

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

F I L E D

MAY 26 1999

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
MARCUS GILL,)
)
Defendant.)

Case No. 97-CR-176-C

ENTERED ON DOCKET
DATE MAY 28 1999

ORDER

Before the Court is defendant, Marcus Gill's, pro se motion seeking resentencing under F.R.Cr.P. 12(b)(2)¹ and 32(c)(1). However, because Gill is collaterally attacking his conviction and sentence and since 28 U.S.C. § 2255 is the exclusive remedy for a prisoner in federal custody who asserts such claims, the Court will treat Gill's present application as a motion brought pursuant to § 2255.

In January 1998, Gill was named in a forty-two Count Superseding Indictment, charging him with conspiracy, armed robbery, and firearm violations. On February 27, 1998, Gill waived jury trial and entered a plea of guilty to Counts 34 and 42, pursuant to a plea agreement. On May 6, 1998, the Court sentenced Gill to 60 months' imprisonment on Count 34 and a consecutive 240 months' imprisonment on Count 42, for a total of 300 months' imprisonment. The Court further ordered Gill to pay \$15,954.02 in restitution. Gill did not file a direct appeal following entry of judgment. Gill

¹ Rule 12(b)(2) provides that objections to jurisdiction shall be noticed by the Court at "any time during the *pendency* of the proceedings." (emphasis added). It is clear, however, that the proceedings herein have concluded, and that they are therefore no longer pending. Gill has been convicted and sentenced, and his judgment of conviction is final. As such, Rule 12(b)(2) has no application here. However, jurisdictional issues are never waived and can be raised on collateral attack, in a § 2255 motion. United States v. Cook, 997 F.2d 1312, 1320 (10th Cir. 1993).

timely submitted the present motion on May 10, 1999, and the Court notes that this is his first such motion.

The Court notes at the outset the well-settled principle that “§ 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 thus acts as a bar to raising the issue in a § 2255 motion unless Gill can show cause and actual prejudice or can show that a fundamental miscarriage of justice will result if his claim is not addressed.² 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.

Gill first argues that this Court had no jurisdiction over the acts for which he was convicted, and he asserts that the Court further lacked jurisdiction to sentence him. Gill claims that the conviction and sentence must be dismissed for lack of jurisdiction. This claim is frivolous. Clearly, this Court has jurisdiction over those acts which Congress has proscribed. See 18 U.S.C. § 3231 (United States District Courts shall have original and exclusive jurisdiction of all offenses against the laws of the United States). The Counts to which Gill pled guilty alleged two separate violations of 18 U.S.C. §§ 924(c) and 2. Because these Counts alleged offenses against the laws of the United States, this Court properly had jurisdiction over this matter.

Gill next argues that the Court adopted the factual findings and guideline recommendations in the presentence report notwithstanding the fact that Counts 34 and 42 alleged the same offense. Because Gill failed to appeal this issue and further failed to demonstrate cause and prejudice, this issue is procedurally barred. However, even considering the issue, the Court finds that it must be

² Gill does not allege ineffective assistance of counsel.

overruled. Count 34 charges that on or about October 29, 1997, Gill committed armed robbery, and during and in relation to that offense, Gill knowingly used and carried a firearm, in violation of 18 U.S.C. §§ 924(c) and 2. Count 42 charges that on or about November 19, 1997, Gill committed armed robbery, and during and in relation to that offense, Gill knowingly used and carried a firearm, in violation of 18 U.S.C. §§ 924(c) and 2. Clearly, Counts 34 and 42 do not charge the same conduct. Moreover, Gill did not object to the factual accuracy of the presentence report, and he filed no objection to the report whatsoever. Further, during the sentencing hearing, the Court gave Gill, and his counsel, adequate opportunity to object to, and contest, any factual and legal matter appearing in the presentence report. Having heard no objections from Gill or his counsel, the Court was satisfied that Gill and his counsel accepted the accuracy of the report. The Court thus satisfied the requirements of Rule 32(c)(1) during the sentencing hearing.

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

IT IS SO ORDERED this ⁴~~25~~ day of May, 1999.


H. DALE COOK
United States District Judge

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

F I L E D

MAY 26 1999

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 MARCUS GILL,)
)
 Defendant.)

Phil Lombardi, Clerk
U.S. DISTRICT COURT

Case No. 97-CR-176-C

ENTERED ON DOCKET
DATE **MAY 28 1999**

JUDGMENT

This matter came before the Court for consideration of defendant Marcus Gill's motion to vacate, set aside, or correct sentence, pursuant to 28 U.S.C. § 2255. The motion having been duly considered and a decision having been rendered in accordance with the Order filed contemporaneously herewith,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment is entered for plaintiff, the United States of America, and against defendant, Gill, on his challenge to the legality of his conviction and sentence.

IT IS SO ORDERED this 25th day of May, 1999.



H. Dale Cook
United States District Judge

7 of the Sentencing Guidelines is applicable. Further, the Court finds that the violation constitutes a Grade A violation and the defendant's original Criminal History Category of III is applicable for determination of the Chapter 7 sentencing range. A Grade A violation and a Criminal History Category III establish an imprisonment sentence of 18-24 months. In consideration of these findings and pursuant to U.S. v Lee, 957 F.2d 770 (10th Cir. 1992) and the 5th Circuit opinion in U.S. v. Headrick, in which the Circuits determined that the policy statements in Chapter 7 are not mandatory but must be considered by the Court, the following is ordered:

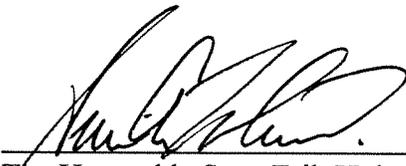
It is the judgment of the Court that the term of supervised release is hereby revoked, and the defendant is committed to the custody of the Bureau of Prisons for a term of twenty-one (21) months. The defendant shall pay the unpaid fine balance of \$1600 immediately. Any amount not paid immediately shall be paid while incarcerated with any unpaid balance to be paid while serving the term of supervised release.

Upon release from imprisonment, the defendant shall be placed on supervised release for the term of fifteen (15) months. Within 72 hours of release from the custody of the Bureau of Prisons, the defendant shall report in person to the probation office in the district to which the defendant is released. While on supervised release you shall not commit another federal, state, or local crime. You are prohibited, during the period of supervised release or afterward, from possession a firearm, destructive device, or other dangerous weapon unless you have received express written permission of the appropriate federal and state agency. Further, while on supervised release you shall not illegally possess a controlled substance. You shall comply with the standard conditions that have been adopted by this court, and shall comply with the following special conditions:

The defendant shall abide by the Special Search and Seizure Condition as enumerated in Miscellaneous Order M-128, filed with the Clerk of the Court on May 25, 1995.

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

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



The Honorable Sven Erik Holmes
United States District Judge

UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

FILED

MAY 26 1999

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA)
Plaintiff)
VS)
JULIE ANN KELLY)
Defendant)

Case Number: 98-CR-100-001-C

ENTERED ON DOCKET

DATE 5/26/99

ORDER REVOKING TERM OF SUPERVISED RELEASE

Now on this 12th day of May 1999, this cause comes on for sentencing after a finding that the defendant violated her conditions of supervised release as set out in the Petition on Supervised Release filed on October 22, 1998. The defendant is present in person and with her attorney, Cindy Cunningham. The Government is represented by Assistant United States Attorney Jim Swartz, and the United States Probation Office is represented by J. Mark Ogle.

On July 29, 1996, in the District of Kansas, Kelly was sentenced to twelve months on Count One and twenty-one months on Count Two, both counts to run concurrently, each with the other, to be followed by a three year term of supervised release following her guilty plea to a two-count Superseding Information. Count One of the Information charged Possession of Methamphetamine, in violation of 21 U.S.C. § 844(a), a Class A misdemeanor. Count Two of the Information charged Possession of a Firearm with an Obliterated Serial Number, in violation of 26 U.S.C. § 5861(h), a Class C felony. The term of supervised release in Count One terminated August 28, 1998. Kelly was also ordered to pay a special assessment of \$75.

On October 22, 1998, a Petition on Supervised Release was filed alleging that Kelly violated the special condition of release by failing to complete an approved program of substance abuse

and/or mental health counseling. The conduct also included a violation of the standard condition that she report to the probation officer and submit a truthful and complete written report within the first five days of each month. On May 12, 1999, a revocation hearing was held at which time the defendant stipulated to the allegations as outlined in the petition.

The Court finds that the offense occurred after November 1, 1987, and that Chapter 7 of the Sentencing Guidelines is applicable. Furthermore, the Court finds that this violation constitutes a Grade A violation and the defendant's original Criminal History Category of I is applicable for determination of the Chapter 7 sentencing range. The Court finds that a Grade C violation and a Criminal History Category I establish an imprisonment range of three to nine months. In consideration of these findings and pursuant to U.S. v Lee, 957 F.2d 770 (10th Cir. 1992), in which the Circuit determined that the policy statements in Chapter 7 are not mandatory but must be considered by the Court, the following is ordered:

It is the judgment of the Court that the term of supervised release is hereby revoked and the defendant is committed to the custody of the Bureau of Prisons for a term of twenty-two (22) months. The Court further recommends that the defendant be placed in a secure Bureau of Prisons facility that offers the 500 hour comprehensive drug treatment program.

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of fourteen (14) months. Within seventy-two (72) hours of release from custody of the Bureau of Prisons, the defendant shall report in person to the Probation Office in the district to which the defendant is released.

While on supervised release, the defendant shall not commit another federal, state, or local crime. The defendant is prohibited during the period of supervised release, or afterward, from

possessing a firearm, destructive devise, or other dangerous weapon unless the defendant has received express written permission from the appropriate federal or state agency. Furthermore, while on supervised release the defendant shall not illegally possess a controlled substance. The defendant shall comply with the standard conditions that have been adopted by this Court, and shall comply with the following special condition:

The defendant shall submit to a search conducted by a United States Probation Officer of her person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgment shall be provided to the U.S. Probation Office immediately upon taking residency.

The defendant is remanded to the custody of the U.S. Marshal.


The Honorable H. Dale Cook
United States District Judge

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

FILED

MAY 24 1999

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,)

Plaintiff,)

-vs-)

MICHAEL NEAL,)

Defendant.)

No. 99-CR-45-C

ENTERED ON DOCKET
DATE MAY 25 1999

ORDER

Now on this 24th day of May, 1999, 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 in the above styled cause. The Court finds that said request ought to be granted and the Indictment against defendant MICHAEL NEAL is dismissed, without prejudice.

IT IS SO ORDERED.



H. DALE COOK
Senior United States District Judge

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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

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UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

F I L E D

MAY 20 1999

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA)
Plaintiff)
vs.)
GARY LYNN TROUTT)
Defendant)

Case No. 93-CR-036-001-B ✓

ENTERED ON DOCKET
DATE MAY 21 1999

**ORDER MODIFYING CONDITIONS
OF SUPERVISED RELEASE**

On January 16, 1998, Troutt commenced a two-year term of supervised release following service of a term of incarceration after his conviction for False Statement to Licensed Firearms Dealer.

On May 13, 1999, Troutt appeared before this Court on a Petition on Supervised Release filed March 3, 1999, outlining several violations of the terms and conditions of supervised release. Troutt appears with counsel, Rob Nigh, the government is represented by Jim Swartz, and appearing for the probation office is Nicole Lebeda. Troutt stipulated to the violations of conditions as presented in the Petition filed March 3, 1999, and announced to the Court he is not opposed to modification of conditions of supervised release. The government agreed that modification of conditions would be an appropriate course of action.

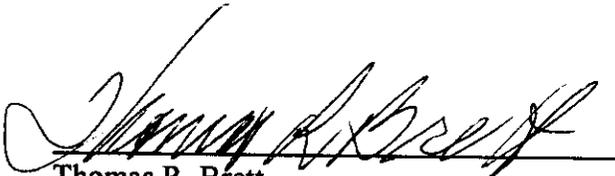
Therefore, as modification of conditions of release is unopposed, and authorized under 18 U.S.C. § 3583(e)(2), the court orders that the conditions of supervised release be modified to include the following conditions:

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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 acknowledgment shall be provided to the U. S. Probation Office immediately upon taking residency.

The defendant shall successfully participate in the 12 & 12 treatment program for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer. Upon successful completion of the inpatient drug treatment program the defendant shall reside for a period of up to six months at the 12 & 12 halfway house. He is permitted to seek and maintain gainful employment while in halfway house placement. The defendant shall abide by the rules and conditions of the 12 & 12 program.

IT IS SO ORDERED this 19th day of May 1999.


Thomas R. Brett
United States District Judge

UP

UNITED STATES DISTRICT COURT
for the
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAY 18 1999

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ENTERED ON DOCKET

DATE MAY 19 1999

Case Number: 96-CR-058-002-H

UNITED STATES OF AMERICA)
Plaintiff)
)
vs)
)
MELISSA LYNN BEKEDEREMO)
Defendant)

JUDGMENT AND COMMITMENT ORDER
ON REVOCATION OF SUPERVISED RELEASE

Now on this 6th day of May 1999, this cause comes on for sentencing after a previous finding that the defendant violated conditions of supervised release as set out in the Petition on Supervised Release filed on January 21, 1999. The defendant is present in person and represented by counsel, Michael McGuire. The Government is represented by Assistant U.S. Attorney Charles McLoughlin, and the United States Probation Office is represented by Randall Drew.

The defendant was heretofore, on December 7, 1993, sentenced after a plea of guilty to Counts One, Seventeen, and Twenty-three, of the second Superseding Indictment charging Conspiracy to Commit Bank Fraud, Bank Fraud, and False Statement, in violation of 18 U.S.C. §§ 371, 1344(1), and 1001, respectively. The defendant was sentenced to six (6) months custody of the U.S. Bureau of Prisons with a five (5) year term of supervised release to follow for Count Seventeen and a three (3) year term of supervised release for Counts One and Twenty-three. The Court convened on February 12, 1999, at which time the defendant's supervised release was revoked

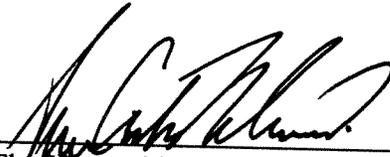
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pursuant the evidence presented pertaining to allegations of her involvement in new felonious law violations as memorialized in the petition on supervised release.

At sentencing, the Court found that the instant conviction and violations occurred after November 1, 1987, and that Chapter 7 of the U.S. Sentencing Guidelines is applicable. Further, the Court found that the violations of supervised release constitutes Grade B violations in accordance with U.S.S.G. §7B1.1(a)(1), and that the defendant's original Criminal History Category of I is applicable for determining the imprisonment range. In addition, the Court found that a Grade B violation and a Criminal History Category of I establish a revocation imprisonment range of four (4) to ten (10) months. In consideration of these findings, and taking notice that the policy statements in Chapter 7 are not mandatory, but must be considered by the Court, the following is ordered:

The defendant is committed to the custody of the U.S. Bureau of Prisons to be imprisoned for a term of eighteen months (18) months. The defendant shall serve a Forty-two (42) month term of supervised release, during which time she shall abide by the conditions of supervised release previously ordered by this Court. The remainder of the restitution in the amount of \$10,000.00 is hereby reimposed.



The Honorable Sven Erik Holmes
United States District Judge

UNITED STATES DISTRICT COURT FOR **F I L E D**
FOR NORTHERN DISTRICT OF OKLAHOMA MAY 18 1999

UNITED STATES OF AMERICA)
Plaintiff)
)
vs)
)
PENNY KAY GEURIN)
Defendant)

Phil Lombardi, Clerk
U.S. DISTRICT COURT

Case Number: 97-CR-032-009-K ✓

ENTERED ON DOCKET
DATE MAY 19 1999

MODIFICATION OF SUPERVISED RELEASE CONDITIONS

Now on this 6th of May, 1999, this matter comes on for a Show Cause Hearing on the Petition to revoke the term of Supervised Release as set out in the petition filed May 29, 1999. The defendant is present in person and represented by counsel, Randy Lynn. The Government is represented by Assistant U.S. Attorney Scott Woodward, and the United States Probation Office is represented by Randall Drew.

The defendant was heretofore, on November 7, 1997, sentenced after a plea of guilty to Count One of the Information which charged Possession of a Counterfeit Forged Security, in violation of 18 U.S.C. § 513(a). The defendant was sentenced to a three(3) year term of probation which commenced on the sentencing date. The court finds based on the defendant's stipulation to the allegations contained in the Petition on Supervised Release, that the defendant is in need of treatment for the addiction to drugs. Accordingly, pursuant to 18 U.S.C. § 3583(e)(2) the following is ordered:

The revocation matter is passed until August 6, 1999, at 1:30 p.m. During the interim period, the defendant shall continue to abide by the conditions previously ordered by this Court. It is further

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ordered that the defendant remain on home confinement to include electronic monitoring until June 17, 1999. The defendant shall pay for the cost of the monitoring program.


The Honorable Terry C. Kern
Chief United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA

V.

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

Case Number: 99-CR-004-001-J

FILED

Jack M. Short
Defendant's Attorney

MAY 18 1999

Phil Lombardi, Clerk
U.S. DISTRICT COURT

Jorge Velasco Esparza

ENTERED ON DOCKET
DATE MAY 18 1999

THE DEFENDANT:

Pleaded guilty to Count 1 of the Information on February 22, 1999.

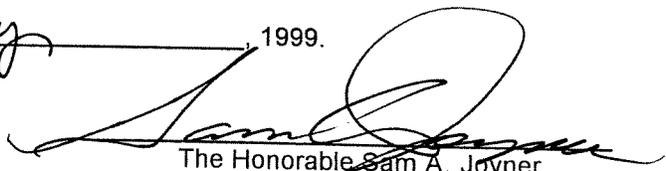
Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

<u>Title and Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count</u>
21 USC 844(a)	Possession of a Controlled Dangerous Substance	12/4/98	1

As pronounced on May 14, 1999, 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 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 18th day of May, 1999.


The Honorable Sam A. Joyner
U.S. Magistrate Judge

Defendant's Soc. Sec. No.: 604-50-4842

Defendant's Date of Birth: 5/30/54

Defendant's USM No.: 08371-062

Defendant's Residence and Mailing Address: 1785 S. 79th East Ave., Apt. 110, Tulsa OK 74112

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

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IMPRISONMENT

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

The 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

SUPERVISED RELEASE

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

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

1. The defendant shall report in person to the Probation Office in the district to which the defendant is released 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.

STANDARD CONDITIONS OF SUPERVISION

1. You will not leave the judicial district without permission of the Court or probation officer.
2. You will report to the probation officer and submit a truthful and complete written report within the first five days of each month.
3. You will answer truthfully all inquiries by the probation officer, and follow the instructions of the probation officer.
4. You will successfully participate in cognitive/life skills training or similar programming as directed by the probation officer.
5. You will support your dependents and meet other family responsibilities, to include complying with any court order or order of administrative process requiring the payment of child support.
6. You will work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
7. You will notify the probation officer ten days prior to any change of residence or employment.
8. You will not frequent places where controlled substances are illegally sold, or administered; you shall refrain from excessive use of alcohol and will not purchase, possess, use, or distribute any controlled substance or paraphernalia related to such substances, except as prescribed by a physician.
9. You will submit to urinalysis or other forms of testing to determine illicit drug use as directed by the probation officer; if directed by the probation officer, you will successfully participate in a program of testing and treatment (to include inpatient) for substance abuse until released from the program by the probation officer.
10. You will not associate with any persons engaged in criminal activity, and will not associate with any person convicted of a crime unless granted permission to do so by the probation officer.
11. You will permit a probation officer to visit at any time at your home, employment or elsewhere and will permit confiscation of any contraband observed in plain view by the probation officer.
12. You will provide access to all personal and business financial information as requested by the probation officer; and you shall, if directed by the probation officer, not apply for or acquire any credit unless permitted in advance by the probation officer.
13. You will notify the probation officer within seventy-two hours of being arrested, questioned, or upon having any contact with a law enforcement officer.
14. You will not enter into any agreement to act as an informer or special agent of a law enforcement agency without the permission of the Court.
15. As directed by the probation officer, you will notify third parties of risks that may be occasioned by your criminal record or personal history or characteristics, and permit the probation officer to make such notifications and to confirm your compliance with such notification requirements.
16. You will not possess a firearm, destructive device, or other dangerous weapon.

ADDITIONAL CONDITIONS:

1. 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 acknowledgment shall be provided to the U. S. Probation Office immediately upon taking residency.
2. The defendant shall provide written verification of residency status with the Immigration and Naturalization Service within 10 days of the term of supervised release.

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties; payments shall be applied in the following order: (1) assessment; (2) restitution; (3) fine principal; (4) cost of prosecution; (5) interest; (6) penalties.

ASSESSMENT	RESTITUTION	FINE
\$25.00	\$0.00	\$1,000.00

ASSESSMENT

It is ordered that the defendant shall pay to the United States a special assessment of \$25 for Count 1 of the Information, which shall be due immediately.

FINE

The defendant shall pay a fine of \$1,000 for Count 1 of the Information. 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.

Unless the interest is waived, the defendant shall pay interest on any fine or restitution of more than \$2,500.00, unless the fine or restitution is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the Schedule of Payments may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

If the fine and/or restitution is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614. The defendant shall notify the Court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay the fine.

All criminal monetary penalty payments are to be made to the United States District Court Clerk, 333 West 4th Street, Rm. 411, Tulsa, Oklahoma 74103, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program.

STATEMENT OF REASONS

The Court adopts the factual findings and guidelines application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level:	4	
Criminal History Category:	I	
Imprisonment Range:	0 to 6 months	Count 1
Supervised Release Range:	1 year	Count 1
Fine Range:	\$250 to \$5,000	Count 1

Total amount of Restitution: \$ Not Applicable

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 the application of the guidelines.

BJS

DATE MAY 17 1999

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

UNITED STATES OF AMERICA)

vs.)

RAYMOND GAITHER)

Docket No. 96-CR-061-001-K

FILED

MAY 14 1999 SA

ORDER REVOKING SUPERVISED RELEASE

Phil Lombardi, Clerk
U.S. DISTRICT COURT

Now on this 7th day of May, 1999, this cause comes on for sentencing concerning allegations that the defendant, Raymond Gaither violated conditions of supervised release as set out in a Petition on Supervised Release filed March 3, 1999. Gaither is present in person and represented by counsel, Stephen Knorr. The government is represented by Kevin Leitch, and the United States Probation Office is represented by Robert E. Boston.

Previously, on April 29, 1999, a Revocation Hearing was held regarding the allegations noted in the Petition on Supervised Release, filed March 3, 1999, said allegations being that:

(A) On the following dates the defendant submitted urine specimens which tested positive for the controlled substance indicated: February 6, 1998 - cocaine, February 10, 1998 - cocaine, February 18, 1998 - cocaine, June 10, 1998- marijuana, June 16, 1998 - marijuana, June 24, 1998 - cocaine, August 19, 1998 - cocaine, and January 28, 1999 - cocaine.

(B) On January 28, 1999, when the defendant reported to the drug treatment program to submit a urine specimen, he attempted to substitute a smuggled urine specimen for his own specimen and when detected doing so he admitted that he had been using drugs immediately prior to visiting the program.

(C) On January 28, 1999, the defendant was personally instructed by his probation officer to return to the probation office on February 3, 1999, and he did not do so.

(D) On February 4, 1999, the probation officer interviewed the defendant's wife and she stated that the defendant moved out of their residence on January 28, 1999, and she had not seen or heard from him since.

After being advised by the Court of the violations of the conditions of supervised release the defendant admitted that the violations were true. The Court found that Gaither was in violation of the conditions and ordered that supervised release be revoked. Sentencing was set for May 7, 1999.

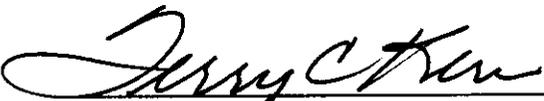
After the defendant announced that there was no reason to not proceed with sentencing at that time, the Court found that the conviction occurred after November 1, 1987, and that Chapter 7 of the U.S. Sentencing Guidelines is applicable. Further, the Court found that the violations of supervised release constituted Grade C violations in accordance with USSG § 7B1.1(a)(3), and Gaither's Criminal History Category of III is applicable for determining the imprisonment range. In addition, the Court found that Grade C violations and a Criminal History Category of III establish a revocation imprisonment range of five (5) to eleven (11) months in accordance with USSG § 7B1.4 (a). 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 Court announced that it took note of the policy statement and the following sentence was ordered:

It is the judgement of the Court that the defendant, Raymond Gaither, is hereby committed to the custody of the U.S. Bureau of Prisons to be imprisoned for a term of five (5) months to be followed by a twenty-four (24) month term of supervised release. In addition to the standard conditions of supervised release, the defendant shall comply with the following special conditions of supervision:

- (1). Immediately upon release from confinement the defendant shall be placed in a residential substance abuse treatment program approved by the U.S. Probation Office and remain therein until successfully discharged by the program director with the approval of the U.S. Probation Officer;
- (2). The defendant shall pay the restitution balance of \$4,666.00 to the victims as stated on the original Judgement in a Criminal Case;
- (3). The defendant shall pay the \$45.00 balance owed on the Special Monetary Assessment;
- (4). The defendant is prohibited from engaging in any form of employment which would give him access to bank accounts, securities, or other negotiable assets of any individual, business, or other entity. All employment shall be approved in advance by the U.S. Probation Officer. Further, he shall advise any and all employers of his previous criminal convictions;
- (5). The defendant shall abide by the "Special Financial Condition" enumerated in Miscellaneous Order Number M-128 filed with the Clerk of the Court on March 18, 1992.

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

May 12, 1999
(Date)


The Honorable Terry C. Kern
Chief United States District Judge

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

UNITED STATES OF AMERICA

V.

Christopher Wayne Jones

JUDGMENT IN A CRIMINAL CASE

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

Case Number: 98-CR-162-001-H

Glen Oltman
Defendant's Attorney

FILED
MAY 17 1999
Phil Lombardi, Clerk
U.S. DISTRICT COURT

THE DEFENDANT:

Pleaded guilty to Count 1 of the Indictment on February 5, 1999.

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

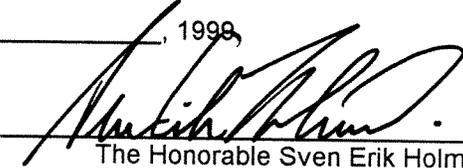
<u>Title and Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count</u>
18 USC 471	Counterfeiting and Forging Obligations of the United States	9/17/98	1

As pronounced on May 7, 1999, 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.

Counts 2-10 of the Indictment are dismissed on the motion of the United States.

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 14TH day of MAY, 1999,


The Honorable Sven Erik Holmes
U.S. District Court Judge

Defendant's Soc. Sec. No.: 445-80-4213

Defendant's Date of Birth: 7/12/70

Defendant's USM No.: 08373-062

Defendant's Residence and Mailing Address: 42 West Mike Street, Sapulpa OK 74066

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 day.

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

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.

STANDARD CONDITIONS OF SUPERVISION

1. You will not leave the judicial district without permission of the Court or probation officer.
2. You will report to the probation officer and submit a truthful and complete written report within the first five days of each month.
3. You will answer truthfully all inquiries by the probation officer, and follow the instructions of the probation officer.
4. You will successfully participate in cognitive/life skills training or similar programming as directed by the probation officer.
5. You will support your dependents and meet other family responsibilities, to include complying with any court order or order of administrative process requiring the payment of child support.
6. You will work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
7. You will notify the probation officer ten days prior to any change of residence or employment.
8. You will not frequent places where controlled substances are illegally sold, or administered; you shall refrain from excessive use of alcohol and will not purchase, possess, use, or distribute any controlled substance or paraphernalia related to such substances, except as prescribed by a physician.
9. You will submit to urinalysis or other forms of testing to determine illicit drug use as directed by the probation officer; if directed by the probation officer, you will successfully participate in a program of testing and treatment (to include inpatient) for substance abuse until released from the program by the probation officer.
10. You will not associate with any persons engaged in criminal activity, and will not associate with any person convicted of a crime unless granted permission to do so by the probation officer.
11. You will permit a probation officer to visit at any time at your home, employment or elsewhere and will permit confiscation of any contraband observed in plain view by the probation officer.
12. You will provide access to all personal and business financial information as requested by the probation officer; and you shall, if directed by the probation officer, not apply for or acquire any credit unless permitted in advance by the probation officer.
13. You will notify the probation officer within seventy-two hours of being arrested, questioned, or upon having any contact with a law enforcement officer.
14. You will not enter into any agreement to act as an informer or special agent of a law enforcement agency without the permission of the Court.
15. As directed by the probation officer, you will notify third parties of risks that may be occasioned by your criminal record or personal history or characteristics, and permit the probation officer to make such notifications and to confirm your compliance with such notification requirements.
16. You will not possess a firearm, destructive device, or other dangerous weapon.

ADDITIONAL CONDITIONS:

1. 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 acknowledgment shall be provided to the U. S. Probation Office immediately upon taking residency.
2. 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.

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties; payments shall be applied in the following order: (1) assessment; (2) restitution; (3) fine principal; (4) cost of prosecution; (5) interest; (6) penalties.

ASSESSMENT

\$100.00

RESTITUTION

\$100.00

FINE

\$500.00

ASSESSMENT

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.

RESTITUTION

The defendant shall make restitution in the total amount of \$100.

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

<u>Name of Payee</u>	<u>Payee Address</u>	<u>City, State, Zip</u>	<u>Amount</u>
Long John Silvers, Attn: Amy Hertz	3152 East 51 st Street	Tulsa OK 74105	\$50
Billiard Palace, Attn: Patty Stevenson	8155 East 21 st Street	Tulsa OK 74129	\$50

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 defendant shall notify the Court and the Attorney General of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution.

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

FINE

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

The defendant shall pay a fine of \$500 for Count 1 of the Indictment. 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.

Unless the interest is waived, the defendant shall pay interest on any fine or restitution of more than \$2,500.00, unless the fine or restitution is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the Schedule of Payments may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

If the fine and/or restitution is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614. The defendant shall notify the Court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay the fine.

All criminal monetary penalty payments are to be made to the United States District Court Clerk, 333 West 4th Street, Rm. 411, Tulsa, Oklahoma 74103, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program.

STATEMENT OF REASONS

The Court adopts the factual findings and guidelines application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level:	13	
Criminal History Category:	I	
Imprisonment Range:	12 to 18 months	Count 1
Supervised Release Range:	2 to 3 years	Count 1
Fine Range:	\$3,000 to \$30,000	Count 1

Total amount of Restitution: \$100.

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 the application of the guidelines.

BJS

UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

FILED

MAY 13 1999

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA)
Plaintiff)
VS)
JULIE A. MEYERS)
Defendant)

Case Number: 97-CR-182-001-C ✓

ENTERED ON DOCKET

DATE 5/14/99

ORDER REVOKING TERM OF SUPERVISED RELEASE

Now on this 10th day of May 1999, this cause comes on for sentencing after a finding that the defendant violated her conditions of supervised release as set out in the Petition on Supervised Release filed on March 31, 1999. The defendant is present in person and with her attorney, Cindy Cunningham. The Government is represented by Assistant United States Attorney Kevin Leitch, and the United States Probation Office is represented by J. Mark Ogle.

On May 20, 1998, in the Northern District of Oklahoma, Meyers was sentenced to three months custody to be followed by a three year term of supervised release following her guilty plea to a one-count Indictment. The Indictment charged Bank fraud, in violation of 18 U.S.C. § 1344(1), a Class B felony. The Court ordered Meyers to pay restitution in the amount of \$1,886.34 and a fine in the amount of \$200. Meyers was also ordered to pay a special assessment of \$100.

On March 31, 1999, a Petition on Supervised Release was filed alleging that Meyers violated a general condition of release by committing the new law violations of Bank Fraud and Uttering a Forged Instrument, in violation of 18 USC §§ 1344 and 513, respectively. The conduct also includes Embezzlement of Cash from an Employer, in violation of 21 OSS § 1455. On April 19, 1999, a revocation hearing was held at which time the defendant stipulated to the allegations as outlined in the petition.

The Court finds that the offense occurred after November 1, 1987, and that Chapter 7 of the Sentencing Guidelines is applicable. Furthermore, the Court finds that this violation constitutes a Grade A violation and the defendant's original Criminal History Category of III is applicable for determination of the Chapter 7 sentencing range. The Court finds that a Grade A violation and a Criminal History Category III establish an imprisonment range of eighteen to twenty-four months. In consideration of these findings and pursuant to U.S. v Lee, 957 F.2d 770 (10th Cir. 1992), in which the Circuit determined that the policy statements in Chapter 7 are not mandatory but must be considered by the Court, the following is ordered:

It is the judgment of the Court that the term of supervised release is hereby revoked and the defendant is committed to the custody of the Bureau of Prisons for a term of twenty-one (21) months. The Court reimposes the remaining restitution amount of \$1,393.74, and the fine of \$200.00. Restitution and the fine shall be due immediately, any amount not paid immediately shall be paid during the term of confinement, any remaining amount shall be due during the term of supervised release.

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of thirty-nine (39) months. Within seventy-two (72) hours of release from custody of the Bureau of Prisons, the defendant shall report in person to the Probation Office in the district to which the defendant is released.

While on supervised release, the defendant shall not commit another federal, state, or local crime. The defendant is prohibited during the period of supervised release, or afterward, from possessing a firearm, destructive devise, or other dangerous weapon unless the defendant has received express written permission from the appropriate federal or state agency. Furthermore, while on supervised release the defendant shall not illegally possess a controlled substance. The defendant shall comply with the standard conditions that have been adopted by this Court, and shall comply with the following special conditions:

- 1) 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.
- 2) The defendant shall submit to a search conducted by a United States Probation Officer of her person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgment shall be provided to the U.S. Probation Office immediately upon taking residency.
- 3) At the discretion of the U.S. Probation Office the defendant shall not accept employment in any capacity where she has access or control of monies belonging to another.

The defendant is ordered to voluntarily surrender on June 14, 1999, by 12:00 p.m. to the facility designated by the Bureau of Prisons to begin service of this sentence. While released pending designation on June 14, 1999, the defendant shall abide by the conditions of supervised release as ordered herein.


The Honorable H. Dale Cook
United States District Judge

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

MAY 13 1999 *rm*

UNITED STATES OF AMERICA)
Plaintiff)
VS)
HERBERT SHANNON GORDON)
Defendant)

Phil Lombardi, Clerk
U.S. DISTRICT COURT

Case Number: 95-CR-084-004-B ✓

ENTERED ON DOCKET

DATE 5-13-99

ORDER REVOKING TERM OF SUPERVISED RELEASE

Now on this 10th day of May 1999, this cause comes on for sentencing after a finding that the defendant violated conditions of supervised release as set out in the Petition on Supervised Release filed on July 23, 1998. The defendant is present in person and with his attorney, Gordon Harmon. The Government is represented by Assistant United States Attorney Neal B. Kirkpatrick, and the United States Probation Office is represented by Scott Kallenberger.

On October 27, 1995, Shannon was sentenced to a 3-year probationary term following his guilty plea to Count Three of an eight-count Indictment charging Use of False Social Security Number, in violation of 18 U.S.C. § 408 (a)(7)(B). Shannon was ordered to pay a special assessment of \$50 and a fine in the amount of \$1,000. On September 4, 1996, this probationary term was revoked with Gordon sentenced to a 12 month and one day revocation term followed by a two-year term of supervised release. The \$1,000 fine was reimposed.

The term of supervised release commenced on August 1, 1997. On July 23, 1998, a Petition on Supervised Release was filed alleging Gordon violated conditions of supervised release related to failure to submit to urine screening, untruthful reporting, failure to notify of change in address or

employment, and failure to pay the court ordered fine. Defendant stipulated to the allegations contained in the Petition. The Court found Gordon violated conditions of supervised release.

The Court finds that the instant conviction occurred after November 1987, and that Chapter 7 of the Sentencing Guidelines is applicable. Further, the Court finds that the violations constitute Grade C violations and the defendant's original Criminal History Category of I is applicable for determination of the Chapter 7 sentencing range. A Grade C violation and a Criminal History Category I establish an imprisonment sentence of 3 - 9 months. In consideration of these findings and pursuant to U.S. v Lee, 957 F.2d 770 (10th Cir. 1992), in which the Circuit determined that the policy statements in Chapter 7 are not mandatory but must be considered by the Court, the following is ordered:

It is the judgment of the Court that the term of supervised release is hereby revoked, and the defendant is committed to the custody of the Bureau of Prisons for a term of eighteen (18) months. The fine in the amount of \$965 is reimposed. The fine shall be due immediately. Any amount not paid immediately shall be paid during the term of imprisonment, with any remaining amount due and payable during the term of supervised release.

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of eighteen (18) months. Within 72 hours of release from the custody of the Bureau of Prisons, the defendant shall report in person to the probation office in the district to which he is released. From this date until expiration of this sentence, to include while on supervised release, the defendant shall not commit another federal, state, or local crime. The defendant is prohibited, during the term of supervised release, or afterward, from possessing a firearm, explosive device, or other dangerous weapon unless granted express written permission of the appropriate federal and state agency. While

on supervised release the defendant shall not illegally possess a controlled substance. Further, the defendant shall comply with the standard conditions that have been adopted by this Court, and the defendant shall comply with the following special conditions:

The defendant shall abide by the Special Search and Seizure Condition as enumerated in Miscellaneous Order M-128, filed with the Clerk of the Court on May 25, 1995.

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

The defendant is remanded to the custody of the U.S. Marshal.


The Honorable Thomas R. Brett
Senior United States District Judge

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

FILED

MAY 10 1999

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
ORLANDO REED,)
)
Defendant.)

Case No. 98-CR-84-C ✓

99-cv-327-C

ENTERED ON DOCKET

DATE MAY 12 1999

JUDGMENT

This matter came before the Court for consideration of defendant Orlando Reed's motion to vacate, set aside, or correct sentence, pursuant to 28 U.S.C. § 2255. The motion having been duly considered and a decision having been rendered in accordance with the Order filed previously,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment is entered for plaintiff, the United States of America, and against defendant, Reed, on his challenge to the legality of his sentence.

IT IS SO ORDERED this 7th day of May, 1999.



H. Dale Cook
Senior United States District Judge

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 ORLANDO REED,)
)
 Defendant.)

Case No. 98-CR-84-C

99-ev 327-C

FILED

MAY 10 1999

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ENTERED ON DOCKET

DATE MAY 12 1999

ORDER

Before the Court is defendant, Orlando Reed's, pro se motion seeking to vacate, set aside, or correct sentence, pursuant to 28 U.S.C. § 2255.

In June 1998, Reed was named in four Count Indictment, charging him with conspiracy to commit bank fraud, possession and use of counterfeit devices, and possession of a firearm after being convicted of a felony. On August 17, 1998, Reed waived jury trial and entered a plea of guilty to Count One, pursuant to a plea agreement. On November 19, 1998, the Court sentenced Reed to twenty-two months' imprisonment, and ordered him to pay \$5,570.89 in restitution. Reed did not file a direct appeal following entry of judgment. Reed timely filed the present motion on April 28, 1999, and the Court notes that this is his first such motion.

The Court notes at the outset the well-settled principle that "§ 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 thus acts as a bar to raising the issue in a § 2255 motion unless Reed can show cause and actual prejudice or can show that a fundamental miscarriage of justice will result if his claim is not addressed. U.S. v. Allen, 16 F.3d 377, 378 (10th

Cir.1994). This procedural bar applies to collateral attacks on a defendant's sentence, as well as his conviction. Id.

In order to overcome the procedural bar, Reed relies upon the universal claim of ineffective assistance of counsel. "While ordinarily the procedural bar rule . . . applies to section 2255 proceedings . . . it does not apply to ineffective assistance of counsel claims." U.S. v. Galloway, 56 F.3d 1239, 1241 (10th Cir. 1995) (citations omitted). Hence, a "defendant may establish cause for procedural default by showing he received ineffective assistance of counsel." U.S. v. Cox, 83 F.3d 336 (10th Cir.1996).

A claim of ineffective assistance of counsel requires that Reed 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, Reed 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, Reed must show that his counsel's performance fell below an objective standard of reasonableness. Furthermore, Reed must show that "the deficient performance prejudiced the defense." Id. For the reasons stated below, the Court concludes that Reed failed to satisfy the Strickland standard for demonstrating ineffective assistance of counsel.

Reed's sole claim is that his counsel was ineffective during sentencing in failing to object to the use of a particular juvenile conviction to increase his criminal history points. Specifically, Reed points to paragraph 32 of the Presentence Report (PSR), which states that, on April 23, 1986, when Reed was 17 years old, he was arrested for larceny of an automobile. The PSR also states that he pled guilty to that charge in March 1987 and received a sentence of three years' imprisonment.

Three criminal history points were therefore added to Reed's criminal history computation, pursuant to Guideline § 4A1.1(c). There is no indication in the record that Reed's counsel objected to the use of this prior offense in calculating his criminal history category. However, even assuming, arguendo, that counsel was deficient,¹ Reed cannot show prejudice.

The essence of Reed's complaint is that the Court committed prejudicial error when it included this "outdated prior juvenile conviction" for the purpose of calculating his criminal history category. Upon the Court's request, however, the Probation Office, through Larry Morris, provided the Court with a certified copy of the Oklahoma State Court Judgment and Sentence related to the larceny of an automobile charge, which Officer Morris relied upon when formulating the PSR. The Judgment and Sentence, entered by the Oklahoma District Court for Tulsa County and dated March 5, 1987, reveals that Reed was regarded as an adult. The Judgment and Sentence further shows that Reed was sentenced to three years' imprisonment at the Oklahoma State Penitentiary in McAlester, Oklahoma, which is clearly not an institution in which the State of Oklahoma places those defendants who are regarded as juveniles. The Court is therefore satisfied that the March 1987 conviction for larceny of an automobile in state court constitutes a prior adult criminal conviction for purposes of calculating Reed's criminal history category.

For offenses committed prior to the age of eighteen, Guideline § 4A1.2(d)(1) provides that, "If the defendant was convicted as an adult and received a sentence of imprisonment exceeding one year and one month, add 3 points under § 4A1.1(a) for each such sentence." Further, § 4A1.2(e) provides that, "Any prior sentence of imprisonment exceeding one year and one month that was imposed within fifteen years of the defendant's commencement of the instant offense is counted." Since Reed was regarded and treated as an adult with respect to his 1987 conviction for larceny of

¹ Of course, counsel is not deficient for failing to raise and argue a clearly meritless issue.

an automobile, which is within fifteen years of his commencement of the instant offense, and since that state court conviction resulted in an adult sentence of imprisonment exceeding one year and one month, Guideline §§ 4A1.2(d)(1) and (e) provide for the inclusion of three criminal history points when calculating the criminal history category. The Court therefore finds no prejudicial error in Reed's sentence.

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

IT IS SO ORDERED this 7th day of May, 1999.


H. DALE COOK
Senior United States District Judge

F I L E D

MAY 10 1999 *June*

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT
for the
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA)
Plaintiff)
)
vs)
)
CHRISTOPHER LEON SCOTT)
Defendant)

Case Number: 94-CR-099-001-B ✓

ENTERED ON DOCKET

DATE 5-11-99

JUDGMENT AND COMMITMENT ORDER
ON REVOCATION OF SUPERVISED RELEASE

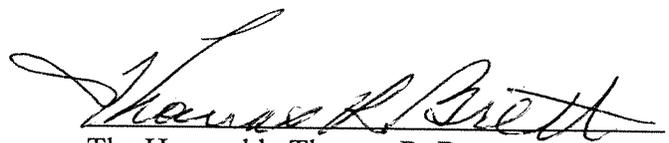
Now on this 4th day of May 1999, this cause comes on for sentencing after a previous finding that the defendant violated conditions of supervised release as set out in the Petition on Supervised Release filed on March 12, 1999. The defendant is present in person and represented by counsel, Jackson M. Zannerhaft. The Government is represented by Assistant U.S. Attorney Lucy Creekmore, and the United States Probation Office is represented by Brad E. Cheffey.

The defendant was heretofore sentenced on November 18, 1994, after being found guilty pursuant to a jury trial, of Count One of a one-count Indictment charging Possession of a Firearm After Former Conviction of a Felony, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). The defendant was sentenced to forty-five (45) months custody of the U.S. Bureau of Prisons with a three year term of supervised release to follow. In addition to the standard conditions, the Court ordered Scott to participate in drug treatment as directed by the U.S. Probation Office, and to submit to a search conducted by the United States Probation Officer upon reasonable suspicion that a condition of supervised release is violated. On February 25, 1998, The Court modified the conditions of

supervised release to include a six month term of home detention to include electronic monitoring as Scott had violated the conditions of supervised release. On December 16, 1998, the Court again modified the conditions of supervised release to include a term of home detention to include electronic monitoring for additional violations of supervised release. The Court convened on April 28, 1999, at which time the Court found that the defendant violated conditions of release pursuant the defendant's stipulation to allegations pertaining to his involvement in a new felonious law violation, and illegal drug use.

At sentencing, the Court found that the instant conviction occurred after November 1, 1987, and that Chapter 7 of the U.S. Sentencing Guidelines is applicable. Further, the Court found that one of the violations of supervised release constitutes a Grade B violation in accordance with USSG §7B1.1(a)(2), and that the defendant's original Criminal History Category of III is applicable for determining the imprisonment range. In addition, the Court found that a Grade B violation and a Criminal History Category of III establish a revocation imprisonment range of eight (8) to fourteen (14) months. In consideration of these findings, and taking notice that the policy statements in Chapter 7 are not mandatory, but must be considered by the Court, the following is ordered:

The defendant is committed to the custody of the U.S. Bureau of Prisons to be imprisoned for a term of twelve months and one day (12 months + 1 day).


The Honorable Thomas R. Brett
Senior United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

EOD: 5-11-99

UNITED STATES OF AMERICA

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

V.

Case Number: 98-CR-103-002-K ✓

Zaida Oneka Bakhsh

Cindy Hodges Cunningham
Defendant's Attorney

FILED

MAY 07 1999 Co

THE DEFENDANT:

Pleaded guilty to Count 2 of the Indictment on February 11, 1999.

Phil Lombardi, Clerk
U.S. DISTRICT COURT

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

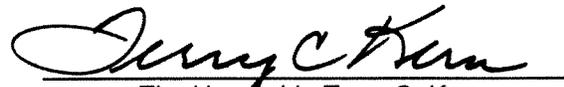
<u>Title and Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count</u>
18 USC 472 & 2	Passing Counterfeit Obligations of the United States and Aiding and Abetting	8/15/97	2

As pronounced on May 6, 1999, 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.

Count 1 of the Indictment is dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Signed this the 7 day of May, 1999.


The Honorable Terry C. Kern
Chief U.S. District Court Judge

Defendant's Soc. Sec. No.: 445-80-9994
Defendant's Date of Birth: 9/24/68
Defendant's USM No.: 08332-062
Defendant's Residence and Mailing Address: 7 East 47th Street, Tulsa OK 74105

PROBATION

The Defendant is hereby placed on probation for a term of four (4) 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 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.

STANDARD CONDITIONS OF PROBATION

1. You will not leave the judicial district without permission of the Court or probation officer.
2. You will report to the probation officer and submit a truthful and complete written report within the first five days of each month.
3. You will answer truthfully all inquiries by the probation officer, and follow the instructions of the probation officer.
4. You will successfully participate in cognitive/life skills training or similar programming as directed by the probation officer.
5. You will support your dependents and meet other family responsibilities, to include complying with any court order or order of administrative process requiring the payment of child support.
6. You will work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
7. You will notify the probation officer ten days prior to any change of residence or employment.
8. You will not frequent places where controlled substances are illegally sold, or administered; you shall refrain from excessive use of alcohol and will not purchase, possess, use, or distribute any controlled substance or paraphernalia related to such substances, except as prescribed by a physician.
9. You will submit to urinalysis or other forms of testing to determine illicit drug use as directed by the probation officer; if directed by the probation officer, you will successfully participate in a program of testing and treatment (to include inpatient) for substance abuse until released from the program by the probation officer.
10. You will not associate with any persons engaged in criminal activity, and will not associate with any person convicted of a crime unless granted permission to do so by the probation officer.
11. You will permit a probation officer to visit at any time at your home, employment or elsewhere and will permit confiscation of any contraband observed in plain view by the probation officer.
12. You will provide access to all personal and business financial information as requested by the probation officer; and you shall, if directed by the probation officer, not apply for or acquire any credit unless permitted in advance by the probation officer.
13. You will notify the probation officer within seventy-two hours of being arrested, questioned, or upon having any contact with a law enforcement officer.
14. You will not enter into any agreement to act as an informer or special agent of a law enforcement agency without the permission of the Court.
15. As directed by the probation officer, you will notify third parties of risks that may be occasioned by your criminal record or personal history or characteristics, and permit the probation officer to make such notifications and to confirm your compliance with such notification requirements.
16. You will not possess a firearm, destructive device, or other dangerous weapon.

ADDITIONAL CONDITIONS:

1. 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 acknowledgment shall be provided to the U. S. Probation Office immediately upon taking residency.
2. 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.

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties; payments shall be applied in the following order: (1) assessment; (2) restitution; (3) fine principal; (4) cost of prosecution; (5) interest; (6) penalties.

ASSESSMENT	RESTITUTION	FINE
\$100.00	\$1,120.00	\$500.00

ASSESSMENT

It is ordered that the defendant shall pay to the United States a special assessment of \$100 for Count 2 of the Indictment, to be paid in full no later than 72 hours of sentencing date.

RESTITUTION

The defendant shall make restitution in the total amount of \$1,120.

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

<u>Name of Payee</u>	<u>Payee Address</u>	<u>City, State, Zip</u>	<u>Amount</u>
Foley's Central Loss Prevention, Attn: Anna Martinez	1110 Main Street	Houston TX 77002	\$1,120

Restitution shall be paid in full immediately. It shall be paid jointly and severally with codefendants Deon Dejohn Lee and Marenga Muwata Wilson. Any amount not paid immediately shall be paid during the period of probation, except that no further payment shall be required after the sum of the amount actually paid by all defendants has fully covered the compensable injury. The defendant shall notify the Court and the Attorney General of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution.

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

FINE

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

The defendant shall pay a fine of \$500 for Count 2 of the Indictment. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid during the period of Probation.

Unless the interest is waived, the defendant shall pay interest on any fine or restitution of more than \$2,500.00, unless the fine or restitution is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the Schedule of Payments may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

If the fine and/or restitution is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614. The defendant shall notify the Court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay the fine.

All criminal monetary penalty payments are to be made to the United States District Court Clerk, 333 West 4th Street, Rm. 411, Tulsa, Oklahoma 74103, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program.

STATEMENT OF REASONS

The Court adopts the factual findings and guidelines application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level:	7	
Criminal History Category:	1	
Imprisonment Range:	0 to 6 months	Count 2
Supervised Release Range:	2 to 3 years	Count 2
Fine Range:	\$500 to \$5,000	Count 2

Total amount of Restitution: \$1,120.

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 the application of the guidelines.

BJS

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 A violation in accordance with USSG § 7B1.1(a)(1), and Workman's Criminal History Category of III is 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 twenty-seven (27) to thirty-three (33) months in accordance with USSG § 7B1.4(a). 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 Court announced that it took note of the policy statement but chose not to follow the policy statement and the following sentence was ordered:

It is the judgement of the Court that the defendant, Jerry Lee Workman, is hereby committed to the custody of the U.S. Bureau of Prisons to be imprisoned for a term of forty-eight (48) months. It is hereby recommended that the Bureau of Prisons place the defendant in a facility where he can receive benefit of the comprehensive drug abuse treatment program and where he can be as near to his Arkansas home as possible. The defendant is hereby remanded to the custody of the U.S. Marshal for delivery to the U.S. Bureau of Prisons.

May 7, 1999
(DATE)

H. Dale Cook
Honorable H. Dale Cook,
United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
MAY 6 1999

UNITED STATES OF AMERICA

V.

JUDGMENT IN A CRIMINAL CASE

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

Reginald Lee Stafford

Case Number: 98-CR-128-004-H ✓

R. Lynn Thompson
Defendant's Attorney

FILED

MAY 5 1999

Phil Lombardi, Clerk
U.S. DISTRICT COURT

THE DEFENDANT:

Pleaded guilty to Count 1 of the Superseding Indictment on October 29, 1998.

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

<u>Title and Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count</u>
21 USC 846	Conspiracy to Distribute Controlled Substances	8/12/98	1

All counts from the original Indictment are dismissed by the Court.

As pronounced on April 15, 1999, 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 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 4TH day of MAY, 1999.


The Honorable Sven Erik Holmes
U.S. District Court Judge

Defendant's Soc. Sec. No.: 441-70-3691

Defendant's Date of Birth: 6/7/62

Defendant's USM No.: 08304-062

Defendant's Residence and Mailing Address: 2405 West Boston Street, Broken Arrow OK 74012

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 45 months.

The Court makes the following recommendations to the Bureau of Prisons:

That the defendant be placed in a Bureau of Prisons' facility where he will receive Comprehensive Substance Abuse Treatment during his period of incarceration.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

Before noon on May 17, 1999.

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

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.

STANDARD CONDITIONS OF SUPERVISION

1. You will not leave the judicial district without permission of the Court or probation officer.
2. You will report to the probation officer and submit a truthful and complete written report within the first five days of each month.
3. You will answer truthfully all inquiries by the probation officer, and follow the instructions of the probation officer.
4. You will successfully participate in cognitive/life skills training or similar programming as directed by the probation officer.
5. You will support your dependents and meet other family responsibilities, to include complying with any court order or order of administrative process requiring the payment of child support.
6. You will work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
7. You will notify the probation officer ten days prior to any change of residence or employment.
8. You will not frequent places where controlled substances are illegally sold, or administered; you shall refrain from excessive use of alcohol and will not purchase, possess, use, or distribute any controlled substance or paraphernalia related to such substances, except as prescribed by a physician.
9. You will submit to urinalysis or other forms of testing to determine illicit drug use as directed by the probation officer; if directed by the probation officer, you will successfully participate in a program of testing and treatment (to include inpatient) for substance abuse until released from the program by the probation officer.
You will not associate with any persons engaged in criminal activity, and will not associate with any person convicted of a crime unless granted permission to do so by the probation officer.
11. You will permit a probation officer to visit at any time at your home, employment or elsewhere and will permit confiscation of any contraband observed in plain view by the probation officer.
12. You will provide access to all personal and business financial information as requested by the probation officer; and you shall, if directed by the probation officer, not apply for or acquire any credit unless permitted in advance by the probation officer.
13. You will notify the probation officer within seventy-two hours of being arrested, questioned, or upon having any contact with a law enforcement officer.
14. You will not enter into any agreement to act as an informer or special agent of a law enforcement agency without the permission of the Court.
15. As directed by the probation officer, you will notify third parties of risks that may be occasioned by your criminal record or personal history or characteristics, and permit the probation officer to make such notifications and to confirm your compliance with such notification requirements.
16. You will not possess a firearm, destructive device, or other dangerous weapon.

ADDITIONAL CONDITIONS:

1. 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 acknowledgment shall be provided to the U. S. Probation Office immediately upon taking residency.
2. 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.

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties; payments shall be applied in the following order: (1) assessment; (2) restitution; (3) fine principal; (4) cost of prosecution; (5) interest; (6) penalties.

ASSESSMENT

\$100.00

RESTITUTION

\$0.00

FINE

\$7,500.00

ASSESSMENT

It is ordered that the defendant shall pay to the United States a special assessment of \$100 for Count 1 of the Superseding Indictment, which shall be due immediately.

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 \$7,500 for Count 1 of the Superseding Indictment. 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.

Unless the interest is waived, the defendant shall pay interest on any fine or restitution of more than \$2,500.00, unless the fine or restitution is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the Schedule of Payments may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

If the fine and/or restitution is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614. The defendant shall notify the Court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay the fine.

All criminal monetary penalty payments are to be made to the United States District Court Clerk, 333 West 4th Street, Rm. 411, Tulsa, Oklahoma 74103, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program.

STATEMENT OF REASONS

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

USSG § 3B1.2 minor participant (2) level reduction with support of the Government.

Guideline Range Determined by the Court:

Total Offense Level:	21	
Criminal History Category:	I	
Imprisonment Range:	37 to 46 months	Count 1
Supervised Release Range:	3 years	Count 1
Fine Range:	\$7,500 to \$1,000,000	Count 1

Total amount of Restitution: \$ Not Applicable

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 the application of the guidelines.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON BOOK 17
DATE MAY 6 1999

UNITED STATES OF AMERICA

V.

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

Case Number: 98-CR-128-002-H ✓

Stanley D. Monroe
Defendant's Attorney

FILED

MAY 5 1999 *OK*

Phil Lombardi, Clerk
U.S. DISTRICT COURT

Donald Lee Stafford

THE DEFENDANT:

Pled guilty to Count 1 of the Superseding Indictment on October 29, 1998.

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

<u>Title and Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count</u>
21 USC 846	Conspiracy to Distribute Controlled Substances	8/12/98	1

All counts from the original Indictment are dismissed by the Court.

As pronounced on April 15, 1999, 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 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 4TH day of MAY, 1999.


The Honorable Sven Erik Holmes
U.S. District Court Judge

Defendant's Soc. Sec. No.: 445-22-3184

Defendant's Date of Birth: 4/13/30

Defendant's USM No.: 08305-062

Defendant's Residence and Mailing Address: 2405 West Boston Street, Broken Arrow OK 74012

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 46 months.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

Before noon on May 17, 1999.

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

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.

STANDARD CONDITIONS OF SUPERVISION

1. You will not leave the judicial district without permission of the Court or probation officer.
2. You will report to the probation officer and submit a truthful and complete written report within the first five days of each month.
3. You will answer truthfully all inquiries by the probation officer, and follow the instructions of the probation officer.
4. You will successfully participate in cognitive/life skills training or similar programming as directed by the probation officer.
5. You will support your dependents and meet other family responsibilities, to include complying with any court order or order of administrative process requiring the payment of child support.
6. You will work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
7. You will notify the probation officer ten days prior to any change of residence or employment.
8. You will not frequent places where controlled substances are illegally sold, or administered; you shall refrain from excessive use of alcohol and will not purchase, possess, use, or distribute any controlled substance or paraphernalia related to such substances, except as prescribed by a physician.
9. You will submit to urinalysis or other forms of testing to determine illicit drug use as directed by the probation officer; if directed by the probation officer, you will successfully participate in a program of testing and treatment (to include inpatient) for substance abuse until released from the program by the probation officer.
10. You will not associate with any persons engaged in criminal activity, and will not associate with any person convicted of a crime unless granted permission to do so by the probation officer.
11. You will permit a probation officer to visit at any time at your home, employment or elsewhere and will permit confiscation of any contraband observed in plain view by the probation officer.
12. You will provide access to all personal and business financial information as requested by the probation officer, and you shall, if directed by the probation officer, not apply for or acquire any credit unless permitted in advance by the probation officer.
13. You will notify the probation officer within seventy-two hours of being arrested, questioned, or upon having any contact with a law enforcement officer.
14. You will not enter into any agreement to act as an informer or special agent of a law enforcement agency without the permission of the Court.
15. As directed by the probation officer, you will notify third parties of risks that may be occasioned by your criminal record or personal history or characteristics, and permit the probation officer to make such notifications and to confirm your compliance with such notification requirements.
16. You will not possess a firearm, destructive device, or other dangerous weapon.

ADDITIONAL CONDITIONS:

1. 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 acknowledgment shall be provided to the U. S. Probation Office immediately upon taking residency.
2. 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.

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties; payments shall be applied in the following order: (1) assessment; (2) restitution; (3) fine principal; (4) cost of prosecution; (5) interest; (6) penalties.

ASSESSMENT

\$100.00

RESTITUTION

\$0.00

FINE

\$5,000.00

ASSESSMENT

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.

FINE

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

The defendant shall pay a fine of \$5,000 for Count 1 of the Indictment. 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.

FORFEITURE

The defendant shall forfeit the defendant's interest in the following property to the United States: Real property located at 2708 East Mohawk Blvd. In Tulsa, Oklahoma.

Unless the interest is waived, the defendant shall pay interest on any fine or restitution of more than \$2,500.00, unless the fine or restitution is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the Schedule of Payments may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

If the fine and/or restitution is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614. The defendant shall notify the Court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay the fine.

All criminal monetary penalty payments are to be made to the United States District Court Clerk, 333 West 4th Street, Rm. 411, Tulsa, Oklahoma 74103, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program.

STATEMENT OF REASONS

The Court adopts the factual findings and guidelines application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level:	23	
Criminal History Category:	I	
Imprisonment Range:	46 to 57 months	Count 1
Supervised Release Range:	3 years	Count 1
Fine Range:	\$10,000 to \$1,000,000	Count 1

Total amount of Restitution: \$ Not Applicable

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 the application of the guidelines.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
DATE MAY 6 1999

UNITED STATES OF AMERICA

V.

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

Case Number: 98-CR-128-003-H ✓

Gordon Harman
Defendant's Attorney

Clinton Augusta Ruff

FILED

MAY 5 1999

Phil Lombardi, Clerk
U.S. DISTRICT COURT

THE DEFENDANT:

Pleaded guilty to Count 1 of the Superseding Indictment on October 29, 1998.

Accordingly, the defendant is adjudged guilty of such count, involving the following offense.

<u>Title and Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count</u>
21 USC 846, 841(a)(1)	Conspiracy to Distribute Controlled Substances	8/12/98	1

All counts from the original Indictment are dismissed by the Court.

As pronounced on April 15, 1999, 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 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 4TH day of MAY, 1999.


The Honorable Sven Erik Holmes
U.S. District Court Judge

Defendant's Soc. Sec. No.: 444-40-5587
Defendant's Date of Birth: 7/23/37
Defendant's USM No.: 08303-062
Defendant's Residence and Mailing Address: 4346 N. Frankford Ave., Tulsa OK 74106

IMPRISONMENT

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

The 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

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.

STANDARD CONDITIONS OF SUPERVISION

1. You will not leave the judicial district without permission of the Court or probation officer.
2. You will report to the probation officer and submit a truthful and complete written report within the first five days of each month.
3. You will answer truthfully all inquiries by the probation officer, and follow the instructions of the probation officer.
4. You will successfully participate in cognitive/life skills training or similar programming as directed by the probation officer.
5. You will support your dependents and meet other family responsibilities, to include complying with any court order or order of administrative process requiring the payment of child support.
6. You will work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
7. You will notify the probation officer ten days prior to any change of residence or employment.
8. You will not frequent places where controlled substances are illegally sold, or administered; you shall refrain from excessive use of alcohol and will not purchase, possess, use, or distribute any controlled substance or paraphernalia related to such substances, except as prescribed by a physician.
9. You will submit to urinalysis or other forms of testing to determine illicit drug use as directed by the probation officer; if directed by the probation officer, you will successfully participate in a program of testing and treatment (to include inpatient) for substance abuse until released from the program by the probation officer.
You will not associate with any persons engaged in criminal activity, and will not associate with any person convicted of a crime unless granted permission to do so by the probation officer.
11. You will permit a probation officer to visit at any time at your home, employment or elsewhere and will permit confiscation of any contraband observed in plain view by the probation officer.
12. You will provide access to all personal and business financial information as requested by the probation officer; and you shall, if directed by the probation officer, not apply for or acquire any credit unless permitted in advance by the probation officer.
13. You will notify the probation officer within seventy-two hours of being arrested, questioned, or upon having any contact with a law enforcement officer.
14. You will not enter into any agreement to act as an informer or special agent of a law enforcement agency without the permission of the Court.
15. As directed by the probation officer, you will notify third parties of risks that may be occasioned by your criminal record or personal history or characteristics, and permit the probation officer to make such notifications and to confirm your compliance with such notification requirements.
16. You will not possess a firearm, destructive device, or other dangerous weapon.

ADDITIONAL CONDITIONS:

1. 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 acknowledgment shall be provided to the U. S. Probation Office immediately upon taking residency.
2. 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.

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties; payments shall be applied in the following order: (1) assessment; (2) restitution; (3) fine principal; (4) cost of prosecution; (5) interest; (6) penalties.

ASSESSMENT

\$100.00

RESTITUTION

\$0.00

FINE

\$10,000.00

ASSESSMENT

It is ordered that the defendant shall pay to the United States a special assessment of \$100 for Count 1 of the Superseding Indictment, which shall be due immediately.

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 \$10,000 for Count 1 of the Superseding Indictment. 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.

FORFEITURE

The defendant shall forfeit the defendant's interest in the following property to the United States: \$4,996.36 in U.S. Currency, \$8,891 from account number 803224 at the FNB Turley, and \$26,592.21 from account number 3979 at the Space Age Credit Union..

Unless the interest is waived, the defendant shall pay interest on any fine or restitution of more than \$2,500.00, unless the fine or restitution is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the Schedule of Payments may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

If the fine and/or restitution is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614. The defendant shall notify the Court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay the fine.

All criminal monetary penalty payments are to be made to the United States District Court Clerk, 333 West 4th Street, Rm. 411, Tulsa, Oklahoma 74103, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program.

STATEMENT OF REASONS

The Court adopts the factual findings and guidelines application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level:	23	
Criminal History Category:	III	
Imprisonment Range:	57 to 71 months	Count 1
Supervised Release Range:	3 years	Count 1
Fine Range:	\$10,000 to \$1,000,000	Count 1

Total amount of Restitution: \$ Not Applicable

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 the application of the guidelines.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET

DATE 5-4-99

UNITED STATES OF AMERICA

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

V.

Case Number: 98-CR-171-001-BU

James M. Heatherly

Michael A. Abel
Defendant's Attorney

FILED

jm MAY 4 - 1999

Phil Lombardi, Clerk
U.S. DISTRICT COURT

THE DEFENDANT:

Pleaded guilty to Counts 1 & 2 of the Information on January 29, 1999.

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

<u>Title and Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Counts</u>
26 USC 7206(1)	Subscribing to a False Income Tax Return	4/15/96	1
18 USC 1955 & 2	Illegal Gambling and Causing a Criminal Act	6/4/97	2

As pronounced on April 28, 1999, 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 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 4th day of MAY, 1999.

Michael Burrage
The Honorable Michael Burrage
U.S. District Court Judge

Defendant's Soc. Sec. No.: 443-68-7000
Defendant's Date of Birth: 1/24/59
Defendant's USM No.: 08374-062
Defendant's Residence and Mailing Address: Box 451615, Grove OK 74345-1615

PROBATION

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

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

1. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of 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.

STANDARD CONDITIONS OF PROBATION

1. You will not leave the judicial district without permission of the Court or probation officer.
2. You will report to the probation officer and submit a truthful and complete written report within the first five days of each month.
3. You will answer truthfully all inquiries by the probation officer, and follow the instructions of the probation officer.
4. You will successfully participate in cognitive/life skills training or similar programming as directed by the probation officer.
5. You will support your dependents and meet other family responsibilities, to include complying with any court order or order of administrative process requiring the payment of child support.
6. You will work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
7. You will notify the probation officer ten days prior to any change of residence or employment.
8. You will not frequent places where controlled substances are illegally sold, or administered; you shall refrain from excessive use of alcohol and will not purchase, possess, use, or distribute any controlled substance or paraphernalia related to such substances, except as prescribed by a physician.
9. You will submit to urinalysis or other forms of testing to determine illicit drug use as directed by the probation officer; if directed by the probation officer, you will successfully participate in a program of testing and treatment (to include inpatient) for substance abuse until released from the program by the probation officer.
10. You will not associate with any persons engaged in criminal activity, and will not associate with any person convicted of a crime unless granted permission to do so by the probation officer.
11. You will permit a probation officer to visit at any time at your home, employment or elsewhere and will permit confiscation of any contraband observed in plain view by the probation officer.
12. You will provide access to all personal and business financial information as requested by the probation officer; and you shall, if directed by the probation officer, not apply for or acquire any credit unless permitted in advance by the probation officer.
13. You will notify the probation officer within seventy-two hours of being arrested, questioned, or upon having any contact with a law enforcement officer.
14. You will not enter into any agreement to act as an informer or special agent of a law enforcement agency without the permission of the Court.
15. As directed by the probation officer, you will notify third parties of risks that may be occasioned by your criminal record or personal history or characteristics, and permit the probation officer to make such notifications and to confirm your compliance with such notification requirements.
16. You will not possess a firearm, destructive device, or other dangerous weapon.

ADDITIONAL CONDITIONS:

1. 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.
2. The defendant shall perform 80 hours of community service, as directed by the Probation Office.

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties; payments shall be applied in the following order: (1) assessment; (2) restitution; (3) fine principal; (4) cost of prosecution; (5) interest; (6) penalties.

ASSESSMENT	RESTITUTION	FINE
\$150.00	\$0.00	\$0.00

ASSESSMENT

It is ordered that the defendant shall pay to the United States a special assessment of \$150 for Counts 1 & 2 of the Information, which shall be due immediately.

Unless the interest is waived, the defendant shall pay interest on any fine or restitution of more than \$2,500.00, unless the fine or restitution is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the Schedule of Payments may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

If the fine and/or restitution is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614. The defendant shall notify the Court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay the fine.

All criminal monetary penalty payments are to be made to the United States District Court Clerk, 333 West 4th Street, Rm. 411, Tulsa, Oklahoma 74103, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program.

STATEMENT OF REASONS

The Court adopts the factual findings and guidelines application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level:	11	
Criminal History Category:	I	
Imprisonment Range:	8 to 14 months	Counts 1 & 2
Supervised Release Range:	1 to 5 years	Counts 1 & 2
Fine Range:	\$3,000 to \$30,000	Counts 1 & 2

Total amount of Restitution: \$ Not Applicable

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

The sentence departs from the guideline range:

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

BJT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET

DATE 5-4-99

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

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

V.

Case Number: 98-CR-085-003-BU

FILED

Kevin Kelleher

Bruce Ndolf and Lorie D. Melone
Defendant's Attorney

rm MAY 4 - 1999

THE DEFENDANT:

Phil Lombardi, Clerk
U.S. DISTRICT COURT

Pleaded guilty to Count 26 of the Second Superseding Indictment on January 8, 1999.

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

<u>Title and Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count</u>
18 USC 1341 & 2(b)	Mail Fraud and Causing a Criminal Act	10/13/95	26

As pronounced on April 28, 1999, 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.

All remaining counts of the Second Superseding Indictment are dismissed on the motion of the United States.

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 4th day of MAY, 1999.

Michael Burrage
The Honorable Michael Burrage
U.S. District Court Judge

Defendant's Soc. Sec. No.: 101-40-6322
Defendant's Date of Birth: 11/12/50
Defendant's USM No.: 53295-004
Defendant's Residence and Mailing Address: 11162 Delta Circle, Bocaraton, Florida 33428

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 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.

STANDARD CONDITIONS OF PROBATION

1. You will not leave the judicial district without permission of the Court or probation officer.
2. You will report to the probation officer and submit a truthful and complete written report within the first five days of each month.
3. You will answer truthfully all inquiries by the probation officer, and follow the instructions of the probation officer.
4. You will successfully participate in cognitive/life skills training or similar programming as directed by the probation officer.
5. You will support your dependents and meet other family responsibilities, to include complying with any court order or order of administrative process requiring the payment of child support.
6. You will work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
7. You will notify the probation officer ten days prior to any change of residence or employment.
8. You will not frequent places where controlled substances are illegally sold, or administered; you shall refrain from excessive use of alcohol and will not purchase, possess, use, or distribute any controlled substance or paraphernalia related to such substances, except as prescribed by a physician.
9. You will submit to urinalysis or other forms of testing to determine illicit drug use as directed by the probation officer; if directed by the probation officer, you will successfully participate in a program of testing and treatment (to include inpatient) for substance abuse until released from the program by the probation officer.
10. You will not associate with any persons engaged in criminal activity, and will not associate with any person convicted of a crime unless granted permission to do so by the probation officer.
11. You will permit a probation officer to visit at any time at your home, employment or elsewhere and will permit confiscation of any contraband observed in plain view by the probation officer.
12. You will provide access to all personal and business financial information as requested by the probation officer; and you shall, if directed by the probation officer, not apply for or acquire any credit unless permitted in advance by the probation officer.
13. You will notify the probation officer within seventy-two hours of being arrested, questioned, or upon having any contact with a law enforcement officer.
14. You will not enter into any agreement to act as an informer or special agent of a law enforcement agency without the permission of the Court.
15. As directed by the probation officer, you will notify third parties of risks that may be occasioned by your criminal record or personal history or characteristics, and permit the probation officer to make such notifications and to confirm your compliance with such notification requirements.
16. You will not possess a firearm, destructive device, or other dangerous weapon.

ADDITIONAL CONDITIONS:

1. 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.
2. The defendant shall perform 500 hours of community service, as directed by the Probation Office.

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties; payments shall be applied in the following order: (1) assessment; (2) restitution; (3) fine principal; (4) cost of prosecution; (5) interest; (6) penalties.

ASSESSMENT

\$50.00

RESTITUTION

\$0.00

FINE

\$0.00

ASSESSMENT

It is ordered that the defendant shall pay to the United States a special assessment of \$50 for Count 26 of the Second Superseding Indictment, which shall be due immediately.

Unless the interest is waived, the defendant shall pay interest on any fine or restitution of more than \$2,500.00, unless the fine or restitution is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the Schedule of Payments may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

If the fine and/or restitution is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614. The defendant shall notify the Court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay the fine.

All criminal monetary penalty payments are to be made to the United States District Court Clerk, 333 West 4th Street, Rm. 411, Tulsa, Oklahoma 74103, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program.

STATEMENT OF REASONS

The Court adopts the factual findings and guidelines application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level:	13	
Criminal History Category:	I	
Imprisonment Range:	12 to 18 months	Count 26
Supervised Release Range:	2 to 3 years	Count 26
Fine Range:	\$3,000 to \$30,000	Count 26

Total amount of Restitution: \$5,984.40.

Restitution is not order for the following reasons:

Because the victim declined restitution.

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

The sentence departs from the guideline range:

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

BJ

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

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
RAMON DELEON REYES,)
)
Defendant.)

ENTERED ON DOCKET
DATE MAY 04 1999

98-CV-950-H
97-CR-151-H ✓

FILED
MAY 4 1999
Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORDER

This matter comes before the Court on Defendant Ramon Deleon Reyes' Motion to Vacate, Set Aside, or Correct Sentence Under 28 U.S.C. § 2255 filed December 16, 1998 (Docket # 1). For the reasons expressed herein, the Court concludes that the motion should be denied.

On December 9, 1997, Mr. Reyes pled guilty to four counts of possession of cocaine with intent to distribute and one count of distribution of one kilogram of cocaine, all in violation of 21 U.S.C. § 841(a)(1). Mr. Reyes was represented by counsel and was provided an interpreter. At that time the Court accepted Mr. Reyes' plea, and on March 17, 1998, Mr. Reyes was sentenced to 204 months imprisonment for all five counts, three years of supervised release as to counts one through four, five years of supervised release as to count five, a \$3,000 fine as to count five, and \$500 in special monetary assessments for counts one through five. The Court entered final judgment on March 23, 1998, and Mr. Reyes did not take a direct appeal. Upon receipt of Mr. Reyes' Motion to Vacate, Set Aside, or Correct Sentence, the Court directed the Government to respond, and the Government so responded on January 29, 1999.

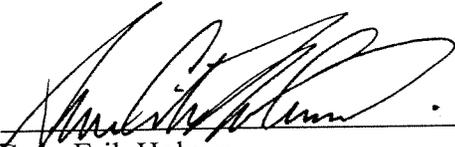
In his Petition, Mr. Reyes first argues that his guilty plea was involuntary because he was not informed by the court or his counsel that count five of the indictment carried a mandatory minimum sentence, and that his plea was not made intelligently because the district court failed

to inform him that he could not withdraw his plea if the court did not accept the Government's recommendations. Because Mr. Reyes did not perfect a direct appeal, these claims may not be attacked on collateral review unless Mr. Reyes can demonstrate cause for the procedural default and actual prejudice from the errors asserted, or actual innocence. See Bousley v. United States, 523 U.S. 614, 623 (1998); United States v. Powell, 159 F.3d 500, 502 (10th Cir. 1998). Mr. Reyes has proffered nothing which would support such findings.

However, Mr. Reyes' claim of ineffective assistance would excuse his failure to raise these claims on direct appeal. Mr. Reyes argues that his counsel provided ineffective assistance by providing an erroneous sentence estimate. Based on a review of the record, it is clear that the Court did in fact advise Mr. Reyes of the minimum mandatory sentence required as well as informing Mr. Reyes that the Court retained final authority to impose sentence within the Sentencing Guidelines. See Change of Plea Tr. at 11, 20. Accordingly, Mr. Reyes cannot show prejudice from any inaccurate sentence prediction because the Court specifically cured any defect by counsel by providing the proper information, see Lasiter v. Thomas, 89 F.3d 699, 703 (10th Cir.), cert. denied, 117 S. Ct. 493 (1996). Since Mr. Reyes' ineffective assistance claim is without merit, his involuntariness claims are procedurally defaulted. Accordingly, Defendant Ramon Deleon Reyes' Motion to Vacate, Set Aside, or Correct Sentence Under 28 U.S.C. § 2255 filed December 16, 1998 (Docket # 1) is hereby denied.

IT IS SO ORDERED.

This 3RD day of May, 1999.


Sven Erik Holmes
United States District Judge