonard, Oct. 22, 1990, pp. 11-12). Further, Leonard's claim under Rule 11(e)(2) is also barred. Defendant alleges a technical violation of Rule 11 which does not rise to the level of prejudice required to overcome the procedural bar. U.S. v. Timmereck, 441 U.S. 780, 783-85 (1979). Moreover, Leonard never alleges that he would have changed his plea had he known he could have withdrawn it. Hence, Leonard's Twenty-second and Twenty-third claims for relief are procedurally barred.

Leonard next complains of plain error alleging that this Court violated Rule 32(c)(5) of the Federal Rules of Criminal Procedure (formerly Rule 32(a)(2)) by not informing him that he could appeal his sentence. This claim is procedurally barred because technical violations of Rule 32 are "not of itself an error that can be raised by collateral attack." Hill v. U.S., 368 U.S. 424, 426 (1962). Further, Leonard cannot show any prejudice as he did in fact appeal. Hence, the Court finds Leonard's claim pursuant to Rule 32(c)(5) procedurally barred.

As his Twenty-fifth claim, Leonard asserts that this Court committed plain error by sentencing him based on false evidence. Leonard argues that this Court drew the wrong conclusion from the

presentence report, not that any facts therein were wrong. However, Leonard cites no new facts to rebut his sentence, nor does he explain why his admission should not be valid. Moreover, his guilty plea established all elements of his continuing criminal enterprise charge. Broce, at 570. Therefore, Leonard's Twenty-fifth claim is denied.

Leonard's next allegation of plain error rests on the fact that this Court did not require production of the Bureau of Prison tapes which Leonard claims would substantiate one of his ineffective assistance of counsel claims against Mr. Echols. However, the burden of producing this possibly relevant evidence does not fall upon the Court. Rather, it falls squarely upon Mr. Leonard and his counsel of the day. Leonard's defense counsel, Mr. Nigh, never requested assistance in procuring said tapes. This Court directed the government to assist if possible and gave Mr. Nigh ample time to obtain the tapes. Standing alone, the fact that the tapes were never produced does not show prejudice. Consequently, this Court denies Leonard's present claim.

Leonard's final claim asserts that his sixth lawyer and second appellate counsel, Mr. Bryant, failed to provide effective assistance of counsel. This claim is also without merit. Mr. Bryant reviewed the case, discussed it with Leonard, and found it to be wholly frivolous. He subsequently filed an Anders brief with the Circuit asking to withdraw due to this case's complete lack of merit. See, Anders, at 744. Accordingly, the Circuit affirmed the Court's findings and granted Mr. Bryant's request to withdraw. Leonard, 16 F.3d at 418. This Court agrees with the Circuit and Mr. Bryant, and dismisses Leonard's final claim as wholly frivolous and without foundation.

In sum, the Court denies all of Leonard's claims of ineffective assistance of counsel because he fails to show any prejudice or that any of his counsel's actions were unreasonable. The Court also holds that Leonard's claims of perjury, prosecutorial misconduct, and error on the part of this Court

are procedurally barred as no prejudice was shown to overcome the procedural hurdle. Hence, the Court finds no grounds for relief set forth in Leonard's motion.

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

IT IS SO ORDERED this 9th day of January, 1998.



H. Dale Cook
Senior U.S. District Judge

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

FILED

JAN 9 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDUARDO JAVIER MARTINEZ,

a/k/a Carlos,

Defendant.

No. 96-CR-14-C

970784C

ENTERED ON DOCKET

DATE JAN 12 1998

ORDER

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

On February 8, 1996, defendant was named in a one-Count Indictment for violation of controlled substance laws. On May 2, 1996, defendant plead guilty to conspiracy to manufacture, possession with intent to distribute, and distribution of methamphetamine, in violation of 21 U.S.C. § 846. On August 20, 1996, defendant was sentenced to 135 months imprisonment and 5 years of supervised release; further, defendant was fined \$2,000 and ordered to pay a special monetary assessment of \$50.

On August 26, 1997, Martinez's present § 2255 motion was filed. Defendant moves the Court to vacate, set aside, or correct the sentence imposed upon him based on four claims of ineffective assistance of counsel. Defendant seeks relief on the following grounds: 1) counsel failed to require that the government prove the type of methamphetamine involved in the present case; 2) counsel failed to argue defendant's minimal role in the conspiracy; 3) counsel failed to argue that the finding of a Category III criminal history was inappropriate in that it over-represented the

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seriousness of defendant's past criminal history; and, 4) counsel failed to request a downward departure, pursuant to § 5K1.1 of the United States Sentencing Guidelines ("Guidelines").

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

In order to evade this procedural bar, Martinez 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, 341 (10th Cir.1996). To succeed on a claim of ineffective assistance of counsel, Martinez 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, Martinez 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, Martinez must show that his counsel's performance fell below an objective standard of reasonableness. Furthermore, Martinez 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.

Martinez claims that his attorney, Mr. Michael Able, provided ineffective assistance because he failed to require that the government prove the type of methamphetamine involved in this case. Defendant argues that counsel's failure resulted in a substantially greater sentence because the sentence was based on d-methamphetamine and not l-methamphetamine. However, the distinction between methamphetamine types was eliminated as of November 1, 1995. U.S. v. Glover, 97 F.3d 1345, 1347 n.2 (10th Cir. 1996). Hence, defendant cannot show unreasonable conduct on the part of Mr. Able as defendant was sentenced, on August 20, 1996, well after the distinction was eliminated. Accordingly, Martinez's present claim is denied.

Defendant next contends that counsel failed to "correctly argue the minimal/minor role defendant held in the conspiracy." Defendant asserts that had counsel made such an argument defendant would have been the recipient of a lesser sentence. This contention is without foundation as Mr. Able did, in fact, make this argument. (Sentencing Tr. of Edwardo Martinez, Aug. 20, 1996, p. 12). Further, defendant's role as a courier does not necessarily warrant a decrease in offense level under the Guidelines. U.S. v. Arredondo-Santos, 911 F.2d 424, 426 (10th Cir. 1990). For the foregoing reasons, the Court concludes that counsel's assistance was effective and that defendant is not entitled to relief on this claim.

Defendant further asserts that he has no other "felony conviction" and, as such, a Category III criminal history finding was inappropriate because it "materially over-represent[ed]" defendant's true criminal history. Defendant argues that Mr. Able's representation was inadequate because this argument was not advanced. Defendant additionally argues that counsel failed to apprise the Court

of the "substantial impact of the elevated criminal history." Both claims are without foundation. Indeed, Mr. Able did argue unsuccessfully that a Category III criminal history classification was inappropriate in light of defendant's prior criminal history.¹ (Sentencing Tr., at p. 12-13). Further, the Court sentences many prisoners every year and is fully aware of the impact that the criminal history category has on sentence length. The Court therefore dismisses defendant's third claim.

In his last claim for relief, defendant alleges that counsel failed to seek a downward departure, pursuant to § 5K1.1 of the Guidelines, which rendered counsel's assistance ineffective. Defendant further alleges that counsel did not explain that a § 5K1.1 departure was discretionary. Defendant asserts that he fully and truthfully cooperated with the government with the expectation of receiving a downward departure. Defendant further asserts that a § 5K1.1 sentence reduction was material to his decision to plea guilty. Even so, defendant cannot show that Mr. Able acted unreasonably.

A § 5K1.1 departure can only be made "upon motion of the government." USSG § 5K1.1. Defendant did not receive a § 5K1.1 departure due to the government's decision not to request one and not due to ineffective assistance of counsel. Further, Mr. Able filed a motion for and subsequently argued for a downward departure at sentencing. (Sentencing Tr., at pp. 16-7). Thus, Mr. Able's actions cannot be considered unreasonable because the government did not move for a downward departure.

Furthermore, a defendant who claims that he received ineffective assistance of counsel in entering a guilty plea must demonstrate that "there is a reasonable possibility that, but for counsel's

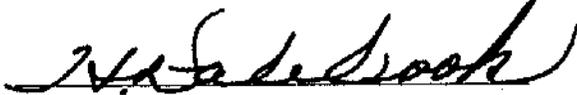
¹ The Court overruled Mr. Abel's objection on this point as all six of Martinez's prior misdemeanor convictions were drug or alcohol related. (Sentencing Tr., at 14).

errors, he would not have pleaded guilty and would have insisted on going to trial.” Hill v. Lockhart, 474 U.S. 52, 59 (1985); U.S. v. Gordon, 4 F.3d 1567, 1570 (10th Cir. 1993). Such a showing “depend[s] largely on whether [defendant] would have succeeded at trial.” Hill, at 59. Defendant has failed to make such a showing as he does not plead that he would have insisted on going to trial “but for counsel’s errors.” Rather, defendant only asserts that the downward departure was material to his decision to plead. Further, defendant asserts no grounds or theories which may have been advanced at trial, much less ones that might have lead to an acquittal. Consequently, Defendant’s final claim is dismissed.

In sum, defendant fails to show prejudice as methamphetamine type no longer has a bearing on the length of sentence. Likewise, defendant’s sentence would have been the same regardless of his alleged role in the conspiracy. Further, defendant cannot show that counsel acted unreasonable because objection was made to defendant’s Category III criminal history classification and counsel did, in fact, argue for a downward departure. Hence, the Court concludes that Martinez has failed to make a showing of ineffective assistance of counsel. Issuance of this Order renders Martinez’s motion for appointment of counsel moot.

Accordingly, Martinez’s motion pursuant to § 2255 is hereby DENIED.

IT IS SO ORDERED this 9th day of January, 1998.


H. Dale Cook
Senior U.S. District Judge

UNITED STATES DISTRICT COURT
Northern District of Oklahoma

FILED

JAN 9 1998

UNITED STATES OF AMERICA

Phil Lombardi, Clerk
U.S. DISTRICT COURT

v.

Case Number 97-CR-110-01-C

ENTERED ON DOCKET

FELIX RENDON OSUNA
Defendant.

DATE 1/12/98

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

The defendant, FELIX RENDON OSUNA, was represented by Alex J. Forgette & William E. Hughes.

The defendant was found guilty on Counts 1 through 6 of the Superseding Indictment, October 9, 1997 after a plea of not guilty. Accordingly, the defendant is adjudged guilty of such counts, involving the following offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 922(o)	Unlawful Possession of Machine Gun	8/7/97	1 - 3
USC 5845, 5861(d), & 5871	Possession of Firearm and Destructive Device	8/7/97	4 - 6

As pronounced on December 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 \$ 600, for Counts 1 through 6 of the Superseding Indictment, which shall be due immediately.

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

Signed this the 9 day of January, 1997.


The Honorable H. Dale Cook
United States District Judge

Defendant's SSN: 553-39-7990
Defendant's Date of Birth: 9/26/48
Defendant's residence and mailing address: 429 Via Mira Monte, Montebello OK 73064

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 case 40
Phil Lombardi, Clerk
By Ramsey M. Callaghan
Deputy

Defendant: FELIX RENDON OSUNA
Case Number: 97-CR-110-01-C

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 51 months as to each count, said counts to run concurrently, each with the other.

The Court makes the following recommendations to the Bureau of Prisons: the Court recommends that the Bureau of Prisons designate a penal facility in California.

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: FELIX RENDON OSUNA
 Case Number: 97-CR-110-01-C

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years as to each count, 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 as soon as possible, but in no event, later than 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, destructive device, or other dangerous weapon.
4. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.
5. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.
 The Court suspends the requirements for mandatory urine screening as dictated by 18 USC § 3608, but specifically retains the probation officer's authority to administer such tests for cause as permitted by the standard conditions of supervision.

STANDARD CONDITIONS OF SUPERVISION

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

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
 - 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
 - 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
 - 4) The defendant shall support his or her dependents and meet other family responsibilities.
 - 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
 - 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
 - 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
 - 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
 - 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
 - 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
 - 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
 - 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 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: FELIX RENDON OSUNA
Case Number: 97-CR-110-01-C

STATEMENT OF REASONS

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

Guideline Range Determined by the Court:

Total Offense Level:	24	
Criminal History Category:	I	
Imprisonment Range:	51 months to 63 months	Cts. 1-6
Supervised Release Range:	2 to 3 years	Cts. 1-6
Fine Range:	\$ 10,000 to \$ 100,000	Cts. 1-6
Restitution:	\$ n/a	

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

FILED

UNITED STATES DISTRICT COURT
Northern District of Oklahoma

JAN 8 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA

v.

Case Number 97-CR-042-001-B

JERRY C. GREEN aka Steven Martin Jacobs
Defendant.

ENTERED ON DOCKET

DATE 1-8-98

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

The defendant, JERRY C. GREEN aka Steven Martin Jacobs, was represented by Paul D. Brunton.

On motion of the United States the court has dismissed counts 1, 2, and 3 of the Indictment.

The defendant pleaded guilty on September 5, 1997, to count 4 of the Indictment. Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 922(g)(1)	Possession of Firearm AFCEP	12-19-96	4

As pronounced on December 23, 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) 4 of the Indictment, which shall be due immediately.

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

Signed this the 5th day of Jan, 1998

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

By [Signature]
Deputy

[Signature]
The Honorable Thomas R. Brett
United States District Judge

Defendant's SSN: 441-58-7869
Defendant's Date of Birth: 01-13-55
Defendant's residence and mailing address: 1747 N. 129th E.Ave., Tulsa, OK 74116

Defendant: JERRY C. GREEN aka Steven Martin Jacobs
Case Number: 97-CR-042-001-B

PROBATION

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

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

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

STANDARD CONDITIONS OF PROBATION

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

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

Defendant: JERRY C. GREEN aka Steven Martin Jacobs
Case Number: 97-CR-042-001-B

FINE

The Court has determined that the defendant does not have the ability to pay interest, and it is accordingly ordered that the interest requirement is waived and fine is to be paid within six (6) months.

The defendant shall pay a fine of \$ 250.

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: JERRY C. GREEN aka Steven Martin Jacobs
Case Number: 97-CR-042-001-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:	4
Criminal History Category:	II
Imprisonment Range:	0 months to 6 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 250 to \$ 5,000
Restitution:	n/a

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

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

F I L E D

JAN 7 1998 *plw*

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
DONALD B.W. EVANS, JR.,)
)
Defendant.)

No. 90-CR-31-01-E ✓

ENTERED ON DOCKET

DATE JAN 08 1998

ORDER

Now before the Court is the Motion To "Correct Illegal Sentence" Pursuant to the Provisions of (Former) Rule 35 (a) of the Federal Rules of Criminal Procedure, and for the Appointment of Counsel, Pursuant to Rule 44(a) of the Federal Rules of Criminal Procedure (Docket #272) of the Defendant, Donald B.W. Evans, Jr.

Evans, who was sentenced to life imprisonment after being convicted of conspiracy to distribute cocaine, argues that his sentence was improperly increased for the presence of a firearm despite the fact that the firearm was not present during the commission of the drug offense. He seeks to have his "illegal sentence" corrected pursuant to former Rule 35(a), Fed.R.Crim.P. Evans recognizes that the new Rule 35(a) would not allow the correction he requests, because under its terms a court may only correct a sentence that is "determined on appeal under 18U.S.C. 3742 to have been imposed in violation of law, to have been imposed as a result of an incorrect application of the sentencing guidelines, or to be unreasonable. . . ." In contrast, former Rule 35(a) allowed a court to correct an illegal sentence "at any

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time." Evans argues that the former rule applies because the conspiracy for which he was convicted began prior to November 1, 1987, which was the effective date of the repeal of former Rule 35.

The authority upon which Evans relies for his argument that the Court has jurisdiction under former Rule 35 is distinguishable. In United States v. Corbitt, 13 F.3d 207 (7th Cir. 1993) the Court was found to have jurisdiction to correct a sentence under former Rule 35 because the entire crime was committed prior to November 1, 1997, and the sentence was a pre-guidelines¹ sentence. In United States v. Byerly, 46 F.3d 694 (7th Cir. 1995), the Court had jurisdiction under former Rule 35 because the defendant was given a pre-guidelines sentence. In this case, the evidence is that the conspiracy began prior November 1, 1987, but continued after that time, and that Evans was sentenced under the United States Sentencing Guidelines.

It is the law of this circuit that crimes beginning prior to the effective date of the guidelines, but continuing after that time should be sentenced under the sentencing guidelines. United States v. Roederer, 11 F.3d 973 (10th Cir. 1993). The Court concludes that, in light of this holding, the version of Rule 35 that should apply is the current version that was enacted at the same time as the guidelines. Thus, this Court may only correct Evans' sentence under certain circumstances that are not present in this case, and the Court is without jurisdiction to consider the allegation

¹ Rule 35 was amended as part of the Comprehensive Crime Control Act of 1984, which also brought about the Sentencing Guidelines, and the amended rule was to go into effect November 1, 1987, the same day the Sentencing Guidelines were to go into effect. See United States v. Corbitt, 13 F.3d 207 (7th Cir. 1993).

of error advanced by Evans.

The Motion To "Correct Illegal Sentence" Pursuant to the Provisions of (Former) Rule 35 (a) of the Federal Rules of Criminal Procedure, and for the Appointment of Counsel, Pursuant to Rule 44(a) of the Federal Rules of Criminal Procedure (Docket #272) is denied.

ORDERED this 1st day of January, 1998.



JAMES O. ELLISON, SENIOR JUDGE
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
JERRY LEE GREEN,)
)
Defendant.)

96-CR-151 ✓
(98-CV-894-H(E))

ENTERED ON DOCKET
DATE JAN 06 1998

FILED

JAN - 5 1998
Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORDER

This matter comes before the Court on Defendant/Petitioner Jerry Lee Green's Petition for Reduction of Sentence Pursuant to 28 U.S.C. § 2255 filed November 24, 1998 (Docket # 1). At the Court's request, the Government filed a response to the petition on December 16, 1998, which noted that Mr. Green's conviction is currently pending on direct appeal in the Tenth Circuit.

It is settled law that absent extraordinary circumstances "a § 2255 motion should not be considered before the disposition of the direct criminal appeal[.]" United States v. Scott, 124 F.3d 1328, 1329 (10th Cir. 1997), and Mr. Green has set forth no extraordinary circumstances which would demonstrate reasons for departure from this rule. See, e.g., United States v. Cook, 997 F.2d 1312, 1318 (10th Cir. 1993); United States v. Hood, 1996 WL 566158, *1 n.2 (10th Cir. Oct. 4, 1996) (deteriorating physical condition unknown at time of sentencing not a proper basis for a § 2255 motion). Accordingly, Defendant/Petitioner Jerry Lee Green's Petition for Reduction of Sentence Pursuant to 28 U.S.C. § 2255 filed November 24, 1998 (Docket # 1) is hereby denied.

IT IS SO ORDERED.

This 5TH day of January, 1999.



Sven Erik Holmes
United States District Judge

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SAC

ENTERED ON DOCKET
DATE 1-5-98

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

UNITED STATES OF AMERICA)
Plaintiff)
VS)
Thomas Reed Bryan)
Defendant)

Case Number: 94-CR-064-001-B

FILED

DEC 23 1997

Phil Lombardi, Clerk
U.S. DISTRICT COURT

**JUDGMENT AND COMMITMENT ORDER
ON REVOCATION OF PROBATION**

Now on this 23rd day of December, 1997, this matter comes on for sentencing after a previous finding that the defendant violated conditions of probation as set out in the Petition on Probation filed on December 23, 1997. The defendant is present in person and with his attorney, Stephen Knorr. The Government is represented by Assistant U. S. Attorney Kevin Leitch, and the U. S. Probation Office is represented by Randall Drew.

The defendant was heretofore, on July 7, 1994, sentenced after a plea of guilty to a one-count indictment which charged theft of Bank Monies, in violation of Title 18, U.S.C. § 2113 (b). The defendant was sentenced to a three year period of probation with a condition that he participate in urinalysis testing and drug treatment as directed by the Probation Office. Bryan was ordered to abide by the Special Financial Conditions adopted by the Court on March 28, 1992, and to pay a \$25 Special Monetary Assessment along with restitution in the amount of \$589.00. The standard conditions of probation recommended by the Sentencing Commission were also imposed. On April 22, 1997, the term of supervision was extended for one year after a revocation hearing in the Court of the Honorable Judge John Leo Wagner.

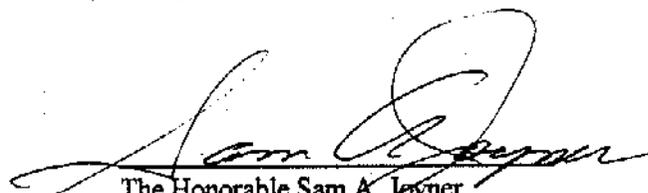
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c/5

On December 23, 1997, a Revocation Hearing was held regarding the allegations noted in the Petition on Probation, said allegations being that the defendant committed an assault, and an assault and battery with a dangerous weapon, both of which constitute new state law violations. Also alleged in the petition is the violation of the special condition which required the defendant to participate in substance abuse counseling as ordered by the Probation Office. After the defendant's stipulation to the petition, the Court found the defendant to be in violation of the conditions of probation, based on both of the allegations contained in the petition. By agreement, a sentencing hearing was held on the same date as the revocation.

At sentencing, 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 violation of probation constituted a Grade A violation in accordance with U.S.S.G. 7B1.1(a)(3), and that the defendant's original Criminal History Category of III was applicable for determining the imprisonment range. In addition, the Court found that a Grade A violation and a Criminal History Category of III establish a revocation imprisonment range of 18 to 24 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 defendant is remanded to the custody of the U.S. Marshal.


The Honorable Sam A. Jeyner
United States Magistrate Judge

UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

FILED
DEC 30 1997
Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA)
Plaintiff)
VS)
CARLTON KEITH JACKSON)
Defendant)

Case Number 92-CR-099-001-C ✓

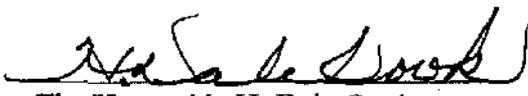
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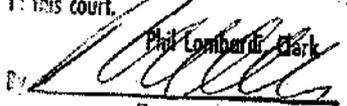
ORDER REVOKING PROBATION

Now on this 18th day of December 1997, this cause comes on for sentencing concerning allegations that Jackson violated conditions of probation as set out in the Petition on Probation filed on September 11, 1997. Jackson is present in person and represented by counsel, Robert S. Durbin. The Government is represented by Assistant United States Attorney, James Swartz, and the United States Probation Office is represented by David Plunkett.

On November 14, 1997, a revocation hearing was held regarding the allegations noted in the Petition on Probation, filed on September 11, 1997, said allegations being that on July 27, 1997, Jackson was arrested by Officers of the Oklahoma City Police Department for trafficking in cocaine. Specifically, a search of Jackson's vehicle subsequent to a traffic stop revealed approximately 500 grams of cocaine. During the revocation hearing, Jackson denied the violations as alleged in the petition. The Court found that Jackson was in violation of the conditions of his release and probation was revoked.

It is the Judgement of the Court, that the defendant, Carlton Keith Jackson, is hereby committed to the custody of the Attorney General to be imprisoned for a term of thirty (30) months. The defendant is remanded to the custody of the U.S. Marshal.


The Honorable H. Dale Cook
Senior United States District Judge

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

Phil Lombardi, Clerk
Deputy