

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

AUG 30 1999

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA

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

V.

Case Number: 99-CR-053-002-C

Torrey Snow

Jack Marwood Short  
Defendant's Attorney

ENTERED ON DOCKET

THE DEFENDANT:

DATE 8/30/99

Pleaded guilty to Count 1 of the Indictment on June 3, 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 371	Conspiracy to Defraud the United States	4/27/98	1

As pronounced on August 23, 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.

Counts 2-5 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 30<sup>th</sup> day of August, 1999.

  
The Honorable H. Dale Cook  
U.S. District Court Judge

Defendant's Soc. Sec. No.: 500-90-1440  
Defendant's Date of Birth: 12/24/76  
Defendant's USM No.: 08465-062  
Defendant's Residence and Mailing Address: 832 I NW, Miami OK 74354

**PROBATION**

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

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

1. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of 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 participate in a program of mental health treatment (to include inpatient), as directed by the Probation Officer, until such time as the defendant is released from the program by the Probation Officer.
2. The defendant shall abide by the "Special Financial Conditions" enumerated in General Order Number 99-12, filed with the Clerk of the Court on July 13, 1999.

**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	\$1,100.00	\$0.00

**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 \$1,100. The interest for restitution is waived by the Court.

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>
Quapaw Tribe of Oklahoma, Attn: Sarah Woodard, Manager	PO Box 735	Miami OK 74335	\$500
Commercial Insurance, Attn: Maureen Selfert	6143 Willow Drive, Ste. 330	Englewood CO 80111	\$200
Walmart (Store 28), Attn: Chuck Stotts, Manager	2414 North Main Street	Miami OK 74354	\$400

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

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 4<sup>th</sup> 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:	6	
Criminal History Category:	1	
Imprisonment Range:	0 to 6 months	Count 1
Supervised Release Range:	2 to 3 years	Count 1
Fine Range:	\$500 to \$5,000	Count 1

Total amount of Restitution: \$1,100.

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 sentence is imposed for the following reason: due to the defendant's minor criminal history, her gainful employment and the need for restitution.

*ew*

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

**FILED**

AUG 26 1999

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA, )  
)  
Plaintiff, )  
)  
-vs- )  
)  
GLORIA VELASCO, )  
)  
Defendant. )

No. 99-CR-66-C ✓<sup>16-</sup>

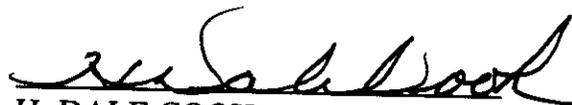
ENTERED ON DOCKET

DATE 8/26/99

**ORDER**

Now on this 26 day of August, 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 GLORIA VELASCO in the above styled cause. The Court finds that said request ought to be granted and the Indictment against defendant GLORIA VELASCO is dismissed, without prejudice.

IT IS SO ORDERED.



H. DALE COOK  
United States District Judge

NAUDDASLEGGETTDAHGLORIA VELASCO DISMISSAL

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

AUG 26 1999

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA

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

V.

Case Number: 99-CR-049-001-C ✓

Terrance D. Jenkins

Jack Schister  
Defendant's Attorney

ENTERED ON DOCKET

THE DEFENDANT:

Pleaded guilty to Count 1 of the indictment on May 26, 1999. DATE 8/26/99

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 922 (g)(1)	Possession of a Firearm After Former Conviction of a Felony	1/22/99	1

As pronounced on August 23, 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 26<sup>th</sup> day of August, 1999.

  
The Honorable H. Dale Cook  
U.S. District Court Judge

Defendant's Soc. Sec. No.: 448-70-9447  
Defendant's Date of Birth: 12/31/75  
Defendant's USM No.: 08463-062  
Defendant's Residence and Mailing Address: 4331 N. Garrison Place, Tulsa OK 74106

Defendant: Terrance D. Jenkins  
Case Number: 99-CR-049-001-C

Judgment - Page 2 of 5

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 20 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.
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 General Order Number 99-12, filed with the Clerk of the Court on July 13, 1999.

**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	\$0.00	\$1,500.00

**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.

**FINE**

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

The defendant shall pay a fine of \$1,500 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 4<sup>th</sup> 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:	III	
Imprisonment Range:	18 to 24 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: \$ 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.

BJS

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

AUG 26 1999

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA

JUDGMENT AND ORDER ON  
REVOCATION OF SUPERVISED RELEASE  
(For Offenses Committed On or After November 1, 1987)

V.

Sheldon Surratt

Case Number: 99-CR-039-001-C ✓

Jack Schisler  
Defendant's Attorney

ENTERED ON DOCKET

DATE 8/26/99

THE DEFENDANT, heretofore convicted and sentenced in Count(s) 1 & 2 as set out in Judgment and Commitment Order entered July 9, 1997, and released to the three (3) year term of supervised release December 4, 1998:

Admitted guilty to violation of Mandatory Condition of the term of supervision as to count(s) 1 & 2.

<u>Condition Number</u>	<u>Nature of Violation</u>
Mandatory Condition	State Law Violation

As pronounced on August 16, 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 26<sup>th</sup> day of August, 1999.

  
The Honorable H. Dale Cook  
U.S. District Court Judge

Defendant's Soc. Sec. No.: 569-45-1431  
Defendant's Date of Birth: 05-30-75  
Defendant's USM No.: 05092-010  
Defendant's Residence and Mailing Address: 4350 S. Garnett #205, Tulsa, OK 74134

**IMPRISONMENT**

The Court finds that the instant offense occurred after November 1, 1987. Consistent with the 10<sup>th</sup> Circuit decision in U.S. v. Lee, and U.S. v. Jones, 973 F.2d 605 (8<sup>th</sup> Circuit 1992), Chapter Seven provisions are not mandatory, but the Court has considered them in arriving at this sentence.

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of twelve (12) months, said terms shall run concurrently, each with the other.

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 twenty-four (24) months, said terms to run concurrently, each with the other.

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

1. The defendant shall report in person to the Probation Office in the district to which the defendant is released as soon as possible, but in no event later than 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.

### 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 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 General Order Number 99-14, filed with the Clerk of the Court on July 13, 1999.

**CRIMINAL MONETARY PENALTIES**

The defendant shall pay a special monetary assessment in the amount of \$200 as to Count(s) 1 & 2.

The defendant shall pay restitution in the amount of \$29,278.76 as to Count(s) 1 to the payees as ordered in the Judgment entered July 9, 1997.

Payments for any unpaid balances shall be applied in the following order: (1) assessment; (2) restitution; (3) fine principal; (4) cost of prosecution; (5) interest; (6) penalties.

Any unpaid criminal monetary penalty 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 was waived at the original sentencing, 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 4<sup>th</sup> Street, Rm. 411, Tulsa, Oklahoma 74103, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

DATE 8/25/99

UNITED STATES OF AMERICA

V.

Vera Schubler-Mills

JUDGMENT AND ORDER ON  
REVOCATION OF SUPERVISED RELEASE  
(For Offenses Committed On or After November 1, 1987)

Case Number: 98-CR-099-001-H ✓

Cindy Cunningham  
Defendant's Attorney

THE DEFENDANT, heretofore convicted and sentenced in Count(s) 1 as set out in Judgment and Commitment Order entered October 30, 1998, and released to the five (5) year term of supervised release October 30, 1998:

Admitted guilty to violation of Condition 8, Mandatory Condition and Special Condition of the term of supervision as to Count 1.

**FILED**

AUG 25 1999 *OK*

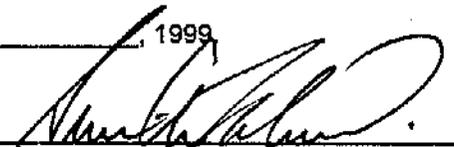
Phil Lombardi, Clerk  
U.S. DISTRICT COURT

<u>Condition Number</u>	<u>Nature of Violation</u>
8	You shall refrain from excessive use of alcohol.
Mandatory Condition	You shall not commit another federal, state or local law violation.
Special Condition	Electronic Monitoring, leaving the residence without permission.

As pronounced on August 20, 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 25<sup>TH</sup> day of August, 1999

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

Defendant's Soc. Sec. No.: 440-58-6717  
Defendant's Date of Birth: 8-11-47  
Defendant's USM No.: 08276-062  
Defendant's Residence and Mailing Address: 2519 S. Florence Pl #6 , Tulsa, OK 74114

**IMPRISONMENT**

The Court finds that the instant offense occurred after November 1, 1987. Consistent with the 10<sup>th</sup> Circuit decision in U.S. v. Lee, Chapter Seven provisions are not mandatory, but the Court has considered them in arriving at this sentence.

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

**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 five (5) years.

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

1. The defendant shall report in person to the Probation Office in the district to which the defendant is released 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 participate in a program of mental health treatment (to include inpatient), as directed by the Probation Officer, until such time as the defendant is released from the program by the Probation Officer.
2. The defendant shall abide by the "Special Financial Conditions" enumerated in General Order Number 99-12, filed with the Clerk of the Court on July 13, 1999.
3. The defendant shall perform 100 hours of community service, as directed by the Probation Office.
4. The defendant shall totally abstain from the consumption of alcoholic beverages.

**CRIMINAL MONETARY PENALTIES**

The defendant shall pay restitution in the amount of \$37,447.22 as to Count(s) 1 to the payees as ordered in the Judgment entered October 30, 1998.

Payments for any unpaid balances shall be applied in the following order: (1) assessment; (2) restitution; (3) fine principal; (4) cost of prosecution; (5) interest; (6) penalties.

Any unpaid criminal monetary penalty 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 was waived at the original sentencing, 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 4<sup>th</sup> Street, Rm. 411, Tulsa, Oklahoma 74103, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA

V.

Renesco Lenard Johnson a/k/a Douglas  
Switzer

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

**FILED**

Case Number: 99-CR-008-002-BU

*rm* AUG 18 1999

Jack Marwood Short  
Defendant's Attorney

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

**THE DEFENDANT:**

Pleaded guilty to Counts 1 & 6 of the indictment on April 29, 1999.

ENTERED ON DOCKET

DATE 8-18-99

Accordingly, the defendant is adjudged guilty of such counts, involving the following offenses:

<u>Title and Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Counts</u>
18 USC 371	Conspiracy	10/98	1
18 USC 1344(1)	Bank Fraud	9/10/98	VI

As pronounced on August 16, 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 18<sup>th</sup> day of August, 1999.

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

Defendant's Soc. Sec. No.: 259-21-1438

Defendant's Date of Birth: 4/11/73

Defendant's USM No.: 49965-019

Defendant's Residence and Mailing Address: 1401 N. Harriston Road, Apt. 20-T, Stone Mountain, GA 30083

**IMPRISONMENT**

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

**RETURN**

I have executed this Judgment as follows:

---

---

---

---

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

United States Marshal

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

### 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 abide by the "Special Financial Conditions" enumerated in General Order Number 99-12, filed with the Clerk of the Court on July 13, 1999.

**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
\$200.00	\$3,716.14	\$0.00

**ASSESSMENT**

It is ordered that the defendant shall pay to the United States a special assessment of \$200 for Counts 1 & 6 of the Indictment. The special assessment shall be paid in full after a financial assessment has been determined by the U.S. Probation Office.

**RESTITUTION**

The defendant shall make restitution in the total amount of \$3,716.14.

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>
NationsBank Tulsa, Attn: Leslie Edison	5950 E. Admiral Place	Tulsa OK 74155	\$3,716.14

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.

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 4<sup>th</sup> 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:	8	
Criminal History Category:	1	
Imprisonment Range:	0 to 6 months	Counts 1 & 6
Supervised Release Range:	2 to 3 years	Count 1
	3 to 5 years	Count 6
Fine Range:	\$1,000 to \$1,000,000	Counts 1 & 6

Total amount of Restitution: \$3,716.14.

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.

BTS

EOD: 8-17-99

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

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

V.

Case Number: 99-CR-027-003-K ✓

Cordney Deon Chairs

William Lunn  
Defendant's Attorney

FILED

AUG 17 1999

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

THE DEFENDANT:

Pleaded guilty to Count 5 of the Indictment on May 7, 1999.

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

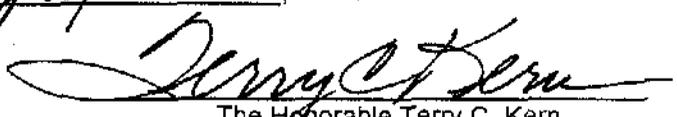
<u>Title and Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count</u>
18 USC 1951 and 2	Interference With Interstate Commerce and Aiding & Abetting	1/24/99	5

As pronounced on August 9, 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.

Count 6 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 16 day of August, 1999.

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

Defendant's Soc. Sec. No.: 440-78-4365  
Defendant's Date of Birth: 7/27/80  
Defendant's USM No.: 08438-062  
Defendant's Residence Address: c/o Tulsa County Jail, 500 S. Denver, Tulsa OK 74103  
Defendant's Mailing Address: 7940 S. Sheridan Road, Apt. 907, Tulsa OK 74133

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 27 months.

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

That the defendant be incarcerated in a Bureau of Prisons' facility separate from codefendants Johnny Bazile, Jr., 99-CR-027-001-K and Deon Paris, 99-CR-027-002-K.

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

**RETURN**

I have executed this Judgment as follows:

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

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

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

y: \_\_\_\_\_  
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 General Order Number 99-12, filed with the Clerk of the Court on July 13, 1999.
3. The defendant shall successfully complete the one-year residential treatment program of the Brush Creek Ranch, Jay, Oklahoma, which shall commence upon release from custody as directed by the U.S. 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
\$100.00	\$473.00	\$0.00

**ASSESSMENT**

It is ordered that the defendant shall pay to the United States a special assessment of \$100 for Count(s) 5 of the Indictment, which shall be due immediately.

**RESTITUTION**

The defendant shall make restitution in the total amount of \$473.

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>
Extended Stay America, Attn: Accounts Receivable	450 E. Los Olas, Ste. 1100	Fort Lauderdale, FL 33301	\$473

Restitution shall be paid in full immediately jointly and severally with codefendant Johnny Bazile, Jr., 99-CR-027-001-K. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid as a condition of supervised release, except that no further payment shall be required after the sum of the 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.

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 4<sup>th</sup> 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:	24	
Criminal History Category:	I	
Imprisonment Range:	51 to 63 months	Count 5
Supervised Release Range:	2 to 3 years	Count 5
Fine Range:	\$10,000 to \$100,000	Count 5

Total amount of Restitution: \$473.

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

The sentence departs from the guideline range for the following specific reasons:

Pursuant to 5K2.0: 1) single act aberrant behavior, 2) disparity in sentence, 3) high school record, 4) long-employment record, 5) sole means of support for eight-month-old son, 6) intimidation by Johnny Bazile, Jr., 7) willingness to attend Brush Creek Residential Treatment Program, 8) extraordinary personal circumstances, 9) youthfulness and lack of maturity, and 10) likelihood of abuse and victimization in prison.

aw

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

COPY

UNITED STATES OF AMERICA

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

V.

Case Number: 99-CR-017-001-J

Tina Miller

Jack Schisler  
Defendant's Attorney

FILED

AUG 16 1999

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

THE DEFENDANT:

Pled guilty to Count 1 of the Information on May 11, 1999.

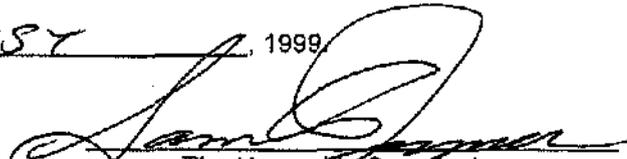
Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

<u>Title and Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count</u>
18 USC 656	Misapplication of Funds by Bank Employee, a Class A Misdemeanor	10/8/96	1

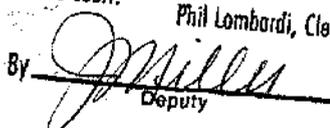
As pronounced on August 12, 1999, the defendant is sentenced as provided in pages 2 through 4 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

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 16 day of AUGUST, 1999

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

Defendant's Soc. Sec. No.: 445-64-0921  
Defendant's Date of Birth: 05/08/59  
Defendant's USM No.: 08483-062  
Defendant's Residence and Mailing Address: 12318 E. 26<sup>th</sup> Street, Tulsa OK 74129

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

ENTERED ON DOCKET  
DATE 8-16-99

**PROBATION**

The Defendant is hereby placed on probation for a term of two (2) years.

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

1. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of 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 perform 80 hours of community service, as directed by the Probation Office, through the Tulsa County Work Program.
2. The Court suspends the requirements for mandatory urine screening as dictated by 18 USC § 3608, but specifically retains the probation officer's authority to administer such tests for cause as permitted by the standard conditions of supervision.

**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**

\$25.00

**RESTITUTION**

\$0.00

**FINE**

\$0.00

**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.

All criminal monetary penalty payments are to be made to the United States District Court Clerk, 333 West 4<sup>th</sup> 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:	I	
Imprisonment Range:	0 to 6 months	Count 1
Supervised Release Range:	1 year	Count 1
Fine Range:	\$500 to \$5,000	Count 1
Total amount of Restitution:	\$ <u>Not Applicable</u>	

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

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

UNITED STATES OF AMERICA, )  
)  
Plaintiff, )  
)  
-vs- )  
)  
CHRISTOPHER JAMES REINERT, )  
)  
Defendant. )

ENTERED ON DOCKET  
AUG 13 1999  
DATE \_\_\_\_\_

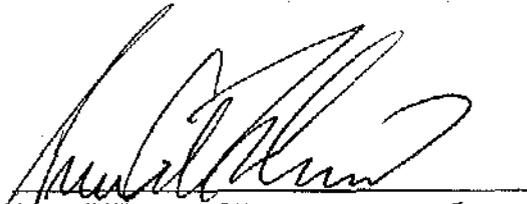
No. 99-CR-91-H

**FILED**  
AUG 13 1999  
Phil Lombardi, Clerk  
U.S. DISTRICT COURT

ORDER

Now on this 13<sup>TH</sup> day of August, 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 CHRISTOPHER JAMES REINERT is dismissed, without prejudice.

IT IS SO ORDERED.

  
SVEN ERIK HOLMES  
United States District Judge

EOD: 8-13-99

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA

v.

Bernard Bing

THE DEFENDANT:

Pleaded guilty to Count 1 of the Indictment on May 4, 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 1343	Wire Fraud	12/18/98	1

As pronounced on August 4, 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 11 day of August, 1999.

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

Defendant's Soc. Sec. No.: 191-38-1818  
Defendant's Date of Birth: 2/8/48  
Defendant's USM No.: 36873-066  
Defendant's Residence Address: c/o Tulsa County Jail, 500 S. Denver Avenue, Tulsa OK 74103  
Defendant's Mailing Address: 1247 S. Newkirk, Philadelphia PA 19142

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

Case Number: 99-CR-016-001-K

Allen J. Autrey  
Defendant's Attorney

FILED

AUG 12 1999

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 40 months.

The 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 abide by the "Special Financial Conditions" enumerated in General Order Number 99-12, filed with the Clerk of the Court on July 13, 1999.

**CRIMINAL MONETARY PENALTIES**

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**

\$0.00

**ASSESSMENT**

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

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 4<sup>th</sup> Street, Rm. 411, Tulsa, Oklahoma 74103, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program.

**STATEMENT OF REASONS**

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

**Guideline Range Determined by the Court:**

Total Offense Level:	14	
Criminal History Category:	V	
Imprisonment Range:	33 to 41 months	Count 1
Supervised Release Range:	3 to 5 years	Count 1
Fine Range:	\$10,000 to \$100,000	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.

LH

Defendant: Johnny Bazile, Jr.  
Case Number: 99-CR-027-001-K

Judgment - Page 1 of 5

ENTERED ON DOCKET

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

DATE 8-11-99

UNITED STATES OF AMERICA

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

V.

Case Number: 99-CR-027-001-K

**FILED**

Johnny Bazile, Jr.

Jack Schisler  
Defendant's Attorney

AUG 11 1999

**THE DEFENDANT:**

Pleaded guilty to Counts 2 & 4 of the indictment on May 4, 1999.

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

Was found guilty by jury trial on Counts 3, 5 & 6 of the indictment of the indictment, on May 18, 1999 after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such counts, involving the following offenses:

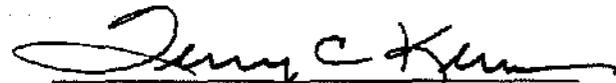
<u>Title and Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Counts</u>
18 USC 924(c) & 2	Use of a Firearm During a Crime of Violence and Aiding & Abetting	12-11-98	2
18 USC 924(c) & 2	Use of a Firearm During a Crime of Violence and Aiding & Abetting	12-23-98	4
18 USC 924(c)	Use of a Firearm During a Crime of Violence and Aiding & Abetting	1-24-99	6
18 USC 1951 & 2	Armed Robbery, Interference With Interstate Commerce and Aiding & Abetting	12-23-98	3
18 USC 1951 & 2	Armed Robbery, Interference With Interstate Commerce and Aiding & Abetting	1-24-99	5

As pronounced on August 4, 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.

Count 1 of the indictment was dismissed.

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

Signed this the 10 day of August, 1999.



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

Defendant's Soc. Sec. No.: 433-51-9978  
Defendant's Date of Birth: 6/16/73  
Defendant's USM No.: 08439-062  
Defendant's Residence and Mailing Address: 9016 E. 35<sup>th</sup> Street, Tulsa OK 74105

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of life plus 497 months; 137 months as to each of Counts 3 & 5, to run concurrently, each with the other; 60 months as to Count 2 to run consecutively to Counts 3, 4, 5 & 6; life as to Count 4 to run consecutively to Counts 2, 3, 5 & 6; 300 months as to Count 6 to run consecutively to Counts 2, 3, 4 & 5, for a total sentence of life.

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 five (5) years; three years as to each of Counts 3 & 5; and five years as to each of Counts 2, 4 & 6; said terms to run concurrently, each with the other.

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

1. The defendant shall report in person to the Probation Office in the district to which the defendant is released as soon as possible, but in no event later than 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.

### 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. 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 General Order Number 99-12, filed with the Clerk of the Court on July 13, 1999.

**CRIMINAL MONETARY PENALTIES**

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
\$500.00	\$3,355.00	\$0.00

**ASSESSMENT**

It is ordered that the defendant shall pay to the United States a special assessment of \$500 for Counts 2, 3, 4, 5, & 6 of the Indictment, which shall be due immediately.

**RESTITUTION**

The defendant shall make restitution in the total amount of \$3,355. The interest for restitution is waived by the Court.

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>
Dirts Away Car Wash	1822 South Main	Broken Arrow OK 74012	\$350
Silver Dollar Jewelry and Pawn, Attn: Timothy Clark	6573 East 71 <sup>st</sup> Street	Tulsa OK 74133	\$455
Armon Welsh	1706 South Lakewood	Tulsa OK 74112	\$2,050
Extended Stay America, Attn: Accounts Receivable	450 East Las Olas, Ste. 1100	Ft. Lauderdale, FL 33301	\$500

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.

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 4<sup>th</sup> Street, Rm. 411, Tulsa, Oklahoma 74103, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program.

**STATEMENT OF REASONS**

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

**Guideline Range Determined by the Court:**

Total Offense Level:	28	
Criminal History Category:	IV	
Imprisonment Range:	110 to 137 months	Counts 3 & 5
	60 months to life	Count 2
	300 months to life	Counts 4 & 6
Supervised Release Range:	2 to 3 years	Counts 3 & 5
	3 to 5 years	Counts 2, 4 & 6
Fine Range:	\$12,500 to \$1,250,000	Counts 2-6

Total amount of Restitution: \$3,355.

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

The sentence is within the guideline range, that range exceeds 24 months, and the sentence is imposed for the following reason:

the aggravating factors of the offense and the defendant's criminal record, some of which did not result in convictions or charges.

DATE **AUG 11 1999**

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

UNITED STATES OF AMERICA

V.

Tad Arthur Dellon Guffey

**THE DEFENDANT:**

Pleaded guilty to Count 1 of the Indictment on April 16, 1999.

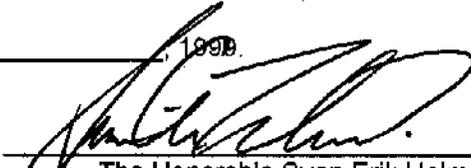
Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

<u>Title and Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count</u>
18 USC 659	Theft from Interstate Shipment	12/3/98	1

As pronounced on July 23, 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 10<sup>TH</sup> day of AUGUST, 1999.

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

Defendant's Soc. Sec. No.: 621-03-2610  
Defendant's Date of Birth: 1/21/43  
Defendant's USM No.: 08457-062  
Defendant's Residence & Mailing Address: 3512 E. Perliter Avenue, Las Vegas, Nevada 89030

**FILED**

AUG 11 1999

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

**IMPRISONMENT**

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

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

That the Bureau of Prisons designate FPC Nellis located in North Las Vegas, Nevada, or a facility as near Las Vegas as possible.

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

Before noon on September 13, 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 General Order Number 99-12, filed with the Clerk of the Court on July 13, 1999.

**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	\$28,813.04	\$0.00

**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 \$28,813.04. The interest for restitution is waived by the Court.

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>
Marmaxx Group Loss Prevention	4100 Lone Mountain Road	Las Vegas NV 89031	\$28,813.04

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.

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 4<sup>th</sup> 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:	II	
Imprisonment Range:	10 to 16 months	Count 1
Supervised Release Range:	2 to 3 years	Count 1
Fine Range:	\$2,000 to \$20,000	Count 1

Total amount of Restitution: \$28,813.04.

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.

aw

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

UNITED STATES OF AMERICA

**JUDGMENT IN A CRIMINAL CASE**

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

V.

Case Number: 98-CR-064-001-H

Darryl Vincent Rodgers a/k/a Darryl Fikree  
Rodgers

Jack Schisler  
Defendant's Attorney

**FILED**  
AUG 11 1999  
Phil Lombardi, Clerk  
U.S. DISTRICT COURT

**THE DEFENDANT:**

Pleaded guilty to Count 1 of the Indictment on April 15, 1999.

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

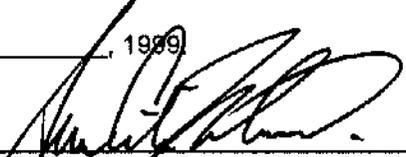
<u>Title and Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count</u>
18 USC 922(g)(1)	Possession of a Firearm and Ammunition After Former Conviction of a Felony	12/1/97	1

As pronounced on July 23, 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 & 3 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 10<sup>TH</sup> day of AUGUST, 1999.

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

Defendant's Soc. Sec. No.: 572-45-5581  
 Defendant's Date of Birth: 1/10/77  
 Defendant's USM No.: 08407-062  
 Defendant's Residence Address: 4911 August Street, #4, Los Angeles CA 90008  
 Defendant's Mailing Address: c/o Tulsa County Jail, 500 S. Denver Avenue, Tulsa OK 74103

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 23 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 General Order Number 99-12, filed with the Clerk of the Court on July 13, 1999.

**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**

\$1,000.00

**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 \$1,000 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.

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 4<sup>th</sup> 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:	III	
Imprisonment Range:	18 to 24 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: \$ 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.

aw

UNITED STATES DISTRICT COURT ENTERED ON DOCKET  
NORTHERN DISTRICT OF OKLAHOMA

DATE 8-11-99

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

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

V.

Case Number: 99-CR-027-002-K

Deon Lamar Paris

Turner Gassaway  
Defendant's Attorney

**FILED**

AUG 10 1999

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

THE DEFENDANT:

Pleaded guilty to Counts 1 & 2 of the Information on May 4, 1999.

Accordingly, the defendant is adjudged guilty of such counts, involving the following offenses:

<u>Title and Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Counts</u>
18 USC 1951 & 2	Interference With Interstate Commerce and Aiding & Abetting	12/11/98	1
18 USC 1951 & 2	Interference With Interstate Commerce and Aiding & Abetting	1/12/99	2

As pronounced on August 4, 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 1-4 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 9 day of August, 1999.



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

Defendant's Soc. Sec. No.: 447-70-7921

Defendant's Date of Birth: 12/5/75

Defendant's USM No.: 08437-062

Defendant's Residence and Mailing Address: c/o Tulsa County Jail, 500 S. Denver Avenue, Tulsa OK 74103

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 87 months.

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

That the defendant be designated to the Bureau of Prisons facility located in El Reno, Oklahoma for his place of incarceration.

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

\_\_\_\_\_  
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 General Order Number 99-12, filed with the Clerk of the Court on July 13, 1999.

**CRIMINAL MONETARY PENALTIES**

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
\$200.00	\$849.00	\$0.00

**ASSESSMENT**

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

**RESTITUTION**

The defendant shall make restitution in the total amount of \$849.

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>
Lee Mobile Service, Attn: James Lee	PO Box 946	Broken Arrow OK 74012	\$350
Michael Bennett	1745 S. Poplar	Broken Arrow OK 74012	\$38
Report Storage, Attn: Charles Gilmore	6520 S. Lewis	Tulsa OK 74136	\$461

Restitution in the amount of \$338 shall be paid jointly and severally with Johnny Bazile, 99-CR-027-001-K. Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid as a condition of supervised release, except that no further payment shall be required after the sum of the 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.

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 4<sup>th</sup> 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:

Paragraphs 16 & 17 which state that Paris was the gunman; Paris claims that he was only the driver (sustained)

**Guideline Range Determined by the Court:**

Total Offense Level:	26	
Criminal History Category:	II	
Imprisonment Range:	70 to 87 months	Counts 1 & 2
Supervised Release Range:	2 to 3 years	Counts 1 & 2
Fine Range:	\$12,500 to \$125,000	Counts 1 & 2

Total amount of Restitution: \$849.00.

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

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

*Handwritten initials*

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

**FILED**

AUG 3 - 1999 *AL*

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

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

Case Nos. 94-CR-159-BU ✓  
97-CV-442-BU

ENTERED ON DOCKET  
DATE AUG 04 1999

**JUDGMENT**

This matter came before the Court upon the motion of Defendant, David Wayne Grubb, to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. Having considered the issues and having duly rendered a ruling,

IT IS ORDERED, ADJUDGED AND DECREED that judgment is entered in favor of Plaintiff, United States of America, and against Defendant, David Wayne Grubb.

ENTERED this 3<sup>rd</sup> day of August, 1999.

  
MICHAEL BURRAGE  
UNITED STATES DISTRICT JUDGE

**FILED**

AUG 3 - 1999

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

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

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

Case Nos. 94-CR-159-BU ✓  
97-CV-442-BU

**ORDER**

This matter comes before the Court upon the motion of Defendant, David Wayne Grubb, to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. Plaintiff, United States of America, has responded<sup>1</sup> and Defendant has replied thereto. Upon due consideration of the parties' submissions and the evidence presented at the evidentiary hearing held on July 27, 1999, the Court makes its determination.

On November 4, 1994, Defendant was charged in a one-count Indictment with possession of a firearm after former conviction of a felony in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). On January 10, 1995, Plaintiff filed a notice of eligibility for

---

<sup>1</sup> Defendant has moved the Court to strike Plaintiff's response brief on the basis that Plaintiff's initial request for an extension of time to file the response brief, which the Court granted, failed to demonstrate excusable neglect in accordance with Rule 6(b)(2), Fed.R.Civ.P. The Court, however, finds that Defendant's motion should be denied. Pursuant to Rule 6(e), Fed.R.Civ.P., Plaintiff had an additional three days to submit its response brief. Plaintiff's initial motion for extension of time was filed within that time period. Therefore, under Rule 6(b)(1), Fed.R.Civ.P., Plaintiff was only required to show cause for the needed extension and Plaintiff satisfied such requirement.

61

passed to  
counsel  
4/9

sentencing enhancement pursuant to 18 U.S.C. § 924(e)(1). Defendant filed a motion seeking to suppress from evidence the firearm at issue in the Indictment and a hearing was held in regard to the motion on January 12, 1995 and January 17, 1995. The Court denied the motion on January 17, 1995 and trial commenced immediately thereafter. On January 18, 1995, the jury found Defendant guilty of the crime charged in the Indictment. Defendant filed a motion for new trial on January 23, 1995. The basis of the motion was ineffective assistance of trial counsel. Defendant's trial counsel filed a motion to withdraw on February 23, 1995, which was granted by the Court on February 28, 1995. Other counsel was subsequently appointed to handle Defendant's sentencing. Defendant's motion for new trial was denied by the Court on April 17, 1995. On that same date, the Court sentenced Defendant to a term of imprisonment of 235 months. Defendant appealed his conviction and sentence alleging two grounds: (1) the Court erred in denying his motion to suppress because the search warrant was based upon stale information and the seizure of the firearm was the result of an illegal entry; and (2) the evidence presented at trial was insufficient to prove Defendant possessed the firearm. The Tenth Circuit Court of Appeals ("Tenth Circuit") rejected Defendant's grounds for appeal and affirmed Defendant's conviction and sentence on April 25, 1996. Defendant appealed and his petition for writ of certiorari was denied by the United States Supreme Court on June 17, 1996. Thereafter, Defendant timely filed his § 2255 motion.

In his § 2255 motion, Defendant challenges his conviction and sentence under 18 U.S.C. §§ 922(g)(1) and 924(a)(2) on the basis that (1) he was denied effective assistance from his counsel during pretrial and trial proceedings and from his counsel during sentencing proceedings; (2) he was denied effective assistance from his counsel during appellate proceedings; (3) the Court erred in the handling of his case; and (4) Plaintiff's counsel committed fundamental errors. The specific grounds are as follows:

(1) Defendant's trial counsel was ineffective in failing to interview and investigate prosecution and defense witnesses which precluded counsel from being properly prepared for Defendant's suppression hearing and trial;

(2) Defendant's trial counsel was ineffective in failing to seek to suppress the firearm based upon the Tulsa County deputy sheriffs' failure to comply with Okla. Stat. tit. 22, § 194 in the execution of the arrest warrant on June 17, 1994;

(3) Defendant's trial counsel was ineffective in failing to request that the witnesses at the suppression hearing be sequestered;

(4) Defendant's trial counsel was ineffective in failing to properly elicit testimony from Lloyd Anderson about his contact with the Tulsa County deputy sheriffs on June 17, 1994;

(5) Defendant's trial counsel was ineffective in failing to question the Tulsa County deputy sheriffs about whether Lloyd Anderson had given them Defendant's phone number when they came to

arrest Defendant at TransaKool Transport Refrigeration ("TransaKool");

(6) Defendant's trial counsel was ineffective in failing to question various witnesses as to whether Defendant had been seen in his residence during the period charged in the Indictment;

(7) Defendant's trial counsel was ineffective in failing to lodge any objection to Plaintiff's failure to provide to Defendant the videotape taken by Special Agent Peggy Tobin of the Bureau of Alcohol, Tobacco and Firearms ("ATF") during the execution of the search warrant on July 25, 1994;

(8) Defendant's trial counsel was ineffective in failing to properly advise Defendant as to testifying in his own behalf;

(9) Defendant's trial counsel was ineffective in failing to request the Court to correct its burden-shifting instructions on the essential elements of the offense under § 922(g)(1);

(10) Defendant's trial counsel's errors allowed Defendant to be found guilty without Plaintiff having to meet its burden of proof beyond a reasonable doubt that Defendant "knowingly" possessed the shotgun;

(11) Defendant's counsel at sentencing was ineffective in failing to make any argument for downward departure;

(12) Defendant's counsel at sentencing was ineffective in failing to require Plaintiff to produce "certified" copies of the judgments for Defendant's prior convictions;

(13) Defendant's appellate counsel was ineffective in failing to raise the issue that the jury could not have reached a verdict

of guilty beyond a reasonable doubt in light of the questions sent to the Court during its deliberations;

(14) Defendant's appellate counsel was ineffective in failing to challenge the Tulsa County deputy sheriffs' failure to comply with Okla. Stat. tit. 22, § 194 in the execution of the arrest warrant;

(15) Defendant's appellate counsel was ineffective in failing to challenge the Court's ruling on suppression of the evidence on the basis that Lloyd Anderson did not have the right to consent to the search of Defendant's residence;

(16) Defendant's appellate counsel was ineffective in failing to appeal the issue that the testimony did not establish that Defendant was in his residence during the period charged in the Indictment;

(17) The Court erred in denying Defendant's motion to suppress on the basis of an incorrect standard of review;

(18) The Court erred in giving a burden-shifting jury instruction on the essential elements of the offense under § 922(g)(1);

(19) The Court violated Defendant's Sixth Amendment right to counsel by not allowing counsel appointed for sentencing to assist Defendant with his motion for new trial;

(20) Plaintiff's counsel knowingly allowed the presentation of unconstitutionally obtained facts and evidence during the suppression hearing;

(21) Plaintiff's counsel failed to insure the jury was instructed properly on the essential elements of the offense under § 922(g)(1);

(22) Plaintiff's counsel failed to provide the defense with a copy of the videotape taken by ATF Special Agent Peggy Tobin;

(23) Plaintiff's counsel failed to validate or substantiate Defendant's prior convictions used to enhance his sentence; and

(24) Plaintiff's counsel failed to sequester Plaintiff's witnesses at the suppression hearing.

#### Ineffective Assistance of Counsel

To prevail on a Sixth Amendment claim for ineffective assistance of counsel, a defendant must establish (1) that his counsel's performance was deficient and (2) that the deficient performance prejudiced the defense. Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674 (1984). Under the first prong of the Strickland test, a defendant must establish "that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. The proper standard for attorney performance is that of reasonably effective assistance. Id. When a defendant complains of the ineffectiveness of counsel's assistance, the defendant must show that counsel's representation fell below an objective standard of reasonableness. Id. at 688, 104 S.Ct. at 2064.

"Judicial scrutiny of counsel's performance must be highly deferential." Id. at 689, 104 S.Ct. at 2065. The district court

must make every effort "to eliminate the distorting effects of hindsight, to reconstruct circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." Id. In addition, the district court must "indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.'" Id. (quoting Michel v. Louisiana, 350 U.S. 91, 101, 76 S.Ct. 158, 164, 100 L.Ed. 83 (1955)).

Under the second prong of Strickland test, a defendant must establish that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland, 466 U.S. at 694, 104 S.Ct. at 2068. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. However, the district court may not set aside a conviction or a sentence solely because the outcome of the proceeding would have been different absent counsel's deficient performance. Lockhart v. Fretwell, 506 U.S. 364, 368-69, 113 S.Ct. 838, 842-43, 122 L.Ed.2d 180 (1993). Instead, in order to establish the required prejudice, a defendant must demonstrate that counsel's deficient performance rendered the proceeding "fundamentally unfair or unreliable." Id. at 369, 113 S.Ct. at 842.

Failure to Seek Suppression of the Firearm Based upon the Tulsa County Deputy Sheriffs' Failure to Comply with Okla. Stat. tit. 22, § 194

Defendant claims that trial counsel was ineffective in failing to seek suppression of the firearm based upon the Tulsa County deputy sheriffs' failure to comply with Okla. Stat. tit. 22, § 194 in executing the arrest warrant. Section 194 provides:

The officer may break open an outer or inner door or window of a dwelling house, to execute the warrant, if after notice of his authority and purpose, he be refused admittance.

Defendant contends that the evidence at the suppression hearing revealed that while Deputy Sheriff Dan Fritz knocked and announced "sheriff's department" prior to entering Defendant's residence, he failed to state his purpose, that is, he was executing a state arrest warrant. Because Deputy Sheriff Fritz failed to state his purpose, Defendant contends that the deputy sheriffs' entry into Defendant's room was illegal. Defendant asserts that had trial counsel raised such issue at the suppression hearing, the firearm would have been suppressed as it was fruit of an illegal search.

In United States v. Mitchell, 783 F.2d 971 (10<sup>th</sup> Cir. 1986), cert. denied, 479 U.S. 860 (1986), the defendant argued that the entry of state police officers to execute state search warrants for the premises violated Okla. Stat. tit. 22, § 1228<sup>2</sup>. On appeal, the Tenth Circuit did not consider whether Section 1228 was satisfied by the state police officers or not. Instead, the Tenth Circuit

---

<sup>2</sup> During the events in Mitchell, Section 1228, dealing with the execution of search warrants, provided in pertinent part:

The officer may break open an outer or inner door . . . of a house, . . . to execute the warrant if, after notice of his authority and purpose he be refused admittance.

ruled that the standard for a state police officer executing a state warrant is one of reasonableness under the Fourth Amendment. The Tenth Circuit specifically stated: "[t]he issue in this case is one under the Fourth Amendment and the exclusion of evidence would only be warranted if there were a violation of the Constitution of the United States." Mitchell, 783 F.2d at 973. Consequently, because the deputy sheriffs in the instant case were attempting to execute a state arrest warrant when they entered Defendant's room, their actions are governed by the Fourth Amendment. Mitchell, 783 F.2d at 973-974. Accord, United States v. McCloud, 127 F.3d 1284, 1286, n. 1 (10<sup>th</sup> Cir. 1997).

In Wilson v. Arkansas, 514 U.S. 927, 934, 115 S.Ct. 1914, 1918, 131 L.Ed.2d 976 (1995), the Supreme Court held that the common-law "knock and announce" principle<sup>3</sup> is "an element of the reasonableness inquiry under the Fourth Amendment." However, in the opinion, the Supreme Court did not determine precisely what defect in or failure to give notice constitutes a Fourth Amendment violation. The Supreme Court declined to address specific matters because the questions had not been dealt with by the state court. Nonetheless, the Supreme Court in Wilson emphasized that the common law rule was not "an inflexible rule requiring announcement under all circumstances." Id.

---

<sup>3</sup> The common-law knock and announce principle requires that police officers knock on a dwelling's door and announce their identity and purpose before attempting forcible entry. Richards v. Wisconsin, 520 U.S. 385, 387, 117 S.Ct. 1416, 1417, 137 L.Ed. 615 (1997).

Prior to Wilson, the Supreme Court in Miller v. United States, 357 U.S. 301, 78 S.Ct. 1190, 2 L.Ed.2d 1332 (1958), addressed the failure of officers of complying with 18 U.S.C. § 3109<sup>4</sup>, the federal knock and announce statute, by not announcing their authority. In that case, a peace officer knocked on the defendant's door and upon inquiry from the defendant as to who was there, the peace officer replied in a low voice, "Police." Id. at 303, 78 S.Ct. 1192-1193. The defendant opened the door on an attached door chain and asked what the officers were doing there. Before either responded, the defendant attempted to close the door. Thereupon, the peace officer and a federal agent put their hands inside the door and pulled and ripped the chain off. The officer and agent then entered and arrested defendant. The officer and agent had no arrest or search warrant for the defendant. The Supreme Court held that the defendant's arrest, without prior notice of authority and purpose of the officer and agent as required by Section 3109, was unlawful and the evidence seized in the subsequent search was inadmissible.

While the Supreme Court's decision in Miller rested on the fact that the peace officer and federal agent did not announce their authority and purpose prior to entry of the defendant's residence, the Supreme Court's holding does not mandate that an announcement of authority and purpose must always precede an entry of a residence. Indeed, the Supreme Court in Miller suggested a

---

<sup>4</sup> Section 3109 is a codification of the common-law knock and announce principle. Sabbath v. United States, 391 U.S. 585, 591 n.8, 88 S.Ct. 1755, 1759 n. 8, 20 L.Ed.2d 828 (1968).

least one exception to that rigid rule, where announcing purpose would be a "useless gesture." Id. at 309, 78 S.Ct. at 1196. Moreover, another exception to the federal knock and announce statute for "exigent circumstances" has been recognized. United States v. Ramirez, 523 U.S. 65, 118 S.Ct. 992, 997-998, 140 L.Ed.2d 191 (1998)

Moreover, the Court finds Miller distinguishable from the instant case. Unlike the police officer in Miller, Deputy Sheriff Fritz did not state his identity in a low voice. Indeed, Deputy Sheriff Fritz testified that he hollered "sheriff's department." (January 12, 1995 Transcript, pg. 44, l. 14). In addition, Defendant did not answer the door upon hearing Deputy Sheriff Fritz's knock and inquire as to who was there and what the deputy sheriffs were doing there. There was no response to Deputy Sheriff Fritz's knock and identification at all. Deputy Sheriff Fritz waited for a response from Defendant's room for "15 to 30 seconds" (January 12, 1995 Transcript, pg. 44, 15-17). Upon receiving no response, Deputy Sheriff Fritz opened the door to Defendant's room. Deputy Sheriff DeVoe testified at the suppression hearing that when Deputy Sheriff Fritz opened the door to Defendant's room, he announced "sheriff's department" for a second time, with no response.<sup>5</sup>

Several courts, subsequent to Miller, have addressed the issue of a police officer failing to state his purpose prior to entry to

---

<sup>5</sup> Indeed, no response to Deputy Sheriff Fritz was given by Defendant as he was not present in his room at the time of entry.

execute a warrant, despite the fact that he has knocked on the door and identified himself as a police officer. These courts have found the execution of the warrant reasonable and the evidence discovered not subject to suppression. United States v. Heacock, 31 F.3d 249 (5<sup>th</sup> Cir. 1994) (execution of state search warrant deemed reasonable where door knocked down after repeated knocking and identification as "police" but no statement of purpose); United States v. Finch, 998 F.2d 349 (6<sup>th</sup> Cir. 1993) ("the identification of themselves as police and giving the occupants a reasonable time to respond are far more constitutionally significant than stating their purpose in demanding entry, and in the absence of special circumstances such as an inquiry from within, the failure to state the purpose does not require suppression of evidence"); United States v. Leichtnam, 948 F.2d 370 (7<sup>th</sup> Cir. 1991) (purpose not required when "officers have not knocked and announced "Police"); United States v. One Parcel of Real Property, 873 F.2d 7 (1<sup>st</sup> Cir. 1989) (focus "is properly not on what 'magic words' are spoken by the police, but rather on how these words or other actions of the police will be perceived by the occupant," and thus "when officers pound on the door, yelling 'Police!'" this is sufficient, as it shows they "want in, presumably to search or arrest, not census-taking"); People v. Saechao, 129 Ill.2d 522, 544 N.Ed.2d 745 (1989) (where officer "loudly announced that he was from the sheriff's office and requested admittance," this statement sufficient though specific purpose not announced). The Court finds these cases persuasive.

The Court concludes that Deputy Sheriff Fritz's failure to announce the purpose of the three deputy sheriffs for demanding entry into Defendant's room did not make their entry illegal under the Fourth Amendment. The Court finds that the deputy sheriffs' method of entry was not unreasonable under the circumstances. With Deputy Sheriff Fritz's knocking on the door and hollering "sheriff's department," any occupant in Defendant's room would have perceived that the deputy sheriffs wanted in the room to search or arrest. In the Court's view, it would not have made any difference to the occupant's perception if Deputy Sheriff Fritz, in addition to hollering "sheriff's department" would have also shouted "arrest warrant." Because the deputy sheriff's method of entry was not unreasonable under the Fourth Amendment, the Court finds that Defendant's ineffective assistance of counsel claim must fail. The Court concludes that trial counsel was not deficient in failing to raise the non-meritorious claim.

Failure to Interview and Investigate Prosecution and Defense Witnesses Which Precluded Counsel From Being Properly Prepared for Defendant's Suppression Hearing and Trial

Defendant contends that trial counsel was ineffective in failing to interview Deputy Sheriffs Dan Fritz, Derek DeVoe, Michael O'Keefe and ATF Special Agent Peggy Tobin prior to the suppression hearing and/or the trial. Defendant contends that by interviewing these witnesses, trial counsel would have ascertained that Deputy Sheriff Dan Fritz did not announce the purpose of demanding entry into Defendant's room on June 17, 1994. Defendant's failure to interview these witnesses, however, did not

prejudice the outcome of Defendant's suppression hearing and/or trial or render the proceedings fundamentally unfair. Even if Defendant's trial counsel had discovered from these witnesses that Deputy Sheriff Fritz did not announce his purpose when he knocked upon Defendant's door and had raised the issue during the suppression hearing and/or trial, the firearm would still not have been suppressed. The failure to announce the purpose of demanding entry did not make the entry of Defendant's room by the three deputy sheriffs illegal. Since the entry was not illegal, the seizure of the firearm, which was in plain view of the three deputy sheriffs upon entry, was not a violation of Defendant's Fourth Amendment rights. Consequently, Defendant cannot show a reasonable probability, that absent trial counsel's alleged errors, the result of the proceedings would have been different.

In regard to ATF Special Agent Tobin, Defendant additionally contends that had trial counsel interviewed her prior to trial, he would have been made aware of the videotape made by her in executing the search warrant on July 25, 1994. However, as hereinafter discussed, Defendant has not demonstrated that trial counsel was unaware of the videotape or that the failure of trial counsel to object to the videotape prejudiced his defense. Defendant further complains that trial counsel did not cross-examine ATF Special Agent Tobin. Defendant, however, has not shown that the failure to cross-exam ATF Special Agent Tobin at trial in any way prejudiced him. There has been no showing that absent the alleged trial counsel's errors, the result of the trial proceedings

would have been different. Nor has there been a showing that the trial proceedings were fundamentally unfair.

Defendant also claims that trial counsel was ineffective in failing to interview Robbie Satterfield prior to trial. Defendant asserts that because trial counsel did not interview Robbie Satterfield, he did not know that the children who were playing in the office where the firearm had been located were his children. Defendant contends that being a father, Robbie Satterfield could have been mad at someone putting his children in harm's way and this could have unduly influenced his testimony or made him omit exculpatory facts at trial.

The Court finds that Defendant has not demonstrated that trial counsel was deficient in failing to interview Robbie Satterfield. At the evidentiary hearing, trial counsel's investigator testified that he interviewed Robbie Satterfield prior to trial and a memorandum to trial counsel regarding the substance of the interview was introduced into evidence. Defendant failed to present any evidence to show that trial counsel was unaware that the children playing in the office where the firearm was located was Robbie Satterfield's children. The Court notes that such fact came out on direct examination of Robbie Satterfield at trial. Moreover, the investigator's memorandums to trial counsel of the interview with Kris Anderson and the interview with Defendant indicated that Robbie Satterfield moved the firearm to Defendant's room because his young daughter played in the office.

Defendant has not shown that it was necessary to impeach Robbie Satterfield by showing the alleged bias and prejudice. The Court further notes that trial counsel, during cross-examination, elicited favorable testimony from Robbie Satterfield. Indeed, Robbie Satterfield testified that he did not get Defendant's permission to move the firearm to Defendant's residence and did not tell Defendant he was moving the firearm to his room. The Court concludes that Defendant has not shown that trial counsel's performance in regard to interviewing Robbie Satterfield fell below the objective standard of reasonableness. Strickland, 466 U.S. at 688, 104 S.Ct. at 2064. Nor has Defendant shown that the alleged deficient performance prejudiced him.

In addition, Defendant asserts that trial counsel was ineffective in failing to interview Willa Thompson and Mike McClary prior to trial. As to Willa Thompson, Defendant contends that had trial counsel interviewed her, he could have made her aware that his questions related to a time frame of June 17, 1994 to July 25, 1994 instead of the "summer." Defendant contends that the exact periods he stayed with Willa Thompson during June and July would have placed him away from his residence. Defendant contends that this would have prompted a not guilty verdict because he was not at his residence "for weeks on end" as believed by the jury. As to Mike McClary, Defendant contends that had trial counsel interviewed him, he would have also discovered Defendant spent various nights with Mike McClary after the firearm was left at TransaKool and this would have placed him away from the residence.

The Court finds that Defendant has not demonstrated that trial counsel was deficient in failing to interview Willa Thompson and Mike McClary. Trial counsel's investigator testified at the evidentiary hearing that he interviewed both Willa Thompson and Mike McClary and memorandums of their interviews were introduced into evidence. Although the investigator did not specifically question about whether Defendant stayed with Willa Thompson and/or Mike McClary during the time alleged in the Indictment, the Court does not find that such omission falls below the objective standard of reasonableness. Defendant had told both the investigator and trial counsel that he had been staying at TransaKool. In his memorandum to trial counsel, the investigator stated that Defendant had told him that he had been staying periodically with Willa Thompson but that for his own security, he started sleeping in the room at TransaKool. At the evidentiary hearing, trial counsel, after Defendant's waiver of the attorney-client privilege, testified that Defendant had told him that he was in the room during the period of the Indictment. Moreover, trial counsel testified that Defendant informed him that he knew the firearm was in the room and that it gave him some sense of security knowing that the firearm was in the room.

The Court additionally finds that Defendant has not demonstrated any prejudice due to trial counsel's failure to interview Willa Thompson and Mike McClary concerning whether Defendant stayed with either of them during the entire period of June 17, 1994 through July 25, 1994. Even if these witnesses may

have been able to place Defendant away from his residence during June 17, 1994 through July 25, 1994, Defendant has not shown that these witnesses would have placed him away from his residence for the entire period charged in the Indictment.<sup>6</sup> As discussed infra., sufficient circumstantial evidence existed to support the jury's finding that Defendant constructively possessed the firearm. The fact that Defendant may have stayed at other person's residences during the time charged during the Indictment does not negate the jury's verdict.

Defendant further contends that trial counsel was ineffective in failing to interview Lloyd Anderson and Kris Anderson prior to trial. Defendant contends that had these witnesses been interviewed, trial counsel would have been able to elicit testimony that they had not seen Defendant enter his residence during the time period charged in the Indictment.

The Court notes that Defendant has raised as a separate ground for his ineffective assistance of counsel claim that trial counsel failed to elicit testimony from Lloyd Anderson and Kris Anderson that they had not seen Defendant in his residence during the time period charged in the Indictment. The separate ground is discussed infra. The Court incorporates that discussion and finds that Defendant has not demonstrated that trial counsel's alleged failure

---

<sup>6</sup> At the evidentiary hearing, Mike McClary testified that Defendant spent the majority of nights with him or his family. However, the Court notes that such testimony differs from the testimony given at trial that Defendant came by to see him "every now and then." (January 17, 1995 Transcript, p. 123, l. 23. The Court finds the testimony of Mr. McClary at the trial to be more credible.

to interview Lloyd Anderson and Kris Anderson prejudiced the outcome of the proceedings in any manner or rendered his trial proceedings fundamentally unfair or unreliable.

Failure to Sequester Witnesses at Suppression Hearing

Defendant contends that his trial counsel rendered ineffective assistance of counsel in failing to request the Court, pursuant to Rule 615, Fed.R.Evid.,<sup>7</sup> to sequester the witnesses during the suppression hearing. Defendant contends that both Tulsa County Deputy Sheriff Derek DeVoe and Tulsa County Deputy Sheriff Michael O'Keefe were able to hear the testimony of defense witness, Lloyd Anderson, prior to giving their testimony and were able to tailor their testimony accordingly. Defendant also states that Deputy Sheriff Michael O'Keefe was able to hear the testimony of Deputy Sheriff Derek DeVoe, prior to testifying, and therefore, was able to tailor his testimony to Deputy Derek DeVoe's testimony.

Upon review, the Court concludes that Defendant's claim of ineffective assistance of counsel based upon a failure to invoke the rule of sequestration is without merit. Defendant has not identified what testimony of Deputy Sheriff Derek DeVoe and Deputy Sheriff Michael O'Keefe was tailored. In addition, there has been no showing by Defendant that the deputy sheriffs falsified or fabricated their testimony in any manner. In the Court's view, Defendant has not overcome the presumption that trial counsel's

---

<sup>7</sup>Rule 615 provides in pertinent part:

"At the request of a party the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses...."

action in not invoking the rule of sequestration was sound trial strategy. Strickland, 466 U.S. at 689, 104 S.Ct. at 2065. Furthermore, the Court concludes that Defendant has failed to demonstrate that the failure of trial counsel to request the Court to sequester the witnesses was prejudicial to his defense.

Failure to Properly Elicit Testimony from Lloyd Anderson About Contact with Tulsa County Deputy Sheriffs on June 17, 1994 and Failure to Question Tulsa County Deputy Sheriffs About Whether Lloyd Anderson Had Given Them Defendant's Phone Number When They Came to Arrest Defendant

Defendant contends that his trial counsel was ineffective in failing to elicit testimony at the suppression hearing from Lloyd Anderson and the three deputy sheriffs that on June 17, 1994, Lloyd Anderson had told the three deputy sheriffs, prior into their entry into Defendant's room, that Defendant was at work and that Lloyd Anderson had given the three deputy sheriffs Defendant's place of employment and phone number in order to contact Defendant. The Court finds that Defendant's counsel was not deficient in his questioning at the suppression hearing. Evidence was elicited that Lloyd Anderson had told the three deputies that Defendant was at work at Tierra Vista when they came to execute the arrest warrant. However, the fact that Lloyd Anderson may have told the deputy sheriffs that Defendant was at work at Tierra Vista and may have in fact given the deputy sheriffs Defendant's phone number prior to the entry of Defendant's room did not make the three deputy sheriffs' entry unlawful. As noted by the Tenth Circuit, the record in the case also revealed that Lloyd Anderson told Deputy Sheriff Dan Fritz that Defendant may have been in his room asleep.

The Tenth Circuit stated that "[a]n arrest warrant founded on probable cause implicitly carries with it the authority to enter a suspect's dwelling when there is reason to believe the suspect is within." United States v. Grubb, 1996 WL 200326 at \*4 (10<sup>th</sup> Cir. 1996), cert. denied, 518 U.S. 1011, 116 S.Ct. 2537, 135 L.Ed.2d 1059 (1996) (quoting Payton v. New York, 445 U.S. 573, 603, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980)). According to the Tenth Circuit, the deputy sheriffs had reason to believe Defendant was within his room based upon the Lloyd Anderson's statement to Deputy Sheriff Derek DeVoe that Defendant "may be asleep." United States v. Grubb, 1996 WL 200326 \*4. Thus, the deputy sheriffs' entry into Defendant's room was not illegal.

Upon review, the Court finds that Defendant has not demonstrated that trial counsel's questioning of Lloyd Anderson and the three deputy sheriffs about their contact on June 17, 1994 fell below an objective standard of reasonableness. Strickland, 466 U.S. at 688, 104 S.Ct. at 2064. Further, the Court finds that Defendant has not demonstrated that any alleged errors of trial counsel in questioning these witnesses prejudiced his defense or rendered the proceedings fundamentally unfair or unreliable.

Failure to Question Various Witnesses as to Whether Defendant Had Been Seen in His Residence During the Period Charged in the Indictment

Defendant claims that his trial counsel was ineffective in failing to question Lloyd Anderson, Kris Anderson, Robbie Satterfield and Willa Thompson at trial if they had seen Defendant in his room during the period charged in the Indictment. Defendant

maintains that each of these witnesses would have answered in the negative. Defendant contends that the jury labored under the misapprehension that Defendant was in his room "for weeks on end." Defendant asserts that if trial counsel had properly question these witnesses, such fact would have been dispelled.

The Court finds that trial counsel's failure to question Lloyd Anderson, Kris Anderson and Robbie Satterfield as to whether they had seen Defendant in his room from June 17, 1994 to July 25, 1994 was not prejudicial. Nor did it render the trial proceeding fundamentally unfair or unreliable. The fact that these witnesses may not have seen Defendant in his room during this time period does not establish that Defendant was never in his room during this time period. In the affidavit submitted with Defendant's motion, Lloyd Anderson states that the reason he did not see Defendant in his residence was because Defendant normally left for work an hour before Lloyd Anderson arrived at TransaKool and Defendant did not come back to TransaKool until after he closed for the day. Although Kris Anderson and Robbie Satterfield do not proffer an explanation for not seeing Defendant, it is plausible that they did not see Defendant because he had already left for work when they arrived at TransaKool and he did not come back until after they had left for the day.

Lloyd Anderson, in the affidavit, also states that he would have clarified his testimony at trial that he knew Defendant was not staying at his residence every night of the period in question. However, Lloyd Anderson, in clarifying his testimony, does not

testify that Defendant was never his in room during the time charged in the Indictment. Moreover, at the evidentiary hearing, Lloyd Anderson could not positively testify that Defendant was never in his room during the time charged in the Indictment.

Defendant states that if trial counsel questioned Willa Thompson she also would have testified that she had not seen him in the room. Defendant, however, submits no affidavit by Willa Thompson to support such statement and Willa Thompson did not appear as a witness at the evidentiary hearing to testify to such statement.

Furthermore, as previously discussed, trial counsel testified at the evidentiary hearing, after Defendant's waiver of the attorney-client privilege, that Defendant had informed him that he was in the room during the period charged in the Indictment and that he was aware of the firearm being in the room.

On direct appeal of Defendant's conviction, the Tenth Circuit found sufficient circumstantial evidence existed to support the jury's finding beyond a reasonable doubt that Defendant constructively possessed the firearm. The Tenth Circuit stated that in order to prove constructive possession by circumstantial evidence in a joint occupancy case, the government had to show "some evidence supporting at least a plausible inference that the defendant had knowledge of and access to the weapon." United States v. Grubb, 1996 WL 200326 at \*5 (quoting United States v. Mills, 29 F.3d 545, 550 (10<sup>th</sup> Cir. 1994) quoting United States v. Mergerson, 4 F.3d 337, 349 (5<sup>th</sup> Cir. 1993), cert. denied, 510 U.S.

1198, 114 S.Ct. 1310, 127 L.Ed.2d 660 (1994)). The Tenth Circuit found it was reasonable to infer that Defendant had knowledge of and access to the firearm because it was in plain view in his 12-foot by 12-foot room. Also, in plain view was the ammunition for the firearm. The Tenth Circuit found it was logical and reasonable to infer that Defendant allowed the firearm to remain in his room and that he brought the ammunition for the shotgun into the room.

Even if the named witnesses were to testify that they did not see Defendant in his room during the time period charged in the Indictment, the Court concludes that sufficient circumstantial evidence still existed to support the jury's finding of Defendant's constructive possession of the firearm. During the time in question, Lloyd Anderson, Kris Anderson and Robbie Satterfield were the only employees of TransaKool. Although there was testimony as to use of temporary workers at TransaKool, Kris Anderson testified at trial that the temporary workers did not go into Defendant's room. Specifically, he testified: "Not the temporary, no because we didn't let anybody up there." (January 17, 1995 Transcript, p. 76). Kris Anderson testified that the firearm was unloaded when the firearm was located in Lloyd Anderson's office. Robbie Satterfield also testified that the firearm was unloaded when he placed the firearm in Defendant's room. Mike McClary testified that when he left the firearm at TransaKool, it was unloaded. However, Deputy Sheriff Derek DeVoe and Deputy Sheriff Michael O'Keefe testified that on June 17, 1994, the firearm was loaded and that the ammunition was taken out of the firearm and placed upon

the wicker shelf in Defendant's room. Deputy Sheriff O'Keefe also testified that there was a black nylon bandoleer that contained ammunition for the firearm in Defendant's room. ATF Special Agent Peggy Tobin testified that on July 25, 1994, the firearm was loaded with ammunition. She also testified that a sling belt of ammunition was in Defendant's room. All of the TransaKool employees testified that they had not placed any ammunition in Defendant's room. It is logical and reasonable for the trier of fact to find that Defendant allowed the firearm to remain in his room and that he brought ammunition into the room and loaded the firearm. Accordingly, the Court finds that Defendant has not demonstrated that trial counsel's failure to question witnesses as to whether they had seen Defendant in his room prejudiced Defendant.

Failure to Object to Plaintiff's Failure to Provide Videotape

Defendant alleges that trial counsel rendered ineffective assistance of counsel in not objecting at trial to Plaintiff's failure to provide Defendant a copy of the videotape which had been made by ATF Special Agent Peggy Tobin during the execution of the search warrant on July 25, 1994. Defendant, however, has not shown that Plaintiff failed to provide trial counsel an opportunity to obtain a copy of the videotape prior to trial. Nevertheless, even if Plaintiff had failed to provide the videotape to trial counsel, the Court finds that Defendant has not demonstrated that his trial counsel's alleged error of not objecting to the videotape prejudiced him in any manner. The procedural aspects of the

execution of the search warrant on July 25, 1994 were never challenged. Moreover, although the fact that the videotape was taken was testified to by ATF Special Agent Tobin, the videotape itself was never offered into evidence.

Defendant maintains that he was the only person who could have ascertained if the videotape showed anything exculpatory and that by being denied the opportunity to view the videotape, all exculpatory benefit was lost. However, the Court notes that in addition to the videotape, ATF Special Agent Tobin took photographs of Defendant's room prior to the search. These photographs were introduced into evidence at trial. Defendant had the opportunity to view these photographs and obtain any exculpatory evidence from them.

Defendant complains that trial counsel should have at least requested a corrective instruction when the videotape was mentioned by ATF Special Agent Tobin during her testimony. The Court, however, finds that a corrective instruction was unnecessary. The videotape was not admitted into evidence by Plaintiff. It was never shown to the jury. Therefore, there was no need for the jury to be instructed to disregard the contents of the videotape.

Failure to Properly Advise Defendant as to Testifying in His Own Behalf at His Trial

Defendant contends that trial counsel rendered ineffective assistance of counsel in failing to advise him that due to his stipulation at trial of previously being convicted of a felony, he could testify in his own defense without the name and nature of the prior convictions being elicited on cross-examination. Defendant

evidence may in a proper case be admissible for impeachment, even if for no other purpose, Fed. Rule Evid. 609, petitioner did not testify at trial. . . .")

In this case, trial counsel properly advised Defendant that it was his right to testify in his own defense and properly advised him as to the risk of the nature of his prior convictions being admitted into evidence if he took the stand in his own defense. The record reflects that after being advised by trial counsel of the risk of testifying and after being advised by both trial counsel and the Court that it was Defendant's right to testify or not testify, Defendant voluntarily chose not to testify in his own defense. The Court concludes that Defendant's trial counsel's performance in regard to advising Defendant as to testifying on his own behalf did not fall below an objective standard of reasonableness. Strickland, 466 U.S. at 688, 104 S.Ct. at 2064.

Failure to Request the Court to Correct Its Burden-Shifting Instructions on the Essential Elements of the Offense Under § 922(g)(1)

Defendant contends trial counsel was ineffective in allowing the Court to give the jury a burden-shifting instruction on the essential elements of the § 922(g)(1) offense. According to Defendant, the Court impermissibly shifted the burden to Defendant to prove his innocence, by instructing the jury that he had stipulated to all essential elements of the offense. Specifically, Defendant contends the Court failed to read the numerical delineations set forth in the written jury instruction concerning the essential elements of a § 922(g)(1) offense, and in so doing,

gave the incorrect impression that there were two elements for proving the § 922(g)(1) offense, instead of three elements, and that Defendant had stipulated to both elements.

The Court has reviewed the transcript of its reading of the written jury instruction. Although the Court did not specifically read the numerical delineations set forth in the written jury instruction, the Court's reading of that instruction did not indicate that there were only two essential elements of the § 922(g)(1) offense and that Defendant had stipulated to both of the essential elements. The Court correctly read that the three essential elements of the § 922(g)(1) offense and correctly read that Defendant had only stipulated to two of the elements: Defendant has been convicted of a crime punishable by imprisonment for a term exceeding one year and such possession was in or affecting in interstate commerce. The jury instruction, as read, did not impermissibly shift the burden of proof to Defendant. The Court further notes that prior to deliberations, the jury was given the written jury instruction which set forth the numerical delineations. There is no indication that the jury was confused in any manner as to the fact that Plaintiff had to prove beyond a reasonable doubt that Defendant knowingly possessed the firearm as charged in the Indictment. The Court finds that trial counsel's failure to object to the Court's reading of the jury instruction did not fall below an objective standard of reasonableness. Strickland, 466 U.S. at 688, 104 S.Ct. 2064. Further, the Court finds that Defendant has not shown that trial counsel's alleged

error in objecting to the Court's reading of the jury instruction prejudiced the defense.

Trial Counsel's Errors Allowed Defendant to be Found Guilty Without Plaintiff Having to Meet Its Burden of Proof Beyond a Reasonable Doubt that Defendant "Knowingly" Possessed the Shotgun

Defendant primarily requests the Court to conduct a de novo review and decide whether his § 922(g)(1) conviction was supported by sufficient evidence. However, the Tenth Circuit, on direct appeal, specifically determined that sufficient circumstantial evidence existed to support the jury's finding that Defendant constructively possessed the firearm beyond a reasonable doubt. It is well-established that a § 2255 proceeding is not to be used to address matters that were disposed of on direct appeal. United States v. Cox, 83 F.3d 336, 342 (10<sup>th</sup> Cir. 1996); United States v. Warner, 23 F.3d 287, 291 (10<sup>th</sup> Cir. 1994); United States v. Cook, 997 F.2d 1312, 1317 n. 6 (10<sup>th</sup> Cir. 1993). Therefore, the Court shall not address the sufficiency of the evidence for Defendant's § 922(g)(1) conviction in this § 2255 proceeding.

In his briefing, Defendant does raise an error of trial counsel. Defendant asserts that trial counsel failed to remind the jury that Kris Anderson testified at trial that "we would watch football up there and races on Saturdays and some when David was not there." (January 17, 1995 Transcript, pg. 76, ll. 7-8). Defendant asserts that it was highly possible that one of the viewers "re-loaded" the shotgun, unbeknownst to Defendant and placed it out of sight of Defendant and trial counsel should have advanced this theory at trial.

Upon review, the Court finds that Defendant has failed to demonstrate prejudice for trial counsel's failure to advanced the stated theory. The evidence in the case indicated that the firearm was loaded on two different times, namely, prior to the attempted execution of the arrest warrant on June 17, 1994 and prior to the execution of the search warrant on July 25, 1994. Thus, a viewer of the football games and races would have had to load the firearm on two different occasions. Also, the evidence showed that the firearm was in plain view and was in the same place on June 17, 1994 and July 25, 1994. The firearm thus was not placed out of sight as stated by Defendant. The Court also notes that Kris Anderson did not specifically state in his testimony that the viewers watched football games and races during the period of June 17, 1994 through July 25, 1994 and Defendant, in his motion, has not presented evidence to that effect. Kris Anderson, who was one of the viewers of the football games and races, also testified that he had never seen the sling belt with ammunition, until it was taken out of Defendant's room during the execution of the search warrant on July 25, 1995. The testimony at trial, however, revealed that sling belt had been in plain view in Defendant's room on both June 17, 1994 and July 25, 1994. Given these circumstances, the Court concludes that trial counsel's failure to advance the theory urged by Defendant did not prejudice the outcome of the proceeding or render it fundamentally unfair or unreliable.

Failure of Sentencing Counsel to Make Any Argument for Downward Departure

Defendant asserts that his counsel during sentencing proceedings was ineffective in failing to request a downward departure on the basis that his criminal history category over-represented the seriousness of his criminal past or the likelihood that the defendant would commit further crime. Defendant states that by failing to request a downward departure, sentencing counsel precluded the Court from exercising the option of a downward departure. Defendant states that the Court had numerous avenues to depart from the basic classification and the Court could have departed downward due to the fact Defendant had shown himself to be rehabilitated through a continuous work history since his last serious involvement with the law.

The Court finds that Defendant has not demonstrated that his sentencing counsel was deficient in failing to request a downward departure. Moreover, even if Defendant has shown his sentencing counsel was deficient, he has not shown that counsel's performance prejudiced the defense. Defendant's past does not present a strong case for departure. His criminal history category of VI (13 or more points) resulted from his accumulation of 15 points for convictions for robbery by force, assault with a dangerous weapon, driving while impaired, assault second degree, aggravated assault and battery and assault on a police officer. Moreover, Defendant's criminal conduct continued after release from incarceration in 1991 and up until the current offense. Cf. U.S.S.G. § 4A1.3 (citing as an example of possibly over-representative criminal history level, case of defendant with two minor misdemeanor convictions close to

ten years prior to the instant offense and no other evidence of criminal behavior in intervening period.)

In his briefing, Defendant has only delineated one possible basis for a downward departure. Defendant asserts that the Court could have departed downward because Defendant had shown himself to be rehabilitated through a continuous work history since his last serious involvement with the law. A defendant's employment record is categorized in the Sentencing Guidelines with other specific offender characteristics as an ordinarily discouraged basis for departure. United States v. Jones, 158 F.3d 492, 498 n. 6 (10<sup>th</sup> Cir. 1998) (citing U.S.S.G. Ch. 5, Pt. H, intro comment.) While discouraged factors are not "necessarily inappropriate" bases for departure, they are to be relied on only "in exceptional cases." Id. The Court finds that Defendant has not demonstrated that his situation is an exceptional case.

Failure of Sentencing Counsel to Require Plaintiff to Produce "Certified" Copies of Prior Convictions

Defendant contends that his counsel during sentencing proceedings was ineffective in failing to require Plaintiff to produce certified copies of his prior convictions in order to prove by a preponderance of the evidence that Defendant had the prior convictions. The Court, however, finds that counsel did not render ineffective assistance in failing to require Plaintiff to produce the certified copies. In the instant case, the prior convictions were set forth in the presentence investigation report. The government may satisfy its burden of establishing the existence of prior convictions by unconverted statements in the presentence

investigation report. United States v. Cordero, 42 F.3d 697, 701 (1<sup>st</sup> Cir. 1994); United States v. Redding, 16 F.3d 298, 302 (8<sup>th</sup> Cir. 1994). Defendant has never denied the existence of the prior convictions. Indeed, Defendant listed the prior convictions in the background section of his § 2255 motion and testified to those convictions during the evidentiary hearing. The fact that counsel did not require Plaintiff's counsel to produce the certified copies of the judgments of Defendant's prior convictions did not in any way prejudice Defendant's sentencing.

Failure of Appellate Counsel to Raise Issue That Jury Could Not Have Reached a Verdict of Guilty Beyond a Reasonable Doubt in Light of Questions Sent to Court During Deliberations

Defendant contends that appellate counsel was ineffective in failing to raise on appeal that the jury could not have reached a verdict beyond a reasonable doubt in light of two questions sent to the Court during deliberations. The two questions sent by the jury during deliberations were: (1) "Can power and intention be separated? (i.e., Can we decide power or intention since it was not proven outright)" and (2) "Define dominion." As to the first question, Defendant states that if the jury believed that Plaintiff had not proven the power to exercise dominion over the firearm, then Plaintiff's claim as to constructive possession had to fail. Further, Defendant contends that if the jury believed intention had not been proven then there was no finding of mens rea or criminal intent. In regard to the second question, Defendant asserts that if the jury did not understand the definition of dominion, then the jury verdict was a compromise verdict.

When a defendant alleges his appellate counsel rendered ineffective assistance by failing to raise an issue on appeal, the district court is to examine the merits of the omitted issue. United States v. Cook, 45 F.3d 388, 392 (10<sup>th</sup> Cir. 1995). Upon review, the Court finds that the challenged omitted issue is without merit. The Court, after receiving the questions from the jury, instructed the jury with agreement from both sides that the instructions which the jury had been given contained all the law that the jury was to consider in the case. Upon receipt of the Court's response to the jury's questions, the jury continued to deliberate and returned with a verdict of guilty. The jury was thereafter individually polled as to whether their verdict was guilty and each juror responded in the affirmative. The jury had been instructed as to proving facts by circumstantial evidence. It had also been instructed that in order to establish the § 922(g)(1) offense, Plaintiff had to prove the essential elements of the § 922(g)(1) offense, specifically, that Defendant knowingly possessed the firearm beyond a reasonable doubt. The fact that the jury may have requested a definition of "dominion" does mean that the jury did not find that Defendant constructively possessed the firearm beyond a reasonable doubt. The jury was instructed that a person is in constructive possession of an item if the person knowingly has been the power and intention, at a given time, "to exercise dominion or control over a thing." There was no indication that the jury did not understand the meaning of control. Furthermore, the Tenth Circuit, on direct appeal, determined that sufficient

circumstantial evidence existed in the record to support the jury's finding that Defendant constructively possessed the firearm beyond a reasonable doubt.

As Defendant's omitted claim is without merit, the Court finds that appellate counsel was not ineffective for failing to raise the claim on direct appeal. Medina v. Barnes, 71 F.3d 363, 367 (10<sup>th</sup> Cir. 1995) ("Because these claims were meritless, any allegation that appellate counsel was ineffective for failing to raise them on direct appeal must also fail.")

Failure of Appellate Counsel to Challenge Tulsa County Deputy Sheriffs' Failure to Comply with Okla. Stat. tit. 22, § 194 in the Execution of Arrest Warrant

Defendant contends that appellate counsel was ineffective in failing to challenge the seizure of the firearm on the basis that the deputy sheriffs failed to comply with Okla. Stat. tit. 22, § 194 in the execution of the arrest warrant. The Court has previously addressed the merits of this issue. Because the issue lacks merit, the Court finds that appellate counsel was not ineffective in failing to raise this omitted issue on appeal. Cook, 45 F.3d at 393 ("If the omitted issue is without merit, counsel's failure to raise it `does not constitute constitutionally ineffective assistance of counsel.'") (quoting United States. v. Dixon, 1 F.3d 1080, 1084 n.5 (10<sup>th</sup> Cir. 1993)).

Failure of Appellate Counsel to Challenge the Court's Ruling on Suppression of the Evidence on the Basis that Lloyd Anderson Did Not Have Right to Consent to Search of Defendant's Room

Defendant asserts that appellate counsel was ineffective in failing to challenge the Court's ruling on suppression of the

evidence on the basis that Lloyd Anderson did not have the right to consent to search of Defendant's room. The Court, however, finds that appellate counsel did not render ineffective assistance of counsel. Appellate counsel challenged the legality of the deputy sheriffs' entry into Defendant's room on appeal. The Tenth Circuit found that the deputy sheriffs' entry into Defendant's room was lawful to execute the arrest warrant founded upon probable cause as the deputy sheriffs had reason to believe Defendant was within the room. Therefore, even if appellate counsel had challenged the legality of the deputy sheriffs' entry in Defendant's room on the basis that Lloyd Anderson did not have the right to give consent to search Defendant's room, such issue would not have changed the finding of the Tenth Circuit. Because the deputy sheriffs had an arrest warrant founded upon probable cause and had a reason to believe that Defendant was within the room, they had a right to enter the room. Grubb, 1996 WL 200326 at \* 4. Therefore, appellate counsel was not deficient in failing to raise this omitted issue on appeal. Cook, 45 F.3d at 393.

Failure of Appellate Counsel to Appeal Issue that Testimony Did Not Establish Defendant Was in His Residence During Period Charged in the Indictment

Defendant contends that appellate counsel was ineffective in failing to raise on appeal the issue that the testimony at trial did not establish that Defendant was in his residence during the period charged in the Indictment. The Court, however, disagrees. Although there may not have been testimony from the witnesses at trial that they saw Defendant in his room during the period charged

in the Indictment, Plaintiff, as found by the Tenth Circuit and as previously discussed herein, presented sufficient circumstantial evidence to support the jury's finding that Defendant constructively possessed the firearm. Accordingly, appellate counsel was not ineffective for failing to raise this omitted issue on appeal. Cook, 45 F.3d at 393.

#### Judicial Errors

Defendant contends that the Court made errors in the handling of Defendant's case which require setting aside his conviction and sentence. These alleged judicial errors, as previously enumerated, include denying Defendant's motion to suppress on the basis of an incorrect standard of review; giving a burden-shifting jury instruction on the essential elements of the offense under § 922(g)(1); and violating Defendant's Sixth Amendment right to counsel by not allowing counsel appointed for sentencing to assist Defendant with his motion for new trial.

None of the judicial errors alleged by Defendant were raised on direct appeal. Plaintiff, in its response brief, has argued that Defendant is procedurally barred from raising the judicial errors because he has not shown cause and prejudice for failure to raise these errors. This Court agrees.

Section 2255 is not available to test the legality of matters which should have been raised on direct appeal. Cox, 83 F.3d at 341. A defendant's failure to address an alleged error on direct appeal bars review unless he can show cause for excusing his procedural default and actual prejudice from the alleged error or

unless he can show that a fundamental miscarriage of justice will occur if the claim is not addressed. Warner, 23 F.3d at 291. In the instant case, Defendant has not shown cause and resulting prejudice to obtain review of the defaulted issues. Nor has he shown that a fundamental miscarriage of justice will occur if the issues are not reviewed. Therefore, the Court finds that Defendant is procedurally barred from raising the defaulted issues.<sup>8</sup>

Nevertheless, even if Defendant were not procedurally barred from raising his defaulted issues, the Court concludes that Defendant's allegations of judicial errors are without merit and do not warrant relief under § 2255. As to the first allegation, Defendant complains that the Court erred in denying his motion to suppress on the basis that Lloyd Anderson had given the deputy sheriffs permission to search Defendant's room. However, regardless of the Court's specific reason for denying Defendant's motion to suppress, the Tenth Circuit, on direct appeal, concluded that the three deputy sheriffs' entry into Defendant's room was not illegal. In regard to the second allegation, the Court has previously determined herein that it correctly read the jury instruction setting forth the essential elements of the § 922(g)(1) offense. It has also previously determined that the jury instruction did not impermissibly shift the burden of proof to

---

<sup>8</sup> A defendant may establish cause for default by showing ineffective assistance of counsel. Cox, 83 F.3d at 341. Although Defendant has alleged ineffective assistance of appellate counsel based upon various grounds, he has not specifically alleged that his appellate counsel was ineffective in failing to raise the purported judicial errors on direct appeal.

Defendant. Turning the last allegation, the Court concludes that it did not violate Defendant's Sixth Amendment right to counsel. The Court did not prohibit sentencing counsel from assisting Defendant with his motion for new trial. At the time sentencing counsel was appointed by the Court, Defendant had already filed his motion for new trial. If Defendant desired sentencing counsel to provide assistance in supplementing the motion for new trial, Defendant could have asked sentencing counsel for such assistance. There is no indication in the record that Defendant ever requested any assistance from sentencing counsel.

#### Prosecutorial Errors

Defendant has raised various errors on the part of Plaintiff's counsel which he maintains also require his conviction and sentence be set aside. Although these prosecutorial errors were not raised during trial or on direct appeal, Plaintiff, in its response brief, has not raised procedural bar as a defense to Defendant's claims. Although the Court may invoke the procedural bar defense sua sponte, see, Hines v. United States, 971 F.2d 506, 508 (10<sup>th</sup> Cir. 1992), the Court declines to raise it in this case as the Court has not previously afforded Defendant an opportunity to respond to the defense as to the claims of prosecutorial errors. Id. at 509. Therefore, the Court proceeds to consider Defendant's claims of prosecutorial errors.

#### Plaintiff's Counsel Knowingly Allowed the Presentation of Unconstitutionally Obtained Facts and Evidence During the Suppression Hearing

Defendant contends that Plaintiff's counsel allowed the deputy sheriffs, who entered Defendant's room on June 17, 1994 to execute the arrest warrant, to testify at the suppression hearing and at trial without establishing that they had complied with Okla. Stat. tit. 22, § 194. Defendant contends that Plaintiff's failure to elicit testimony that the requisite procedures of § 194 were followed amounted to prosecutorial misconduct.

The Court has previously found that the deputy sheriffs' failure to comply with § 194 did not violate Defendant's Fourth Amendment rights. Thus, the Court concludes that the failure of Plaintiff's counsel to elicit testimony concerning the requirements of § 194 does not require vacating of Defendant's conviction and sentence.

Plaintiff's Counsel Failed to Insure the Jury was Instructed Properly on the Essential Elements of the Offense Under § 922(g)(1)

Defendant contends that Plaintiff's counsel failed to insure that the jury was instructed properly on the essential elements of the § 922(g)(1) offense. However, the Court has previously found that the jury was properly instructed on the essential elements of the § 922(g)(1) offense. Defendant's claim of alleged prosecutorial misconduct on the part of Plaintiff's counsel for failing to have the challenged jury instruction corrected by the Court is therefore without merit.

Plaintiff's Counsel Failed to Provide the Defense with a Copy of the Videotape Taken by ATF Special Agent Peggy Tobin

Defendant contends that Plaintiff's counsel failed to provide a copy to the defense of the videotape taken by ATF Special Agent

Peggy Tobin during the execution of the search warrant on July 25, 1994. Defendant contends that Plaintiff's failure to provide the videotape constituted a violation of Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963).

In Brady, the Supreme Court held that "suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." Id. at 87, 83 S.Ct. at 1196-97.

In order to establish a Brady violation, the defendant bears the burden of establishing (1) that the prosecution suppressed evidence; (2) that the evidence was favorable to the accused; and (3) that the evidence was material. United States v. Gonzalez-Montoya, 161 F.3d 643, 649 (10<sup>th</sup> Cir. 1998), cert. denied, \_\_\_ U.S. \_\_\_, 119 S.Ct. 184, 143 L.Ed.2d 377(1999) (citing Smith v. Secretary of New Mexico Dept. of Corrections, 50 F.3d 801, 824 (10<sup>th</sup> Cir.), cert. denied, 516 U.S. 905, 116 S.Ct. 272, 133 L.Ed.2d 193 (1995)). The materiality requirement is met "only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." United States v. Bagley, 473 U.S. 667, 682, 105 S.Ct. 3375, 3383, 87 L.Ed.2d 481 (1985); United States v. Hernandez, 94 F.3d 606, 610 (10<sup>th</sup> Cir. 1996). In other words, evidence is material "when the Government's evidentiary suppression undermines confidence in the outcome of the trial." Kyles v. Whitley, 514 U.S. 419, 434, 115

S.Ct. 1555, 1566, 131 L.Ed.2d 490 (1995) (quoting Bagley, 473 U.S. at 678, 105 S.Ct. at 3381).

Upon review, the Court finds that Defendant has failed to demonstrate that Plaintiff's counsel suppressed the videotape to Defendant's counsel. However, even if Defendant had made such a showing, the Court concludes that Defendant has not shown that the evidence was material to the finding of guilt or punishment. Defendant has not shown a reasonable probability that, had the evidence been disclosed to Defendant's counsel, the jury's verdict would have been different. Furthermore, the Court notes that any exculpatory evidence which may have been on the videotape could have been shown through photographs which were taken by ATF Special Agent Peggy Tobin during the search. Those photographs were offered into evidence and Defendant had an opportunity to present any exculpatory evidence through those photographs. The videotape would have been merely cumulative evidence.

Plaintiff's Counsel Failed to Validate or Substantiate Defendant's Prior Convictions Used to Enhance His Sentence

Defendant contends that Plaintiff's counsel failed to present certified copies of Defendant's prior convictions to substantiate their use for enhancement of his sentence. However, Plaintiff's failure to present certified copies of Defendant's prior convictions does not require vacating Defendant's sentence. As previously discussed, Plaintiff could rely upon unconverted statements in the presentence investigation report to satisfy its burden of proving the prior convictions. Cordero, 42 F.3d at 701; Redding, 16 F.3d at 302. In the instant case, Plaintiff did in

fact rely upon the unconverted statements in the presentence investigation report and in so doing, satisfied its burden in proving Defendant's prior convictions.

Plaintiff's Counsel Failed to Sequester Plaintiff's Witnesses at the Suppression Hearing

Defendant contends that Plaintiff's counsel failed to sequester Plaintiff's witnesses at the suppression hearing. The Court, however, finds that Plaintiff's failure to sequester the witnesses does not warrant vacating Defendant's conviction and sentence. Defendant has not cited to any authority which requires the government, in a criminal case, to request the Court under Rule 615, Fed.R.Evid., to sequester witnesses at a suppression hearing, if a defendant fails to make such request. Moreover, Defendant has not demonstrated how he was prejudiced by the failure of Plaintiff's witnesses not being sequestered during the suppression hearing.

Conclusion

Based upon the foregoing, Defendant's Motion to Vacate, Set Aside, or Correct Sentence (Docket Entry #48) is DENIED. Defendant's Motion to Strike Government's Response (Docket Entry #55) is DENIED. Judgment shall issue forthwith.

ENTERED this 3rd day of August, 1999.

  
MICHAEL BURRAGE  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

AUG 2 1999 *B*

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA

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

V.

Case Number: 99-CR-024-004-C ✓

William Oscar Noller, Sr.

C.W. Hack  
Defendant's Attorney

ENTERED ON DOCKET

THE DEFENDANT:

DATE 8/2/99

Pleaded guilty to Count 1 of the indictment on April 12, 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 371	Conspiracy to Commit an Offense Against or Defraud the United States	5/31/98	1

As pronounced on July 26, 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 29<sup>th</sup> day of July, 1999.

*H. Dale Cook*  
The Honorable H. Dale Cook  
U.S. District Court Judge

Defendant's Soc. Sec. No.: 566-50-0990  
Defendant's Date of Birth: 4/11/42  
Defendant's USM No.: 08441-062  
Defendant's Residence and Mailing Address: 240 West 16<sup>th</sup> Street, Tulsa OK 74119

**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 abide by the "Special Financial Conditions" enumerated in General Order Number 99-12, filed with the Clerk of the Court on July 13, 1999.

**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**

\$2,000.00

**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 \$2,000 for Count 1 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 4<sup>th</sup> 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:	10	
Criminal History Category:	I	
Imprisonment Range:	6 to 12 months	Count 1
Supervised Release Range:	2 to 3 years	Count 1
Fine Range:	\$2,000 to \$20,000	Count 1

Total amount of Restitution: \$ Not Applicable

The sentence departs from the guideline range for the following specific reasons:

A two-level downward departure is appropriate under the provisions of USSG §2Q1.2(b)(4), Application Note 8. That note provides a possible downward departure when the offense involved a violation of a permit, or where there was a failure to obtain a permit when one was required. In this case, the defendant fraudulently provided HAZPOWER certificates for Gary Brown and other truck drivers, who worked for his company. This offense did not result in any contamination or mishandling of the hazardous substances transported by this defendant.

With a departure of two levels, Noller's offense level is 8. Therefore, the point of departure (an offense level 8), combined with his Criminal History Category I, provides a guideline range of imprisonment of 0 to 6 months. This places him in Zone A of the Sentencing Table.

*CW*

AUG 2 1999

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA

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

V.

Case Number: 99-CR-024-003-C ✓

Gary Brown

Mike Jones  
Defendant's Attorney

THE DEFENDANT:

ENTERED ON DOCKET

Pleaded guilty to Count 1 of the Indictment on April 12, 1999.

DATE 8/2/99

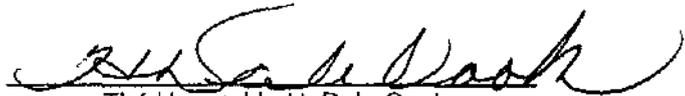
Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

<u>Title and Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count</u>
18 USC 371	Conspiracy to Commit an Offense Against or Defraud the United States	5/31/98	1

As pronounced on July 26, 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 29<sup>th</sup> day of July, 1999.

  
The Honorable H. Dale Cook  
U.S. District Court Judge

Defendant's Soc. Sec. No.: 448-50-0875  
Defendant's Date of Birth: 3/5/53  
Defendant's USM No.: 08440-062  
Defendant's Residence and Mailing Address: PO BOX 423, Bristow OK 74010

### PROBATION

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

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

1. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of 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 General Order Number 99-12, filed with the Clerk of the Court on July 13, 1999.

**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	\$0.00	\$1,000.00

**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 \$1,000 for Count 1 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 4<sup>th</sup> 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:	8	
Criminal History Category:	I	
Imprisonment Range:	0 to 6 months	Count 1
Supervised Release Range:	1 to 5 years	Count 1
Fine Range:	\$2,000 to \$20,000	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 departs from the guideline range for the following specific reasons:

A two-level downward departure is appropriate under the provisions of USSG §2Q1.2(b)(4), Application Note 8. That note provides a possible downward departure when the offense involved a violation of a permit, or where there was a failure to obtain a permit when one was required. In this case, the defendant conspired with others to fraudulently obtain HAZWOPER certificates for truck drivers who worked for his company. This offense did not result in any contamination or mishandling of the hazardous substances transported by this defendant.

With a departure of two levels, Brown's offense level is 8. Therefore, the point of departure (an offense level 8) combined with his Criminal History Category I, provides a guideline range of imprisonment of 0 to 6 months. This places him in a Zone A of the Sentencing Table. A sentence of probation is authorized when a guideline range is in this zone.

BJS

AUG 2 1999

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA

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

V.

Case Number: 99-CR-024-002-C

Cheryl Renee Beshears

Kevin Buchanan  
Defendant's Attorney

THE DEFENDANT:

ENTERED ON DOCKET

Pleaded guilty to Count 1 of the Indictment on April 12, 1999.

DATE 8/2/99

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 371	Conspiracy to Commit an Offense Against or Defraud the United States	5/31/98	1

As pronounced on July 26, 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 29<sup>th</sup> day of July, 1999.

*H. Dale Cook*  
The Honorable H. Dale Cook  
U.S. District Court Judge

Defendant's Soc. Sec. No.: 440-70-4115  
Defendant's Date of Birth: 10/14/65  
Defendant's USM No.: 08443-062  
Defendant's Residence and Mailing Address: 22531 N. 4032 Drive, Bartlesville OK 74006

**PROBATION**

The Defendant is hereby placed on probation for a term of two (2) years.

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

1. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of 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 General Order Number 99-12, filed with the Clerk of the Court on July 13, 1999.

**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**

\$1,000.00

**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 \$1,000 for Count 1 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 4<sup>th</sup> 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:	10	
Criminal History Category:	I	
Imprisonment Range:	6 to 12 months	Count 1
Supervised Release Range:	2 to 3 years	Count 1
Fine Range:	\$2,000 to \$20,000	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 departs from the guideline range for the following specific reason:

A two-level downward departure is appropriate under the provisions of USSG §2Q1.2(b)(4), Application Note 8. That note provides a possible downward departure when the offense involved a violation of a permit, or where there was a failure to obtain a permit when one was required. In this case, the defendant conspired with others to fraudulently obtain HAZWOPER certificates for truck drivers who worked for her company. This offense did not result in any contamination or mishandling of the hazardous substances transported by her co-defendants, and there was a low risk associated with this offense.

With a departure of two levels, Beshears' offense level is 8. Therefore, the point of departure (an offense level 8) combined with his Criminal History Category I, provides a guideline range of imprisonment of 0 to 6 months. This places her in a Zone A of the Sentencing Table. A sentence of probation is authorized when a guideline range is in this zone. Unlike Zone B which requires the imposition of home detention or community confinement as a condition of probation, these conditions are available to the Court as an option when a guideline range is in Zone A.

*aw*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

AUG 2 1999 B

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA

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

V.

Case Number: 99-CR-024-001-C ✓

Gary Beshears

Kevin Buchanan  
Defendant's Attorney

THE DEFENDANT:

ENTERED ON DOCKET

Pleaded guilty to Count 1 of the Indictment on April 12, 1999.

DATE 8/2/99

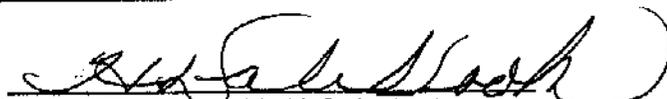
Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

<u>Title and Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count</u>
18 USC 371	Conspiracy to Commit an Offense or Defraud the United States	5/31/98	1

As pronounced on July 26, 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 29<sup>th</sup> day of July, 1999.

  
The Honorable H. Dale Cook  
U.S. District Court Judge

Defendant's Soc. Sec. No.: 441-62-9566  
Defendant's Date of Birth: 12/4/62  
Defendant's USM No.: 08442-062  
Defendant's Residence and Mailing Address: 22531 North 4032 Drive, Bartlesville OK 74006

**PROBATION**

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

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

1. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of 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 General Order Number 99-12, filed with the Clerk of the Court on July 13, 1999.

**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**

\$1,000.00

**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 \$1,000 for Count 1 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 4<sup>th</sup> 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:	10	
Criminal History Category:	1	
Imprisonment Range:	6 to 12 months	Count 1
Supervised Release Range:	2 to 3 years	Count 1
Fine Range:	\$2,000 to \$20,000	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 and because the Court departed downward on the offense level.

The sentence departs from the guideline range for the following specific reasons:

A two-level downward departure is appropriate under the provisions of USSG §2Q1.2(b)(4), Application Note 8. That note provides a possible downward departure when the offense involved a violation of a permit, or where there was a failure to obtain a permit when one was required. In this case, the defendant conspired with others to fraudulently obtain HAZWOPER certificates for truck drivers who worked for his company. This offense did not result in any contamination or mishandling of the hazardous substances transported by this defendant, and there was a low risk associated with this offense.

With a departure of two levels, Beshears' offense level is 8. Therefore, the point of departure (an offense level 8) combined with his Criminal History Category I, provides a guideline range of imprisonment of 0 to 6 months. This places him in a Zone A of the Sentencing Table. A sentence of probation is authorized when a guideline range is in this zone. Unlike Zone B which requires the imposition of home detention or community confinement as a condition of probation, these conditions are available to the Court as an option when a guideline range is in Zone A.

aw