

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

NOV 29 1999

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA

JUDGMENT AND ORDER ON  
REVOCAION OF PROBATION

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

V.

Jeremy C. Jones

Case Number: 95-CR-087-001-C

Stephen Knorr  
Defendant's Attorney

ENTERED ON DOCKET

DATE 11/30/99

**THE DEFENDANT**, heretofore convicted and sentenced in Count(s) 1 as set out in Judgment and Commitment Order entered November 9, 1995:

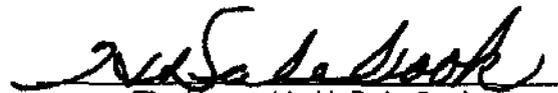
Admitted guilty to violation of Mandatory and Special Conditions of the term of probation as to count(s) 1.

<u>Condition Number</u>	<u>Nature of Violation</u>
Mandatory Condition	Violation of Law - Obtaining Merchandise by Bogus Check.
Special Financial Condition # 2	Abide by Special Financial Condition - Entering into Financial Contract without Probation Officer's permission.
Special Condition	Failure to Participate in Mental Health Treatment.

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

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

Defendant's Soc. Sec. No.: 440-66-0124  
Defendant's Date of Birth: 10/20/72  
Defendant's USM No.: 07543-062  
Defendant's Residence and Mailing Address: 18537 E. 3<sup>rd</sup> Street, Tulsa, OK 74108

**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 six (6) months.

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

Defendant be placed where he can continue to work.

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 eighteen (18) months.

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 be placed on home detention to include electronic monitoring at the discretion of the U. S. Probation Office for a period of four (4) months, to commence within 72 hours of release from imprisonment. During this time, the defendant shall remain at place of residence except for employment and other activities approved in advance by the probation office. The defendant shall maintain a telephone at place of residence without any special services, modems, answering machines, or cordless telephones for the above period. The defendant shall wear an electronic device and shall observe the rules specified by the Probation Office. The entire cost of this program shall be paid by the defendant.
2. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

**CRIMINAL MONETARY PENALTIES**

The Court reimposes the original fine in the amount of \$500.00 as to Count(s) 1.

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.

**STATEMENT OF REASONS**

Pursuant to 18 U.S.C. § 3553 (c), the Court states the reasons for imposition of the sentence:

The Court imposes this sentence within the guideline range based on the defendant's violations and his criminal history.

**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-050-002-H

Philip Joseph Hood

Robert Nigh, Jr.  
Defendant's Attorney

**FILED**  
NOV 22 1999  
Phil Lombardi, Clerk  
U.S. DISTRICT COURT

**THE DEFENDANT:**

Pleaded guilty to Counts 1 and 4 of the Indictment on July 12, 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 371	Conspiracy to Utter a Forged U.S. Treasury Check	7/5/97	1
18 USC 471	Making Counterfeit Obligations	3/31/98	4

As pronounced on November 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 2 and 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 19<sup>TH</sup> day of NOVEMBER, 1999.

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

Defendant's Soc. Sec. No.: 446-84-7562  
Defendant's Date of Birth: 2-19-67  
Defendant's USM No.: 08507-062  
Defendant's Residence and Mailing Address: c/o Federal Bureau of Prisons,

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 30 months. The terms of custody in Counts 1 and 4 shall run concurrently with each other and concurrently with the undischarged terms of imprisonment in Tulsa County Cases CF97-2907 and CF98-1286.

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
\$200.00	\$9,805.00	\$0.00

**ASSESSMENT**

It is ordered that the defendant shall pay to the United States a special assessment of \$200 for Counts 1 & 4 of the Indictment, which shall be due immediately.

**RESTITUTION**

The defendant shall make restitution in the total amount of \$9,805.00.

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, Attn: Leslie Edison	5950 E. Admiral Place	Tulsa, Oklahoma 74115	\$ 9,805.00

Restitution shall be paid jointly and severally with his codefendant, Christina Taber. 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.

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:	VI	
Imprisonment Range:	24 to 30 months	Counts 1 & 4
Supervised Release Range:	2 to 3 years	Counts 1 & 4
Fine Range:	\$2,000 to \$20,000	Counts 1 & 4

Total amount of Restitution: \$ 9,805.00

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 sentence is imposed for the following reasons: Given the nature of the offense and the fact that the sentences are to run concurrently with the undischarged terms of imprisonment in Tulsa County cases CF97-2907 and CF98-1286, a sentence at the high end of the guideline range is warranted.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA

V.

Charles Anthony Fellanto

THE DEFENDANT:

Pleaded guilty to Count 1 of the Superseding Indictment on August 23, 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 After Former Conviction of a Felony	4/2/99	1

As pronounced on November 15, 1999, the defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

Count 2 of the Superseding Indictment and the original 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 22<sup>nd</sup> day of November, 1999.

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

Defendant's Soc. Sec. No.: 141-50-5123  
Defendant's Date of Birth: 8/23/70  
Defendant's USM No.: 08467-062  
Defendant's Residence and Mailing Address: 9745 E. 4<sup>th</sup> Place, Tulsa OK 74128

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

Case Number: 99-CR-059-001-C

**FILED**  
NOV 22 1999

C.W. Daimon Jacobs  
Defendant's Attorney  
ENTERED ON DOCKET

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

DATE 11/22/99

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 34 months.

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

That the defendant be designated to a Bureau of Prisons facility where he will participate in the 500 Hour Residential Substance Abuse Treatment Program during his period 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

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**

\$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 1 of the Superseding Indictment, which shall be due immediately.

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

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

All criminal monetary penalty payments are to be made to the United States District Court Clerk, 333 West 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:	17	
Criminal History Category:	III	
Imprisonment Range:	30 to 37 months	Count 1
Supervised Release Range:	2 to 3 years	Count 1
Fine Range:	\$5,000 to \$50,000	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 exceeds 24 months, and the sentence is imposed for the following reasons: based on the long period of time and the continuing nature of the defendant's conduct.

*Ali*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA

V.

Pablo Flores

THE DEFENDANT:

Pleaded guilty to Count 1 of the indictment on August 30, 1999.

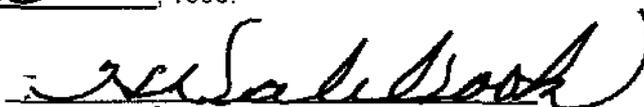
Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

<u>Title and Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count</u>
21 USC 846	Conspiracy to Possess With Intent to Distribute and Distribution of Methamphetamine and Cocaine	5/10/99	1

As pronounced on November 15, 1999, the defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

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

Signed this the 22<sup>nd</sup> day of November, 1999.

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

Defendant's Soc. Sec. No.: 568-59-0737  
Defendant's Date of Birth: 1/8/1980  
Defendant's USM No.: 08500-062  
Defendant's Residence and Mailing Address: 7627 East 21<sup>st</sup> Street, #104, Tulsa OK 74129

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

Case Number: 99-CR-066-009-C

Jim Fransein  
Defendant's Attorney

ENTERED ON DOCKET

FILED

NOV 22 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 six (6) months.

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

**RETURN**

I have executed this Judgment as follows:

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

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

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

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

### SUPERVISED RELEASE

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

**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	\$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 \$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:	8	
Criminal History Category:	1	
Imprisonment Range:	0 to 6 months	Count 1
Supervised Release Range:	5 years	Count 1
Fine Range:	\$1,000 to \$4,000,000	Count 1

Total amount of Restitution: \$ Not Applicable

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

The sentence is within the guideline range, that range does not exceed 24 months, and the sentence is imposed for the following reasons: A sentence at the high end of the guideline range because of the defendant's role in the offense and the serious nature of the crime.

*EW*

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-066-011-C

**FILED**

Alesha Beets

Allen Smallwood  
Defendant's Attorney

NOV 18 1999

ENTERED ON DOCKET

THE DEFENDANT:

DATE 11/19/99

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

Pleaded guilty to Count 1 of the Indictment on August 30, 1999.

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

<u>Title and Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count</u>
21 USC 846	Conspiracy to Possess With Intent to Distribute Cocaine and to Distribute Methamphetamine and Cocaine	5/10/99	1

As pronounced on November 15, 1999, the defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

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

Signed this the 18<sup>th</sup> day of November, 1999.

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

Defendant's Soc. Sec. No.: 440-90-9862  
Defendant's Date of Birth: 10/31/79  
Defendant's USM No.: 08508-062  
Defendant's Residence and Mailing Address: 4752 West 41<sup>st</sup> Street, Tulsa OK

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 57 months.

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

That the defendant be designated to a Bureau of Prisons facility as close to her family in Tulsa, Oklahoma, as possible where she will participate in the 500 Hour Comprehensive Substance Abuse Treatment Program during her period of incarceration.

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

Before 9 a.m. on January 10, 2000.

**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.
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.

**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.

<b>ASSESSMENT</b>	<b>RESTITUTION</b>	<b>FINE</b>
\$100.00	\$0.00	\$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.

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:	25	
Criminal History Category:	I	
Imprisonment Range:	57 to 71 months	Count 1
Supervised Release Range:	5 years	Count 1
Fine Range:	\$10,000 to \$4,000,000	Count 1

Total amount of Restitution: \$ Not Applicable

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

The sentence is within the guideline range, that range does not exceed 24 months, and the sentence is imposed for the following reason: Based on the defendant's youthful age, her lack of a criminal record, and her minor role in the overall conspiracy.

*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: 99-CR-077-001-H

Joshua Ridley Harris

Stanley D. Monroe  
Defendant's Attorney

**FILED**  
NOV 18 1999

THE DEFENDANT:

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

Pleaded guilty to Count 1 of the Indictment on July 23, 1999.

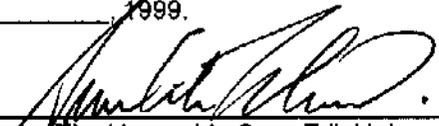
Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

<u>Title and Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count</u>
18 USC 2252(a)(4)(B)	Possession of Child Pornography	4/12/99	1

As pronounced on November 3, 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 NOVEMBER, 1999.

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

Defendant's Soc. Sec. No.: 446-72-7839  
Defendant's Date of Birth: 12-13-1973  
Defendant's USM No.: 08524-062  
Defendant's Residence and Mailing Address: 1336 E. 60<sup>th</sup>, #6E, 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 22 months.

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

That the defendant be placed in the Sex Offender Treatment Program at Butner FCI, if available. If that program is not available, the Court recommends that the defendant be placed in a facility where he may receive this treatment, if available and appropriate.

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

Before noon on January 3, 2000.

**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 two (2) 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 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 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.
3. The defendant shall abide by the "Special Sex Offender Conditions" enumerated in General Order Number 99-17, 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	\$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.

**FORFEITURE**

The defendant shall forfeit the defendant's interest in the following property to the United States: all property as listed in Count 2 of the Indictment.

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:

The two-level increase in offense level under USSG § 2B2.4(b)(2) does not apply.

**Guideline Range Determined by the Court:**

Total Offense Level:	16	
Criminal History Category:	I	
Imprisonment Range:	21 to 27 months	Count 1
Supervised Release Range:	2 to 3 years	Count 1
Fine Range:	\$5,000 to \$50,000	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 sentence is imposed for the following reason: because the defendant is a first-time offender and, with assistance from treatment, may be able to avoid similar offenses.

BJS

Handwritten mark

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

FILED  
NOV 17 1999

UNITED STATES OF AMERICA,

Plaintiff,

v.

RICK THURSTON WELCH;  
SEAN THOMAS JULIAN;  
TRUMAN LEON WOLERY; and  
WAYNE K. SIEGEL,

Defendants.

) ENTERED ON DOCKET  
)  
) **NOV 18 1999**  
) DATE \_\_\_\_\_

) Case No. 99-CR-150-BU

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

**FILED**

NOV 18 1999

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

ORDER

This matter comes before this Court on the Motion to Dismiss Count Two filed by Defendant Rick Thurston Welch on November 1, 1999, to which the United States filed a timely response as well as the Motion to Adopt Co-Defendant's Motion to Dismiss Count Two of the Indictment filed by Defendant Wayne Siegel on November 12, 1999. In his Motion, Defendant Welch contends that as a matter of law he has been improperly charged under Count Two of the Indictment, which purports to charge this Defendant with a violation of 18 U.S.C. § 2251(b). Defendant Welch asserts that a relationship between a minor and the accused of either a parent, legal guardian or person having control or custody of the minor in order for this charge to be maintained, and that no such relationship exists between he and the minor involved in this case. In its response the United States concedes Defendant Welch's position. As a result, Count Two will be dismissed.

Similarly, Defendant Siegel seeks permission to adopt

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Defendant Welch's Motion, contending that the same arguments apply to him. At the Pretrial Hearing conducted November 17, 1999, the United States conceded the Motion as it pertains to Defendant Siegel. Consequently, Defendant Siegel will be permitted to adopt the Motion and Count Two will be dismissed as to him.

IT IS THEREFORE ORDERED that the Motion to Adopt Co-Defendant's Motion to Dismiss Count Two of the Indictment filed by Defendant Wayne Siegel on November 12, 1999 is hereby **GRANTED**.

IT IS FURTHER ORDERED that the Motion to Dismiss Count Two filed by Defendant Rick Thurston Welch on November 1, 1999 and adopted by Defendant Wayne Siegel is hereby **GRANTED**. Accordingly, Count Two of the Indictment is hereby **DISMISSED**, as it pertains to Defendants Welch and Siegel.

IT IS SO ORDERED this 17<sup>th</sup> day of November, 1999.

  
MICHAEL BURRAGE  
UNITED STATES DISTRICT JUDGE

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

**FILED**  
NOV 18 1999

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
PETER J. McMAHON, )  
 )  
Defendant. )

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

Case Nos. 95-CR-60-H ✓  
97-CV-944-BU

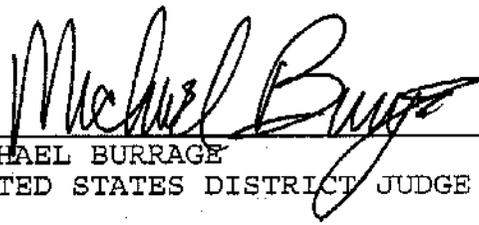
ENTERED ON DOCKET  
DATE NOV 18 1999

**JUDGMENT**

This matter came before the Court upon Defendant's motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255. The Court duly considered the issues and rendered a decision herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that judgment is hereby entered for Plaintiff and against Defendant.

SO ORDERED THIS 17<sup>th</sup> day of November, 1999.

  
\_\_\_\_\_  
MICHAEL BURRAGE  
UNITED STATES DISTRICT JUDGE

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PETER J. McMAHON,

Defendant.

ENTERED ON DOCKET

DATE NOV 18 1999

Case Nos. 95-CR-60-H ✓  
97-CV-944-BU

**FILED**

NOV 18 1999

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

ORDER

This matter comes before the Court upon the pro se motion of Defendant, Peter J. McMahon, to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. Plaintiff, United States of America, has responded and Defendant has replied thereto. Defendant also has filed a Motion to Enlarge Record, to which the Plaintiff has responded and Defendant has replied. Upon due consideration of the parties' submissions and the record, the Court determines that no evidentiary hearing is required and that Defendant's motion pursuant to § 2255 should be denied. Defendant's motion to enlarge the record also should be denied.

BACKGROUND

This matter arose out of Defendant's procurement of perjured testimony presented in his March, 1995 prosecution for firearms and ammunition violations (United States of America v. Peter J. McMahon and Kandy Kay Thomas, No. 94-CR-176-BU). During the course of the jury trial on those charges, the Assistant U.S. Attorney determined that at Defendant's request Michael Sinclair and two minor witnesses

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had testified falsely regarding ownership and delivery of a firearm and ammunition to Defendant's residence (evidence relevant to determining Defendant's knowledge and intent on the firearms charges). After the perjury plot was uncovered, co-defendant Thomas decided to plead guilty, and thereafter Defendant himself testified that he played a part in procuring the perjured testimony. The jury convicted Defendant on the firearm charges, and his sentences were enhanced because of his prior convictions for at least three violent felony or controlled substance offenses.<sup>1</sup>

Six weeks later, on May 3, 1995, the grand jury charged Defendant and Sinclair with conspiracy to present false testimony, in violation of 18 U.S.C. §§ 371 and 1623.<sup>2</sup> Defendant pled guilty to this charge and admitted that he contacted Sinclair and asked him to testify falsely at Defendant's trial on the firearms charges. The July 14, 1995 plea agreement signed by Defendant, his attorney and the Assistant U.S. Attorney provided, inter alia, that the Plaintiff was entitled to a reduction for acceptance of

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<sup>1</sup>Defendant was originally sentenced to a total of 295 months. However, on appeal his conviction and sentence on the charge under 18 U.S.C. § 924(c) was vacated in light of Bailey v. United States, 516 U.S. 137 (1995). United States v. McMahon, 91 F.3d 1394 (10<sup>th</sup> Cir. 1996). In 1998 Defendant was resentenced to 235 months on the remaining firearms charges. This sentence was affirmed on appeal. United States v. McMahon, No. 98-5081, 1999 WL 363040 (10<sup>th</sup> Cir. June 7, 1999). Defendant's petition for writ of certiorari is currently pending before the U.S. Supreme Court.

<sup>2</sup>The indictment also charged Sinclair with a substantive violation of making a false statement in court. Moreover, on August 3, 1995, after Defendant had pled guilty to this conspiracy charge, a superseding indictment was filed charging Sinclair and Michelle Farmer with additional offenses related to the perjury plot.

responsibility under § 3E1.1 of the United States Sentencing Guidelines ("Sentencing Guidelines" or "guidelines"), and that Plaintiff would request that any sentence would be served concurrently with the sentence Defendant received due to his conviction on the firearms charges (Plea Agreement at 1). The plea agreement further provided that "[t]he defendant understands that the sentence to be imposed in the instant case is completely within the discretion of the sentencing judge,..." (Plea Agreement at 2, emphasis in original).

On August 2, 1995, after a sentencing hearing at which defense counsel and Defendant presented objections to the Presentence Report prepared by the U.S. Probation Office, Defendant was sentenced to 60 months imprisonment followed by three years of supervised release, to run concurrently with his sentence in the firearms case.

Defendant was thereafter subpoenaed to testify at Sinclair's trial on the perjury and conspiracy charges, and after his refusal to testify, the Court granted him use immunity and compelled his testimony.

Defendant appealed his conviction and sentence in the instant case alleging three grounds: (1) the Court erred in granting only a two-point downward adjustment for acceptance of responsibility; (2) the Court erred in increasing his offense level by four points for his role as an organizer or leader; and (3) the government breached the plea agreement when it subpoenaed him as a witness at Sinclair's trial. The Tenth Circuit Court of Appeals ("Tenth Circuit") rejected Defendant's grounds for appeal and affirmed his

conviction and sentence on July 26, 1996. Thereafter, Defendant timely filed this § 2255 motion.

In his § 2255 motion, as amended, Defendant challenges his conviction and sentence on the basis that: (1) he was denied effective assistance from his counsel during sentencing proceedings and on appeal, based on eight specific grounds; (2) 1981 Tulsa County convictions utilized by the U.S. Probation Office in its Presentence Report in calculating his offense level under the Sentencing Guidelines were unconstitutionally obtained; and (3) 1986 Tulsa County convictions similarly cited in the Presentence Report were also unconstitutional.

Defendant alleges the following specific grounds of ineffective counsel:

- (A) Counsel failed to move to dismiss the indictment based upon Defendant's recantation at trial;
- (B) Counsel failed to advocate for use immunity or other benefits in exchange for Defendant's testimony in Sinclair's trial;
- (C) Counsel failed to assert the government's breach of the plea agreement;
- (D) Counsel failed to argue for downward departure under § 5K2.0 of the Sentencing Guidelines for acceptance of responsibility;
- (E) Counsel failed to "sentence bargain" prior to recommending that Defendant accept the plea agreement;

(F) Counsel failed to properly advise as to the Sentencing Guidelines and the government impeded Defendant's efforts to timely plead guilty;

(G) Counsel failed to suggest application of § 5K2.2; and

(H) Counsel failed to appeal the District Court's neglect in failing to advise the consequences of a violation of supervised release.

In its response to the § 2255 motion, Plaintiff asserts that Defendant's claims are procedurally barred because he did not raise them on appeal and has failed to demonstrate cause and prejudice or a miscarriage of justice. Plaintiff further asserts that Defendant's claims of ineffective assistance of counsel are without merit.

As discussed in detail *infra*, this Court agrees that it is procedurally barred from reaching the merits of Claims 2 and 3, which challenge the constitutionality of prior convictions used pursuant to the Sentencing Guidelines to determine Defendant's criminal history level. Further, the Court determines that Defendant's claims of ineffective assistance of counsel are without merit.

#### ANALYSIS

##### A. Defendant's Motion to Enlarge the Record

Defendant has filed a Motion for Expansion of Record under Rule 7, Rules Governing Section 2255 Proceedings for the United States District Courts. Defendant asks that the record be expanded to include: (1) the transcripts of the jury proceedings in the trial

of his co-conspirator, Michael Sinclair; (2) all of the pleadings and records filed under Case Nos. 96-CV-697-B and 96-CV-977-H; and (3) any forthcoming claims and arguments which will be made by Defendant's counsel in a future § 2255 motion challenging the firearms convictions.

Defendant alleges the transcripts of his testimony at Sinclair's trial show that he substantially assisted the government in its prosecution of Sinclair and thus these transcripts presumably bolster several of his claims that defense counsel was ineffective at sentencing. Defendant alleges that the pleadings in the cases referenced above relate to challenges to his 1981 and 1986 Tulsa County convictions and thus are relevant to claims 2 and 3 of his instant § 2255 motion. Finally, Defendant predicts that his retained attorney in the firearms case will address the constitutionality of the 1981 and 1986 convictions in a future § 2255 motion to be filed in that case.

In its response, Plaintiff contends that Defendant's testimony against Sinclair was obtained only after the government obtained immunity for his testimony and the court compelled him to testify; thus, Plaintiff has no objection to enlarging the record to include relevant portions of the Sinclair trial transcript. Plaintiff does object to including the other materials requested by Defendant, on the ground that they are not relevant to the determination of this § 2255 motion.

Pursuant to Rule 7 of the Rules Governing § 2255 Proceedings, the Court may direct that the record be expanded by the inclusion

of "additional materials relevant to the determination of the merits of the motion." The transcripts of Sinclair's trial are already part of the record in this case No. 95-CR-60; accordingly, Defendant's motion is unnecessary insofar as it relates to those transcripts. Further, because the Court determines as discussed infra that Defendant's claims relating to the use of his prior convictions for sentencing purposes are procedurally barred, Defendant's motion to enlarge the records to include extraneous material related to those claims is also denied.

B. § 2255 Motion

1. Ineffective Assistance of Counsel Claims

In order 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 (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.

"Judicial scrutiny of counsel's performance must be highly deferential." Id. at 689. 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 (1955)).

Under the second prong of the 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. "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 (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.

In light of these principles, the Court addresses each of Defendant's claims of ineffective assistance of counsel.

(A) Failure to move for dismissal of the indictment

Defendant asserts that his trial counsel should have moved to dismiss the indictment based upon Defendant's recantation of the perjured testimony at his trial on the firearms charges. In support

of this claim, Defendant cites 18 U.S.C. § 1623(d), which provides an exception to the provision penalizing perjury:

Where, in the same continuous court or grand jury proceeding in which a declaration is made, the person making the declaration admits such declaration to be false, such admission shall bar prosecution under this section if, at the time the admission is made, the declaration has not substantially affected the proceeding, or it has not become manifest that such falsity has been or will be exposed.

Defendant states that he admitted his part in the perjury plot during the same proceeding in which Sinclair and the two minors testified falsely.

Defendant's argument, which attacks the validity of his conviction rather than his sentence, fails on several grounds. Generally, a collateral attack on a conviction resulting from a guilty plea is "confined to whether the underlying plea was both counseled and voluntary." United States v. Broce, 488 U.S. 563, 569 (1989). Thus, a guilty plea bars subsequent challenges based on nonjurisdictional, pre-plea errors. Osborn v. Shillinger, 997 F.2d 1324, 1327 (10<sup>th</sup> Cir. 1993). See, e.g., Menna v. New York, 423 U.S. 61, 62 n.2 (1975); Tollett v. Henderson, 411 U.S. 258, 267 (1973) ("When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.") By entering an unconditional plea of guilty to this charge, Defendant admitted that "he committed the conduct alleged in the indictment and that in so doing he committed

the crime charged." United States v. Allen, 24 F.3d 1180, 1183 (10<sup>th</sup> Cir. 1994). His attempt to now formulate a defense to the conspiracy charge does not vitiate his voluntary decision to plead guilty.

Nonetheless, even if it were to reach the merits of this claim, the Court must conclude that Defendant's reliance on § 1623(d) is misplaced. Defendant was indicted for conspiracy to present perjured testimony rather than a substantive violation of § 1623 (in contrast to co-defendant Michael Sinclair, who was charged with both violations). Thus, it is arguable whether § 1623(d) even applies in the first instance as a defense to a charge of conspiring to violate § 1623. Moreover, even were § 1623(d) somehow applicable to Defendant's conspiracy charge, he would not meet the exception's requirement that "the person making the declaration admits such declaration to be false," because it was not Defendant, but rather Sinclair and other witnesses, who provided the false testimony (albeit at Defendant's instigation).

Furthermore, while § 1623(d) provides that a defendant may recant his prior perjury so long as the perjury has not substantially affected the proceeding or it has not become manifest that such falsity has been or will be exposed, all but one circuit which have addressed this issue have held that the "or" in this statute is to be construed as meaning "and", so that failure to satisfy either the "substantially affected" or the "manifestness" requirement will preclude the use of the recantation defense. See, e.g., United States v. Sherman, 150 F.3d 306, 313 (3d Cir. 1998);

United States v. Fornaro, 894 F.2d 508 (2d Cir. 1990); United States v. Scrimgeour, 636 F.2d 1019, 1024 (5<sup>th</sup> Cir. 1981); United States v. Moore, 613 F.2d 1029, 1043 (D.C. Cir. 1979) ("We conclude that Congress did not countenance in Section 1623(d) the flagrant injustice that would result if a witness is permitted to lie to a judicial tribunal and then, upon only learning that he had been discovered, grudgingly to recant in order to bar prosecution."); but see United States v. Smith, 35 F.3d 344, 346-47 (8<sup>th</sup> Cir. 1994) (disagreeing with the majority view and giving effect to the plain language of § 1623(d)). This Court believes the Tenth Circuit would align itself with the majority opinion on this issue and require that an effective recantation within the meaning of § 1623(d) must occur before both the perjury became manifest and had substantially affected the outcome of the proceeding.

In this case, it is unequivocal that Defendant testified to his part in the perjury scheme only after Plaintiff uncovered and revealed the plot to the Court; thus, even assuming he was a proper party to raise the recantation defense under 1623(d), Defendant would not have prevailed had his attorney raised it. Therefore, Defendant has not established that his attorney's performance was constitutionally deficient in this regard.

(B) and (E) Failure to "sentence bargain" or advocate for benefits based upon the possibility Plaintiff would subpoena Defendant to testify at Sinclair's trial

Defendant contends that defense counsel should have requested a continuance of the change of plea hearing in order to address with

Plaintiff's attorney the "contours for cooperating, substantial assistance, or for meaningful immunization." (Docket Entry #181 at 12). Defendant's claims stem from his allegation that his sentence did not reflect any "benefits" from testifying at his co-defendant's subsequent trial. Defendant complains that he received unfavorable treatment compared to other co-operating criminal defendants for whom a prosecutor might recommend downward adjustments in the guideline range for substantial assistance.

Plaintiff responds that any attempts by defense counsel to bargain or seek recommendations for a reduced sentence would have been futile, insofar as Plaintiff's attorney never entertained any inclination to make a "deal" with Defendant.

Based upon the record in this case and despite Defendant's unconvincing arguments to the contrary, the Court is persuaded by Plaintiff's assertions that any attempt by defense counsel to obtain "benefits" for Defendant would have been entirely futile. Therefore, the Court concludes that Defendant has failed to demonstrate that defense counsel's failure to plea bargain, even if assumed to be error, prejudiced him, i.e., changed the result of the sentencing proceeding within the meaning of Strickland, 466 U.S. at 694.

(C) Failure to assert Plaintiff's breach of plea agreement

Defendant claims that Plaintiff breached the written plea agreement when it argued against application of the extra one-point reduction under § 3E1.1(b) of the Sentencing Guidelines for

acceptance of responsibility. That section provides:

§3E1.1. Acceptance of Responsibility

- (a) If the defendant clearly demonstrates acceptance of responsibility for his offense, decrease the offense level by 2 levels.
- (b) If the defendant qualifies for a decrease under subsection (a), the offense level determined prior to the operation of subsection (a) is level 16 or greater, and the defendant has assisted authorities in the investigation or prosecution of his own misconduct by taking one or more of the following steps:
  - (1) timely providing complete information to the government concerning his own involvement in the offense; or
  - (2) timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the court to allocate its resources efficiently,

decrease the offense level by 1 additional level.

The plea agreement did not specify the number of points to be applied under § 3E1.1, and only the two-point reduction under § 3E1.1(a) was allowed at sentencing, despite defense counsel's lobbying for the additional point reduction under § 3E1.1(b). Plaintiff responds that this issue was raised and disposed of on direct appeal.

On appeal, the Tenth Circuit held that this Court did not err in finding that Defendant was not entitled to the additional one-point downward adjustment. United States v. McMahon, No. 95-5168, 1996 WL 422044 at \*1 (10<sup>th</sup> Cir. July 26, 1996). Absent an intervening change in law, a defendant may not raise in a § 2255

motion issues that have already been adjudicated 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). Accordingly, Defendant is barred from now relitigating the issue of whether he is entitled to the additional one-point reduction under § 3E1.1(b).

Defendant attempts to circumvent this result by couching his claim as a failure of defense counsel to argue that Plaintiff breached the plea agreement by opposing the additional one-point downward adjustment at sentencing.<sup>3</sup> The Court does not view Defendant's rephrasing of the issue as providing a valid distinction from the issue decided by the Tenth Circuit. The plea agreement is undisputably silent as to the number of points to be recommended by Plaintiff pursuant to § 3E1.1, and Defendant does not allege that Plaintiff made any oral promises or otherwise misled him regarding the number of points it would recommend pursuant to this provision. Further, as noted in the plea agreement, this Court retained full authority to determine Defendant's sentence, including the adoption or rejection of any recommendations by Plaintiff.

In any event, however, Defendant fails to show how his sentence would have been different if Plaintiff had recommended and the Court

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<sup>3</sup>The Court notes that the Tenth Circuit did consider and reject counsel's argument on appeal that the government breached its plea agreement by issuing a subpoena for Defendant to testify at Sinclair's trial. McMahon, 1996 WL 422044 at \*2.

had adopted the additional one-point downward adjustment. The Tenth Circuit on appeal noted that:

Even if we accepted defendant's arguments and lower his offense level to 16, his sentencing range would be 63 to 78 months. The district court, therefore, would have to depart downward to lower defendant's sentence below 60 months. We also note that because defendant's sentence in the instant case runs concurrently with that in his companion case, any decision here will not result in an earlier release date.

McMahon, 1996 WL 422044 at \*1 n 1. Thus, even assuming counsel erred in not phrasing this issue as a breach of the plea agreement, such action had no effect on Defendant's sentence and does not meet the "prejudice" requirement of Strickland. Therefore, this ground of ineffective assistance of counsel is without merit.

(D) Failure to argue for downward departure under § 5K2.0 of the Sentencing Guidelines for acceptance of responsibility

This claim also deals with Defendant's allegation that he did not realize any actual reduction in his sentence for acceptance of responsibility. As noted above, Defendant's sentence range pursuant to the guidelines would have been 63-78 months even factoring in the additional one-point reduction in offense level for acceptance of responsibility under § 3E1.1(b). Because the guidelines range exceeded the statutory maximum of 60 months under 18 U.S.C. § 371, Defendant was sentenced to the statutory maximum of 60 months. According to Defendant, "this created an unusual situation that had not adequately been taken into consideration by the Sentencing Commission in formulating the guidelines, warranting a departure under § 5K2.0." (Docket Entry #180 at 19). The Court disagrees.

A sentencing court may depart from the applicable guideline range "if the court finds 'that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described.'" § 5K2.0 (quoting 18 U.S.C. § 3553(b)). See generally Koon v. United States, 518 U.S. 81 (1996). The Commentary to § 5K2.0 notes that a departure is not authorized "in the absence of a characteristic or circumstance that distinguishes a case as sufficiently atypical."

This is not one of those rare, atypical cases. Defendant does not allege that his acceptance of responsibility was in any way extraordinary. Instead he cites a case from the Eleventh Circuit holding that where the statutory maximum is below the guidelines range and renders the § 3E1.1 adjustment ineffectual in reducing defendant's actual sentence, a downward departure is "consistent with the goals of the guidelines." United States v. Rodriguez, 64 F.3d 638, 643 (11<sup>th</sup> Cir. 1995). There is no comparable authority in this Circuit, and the Court does not find that either Defendant's dissatisfaction with the available sentencing range or his preference for a different sentence than that authorized by the guidelines is an appropriate basis for a sentence outside the applicable guideline range. Accordingly, Defendant has not demonstrated that counsel was deficient in failing to move for downward departure in this regard.

(F) Failure to properly advise as to the Sentencing Guidelines and failure to fulfill Defendant's intention to plead guilty early

Defendant claims that he told his lawyer that he wanted to plead guilty on May 25, but counsel did not convey this to Plaintiff's attorney until sometime between July 7 and July 10. Further, Defendant contends that counsel mistakenly told him that his sentence would run consecutively to his sentences on the firearms charges and did not alert him to the timeliness requirement of § 3E1.1(b). Defendant also contends that Plaintiff impeded his plan to plead guilty because the Assistant U.S. Attorney handling this case was out of town during part of June, which delayed defense counsel's negotiation of a plea agreement on Defendant's behalf.

Insofar as this claim relates to the previously discussed issue of Defendant's entitlement to the additional one-point adjustment under § 3E1.1(b), the Court reiterates that Defendant has failed to demonstrate that any errors made by counsel prejudiced him within the meaning of Strickland.

To the extent Defendant's claim might be interpreted as a challenge to the validity of his guilty plea because counsel failed to adequately or accurately advise him regarding the applicable sentencing guidelines, it also fails.

A defendant asserting ineffective assistance of counsel in the context of a guilty plea must show that counsel's performance fell below an objective standard of reasonableness and that, but for

counsel's error, the defendant would have insisted upon going to trial. See Hill v. Lockhart, 474 U.S. 52, 58-59 (1985). A plea may be involuntary where an attorney materially misrepresents the consequences of the plea; however, standing alone, an attorney's erroneous sentence estimate does not render a plea involuntary. See Laycock v. New Mexico, 880 F.2d 1184, 1186 (10<sup>th</sup> Cir. 1989); see also Lasiter v. Thomas, 89 F.3d 699, 702-03 (10<sup>th</sup> Cir. 1996); United States v. Gordon, 4 F.3d 1567, 1570-71 (10<sup>th</sup> Cir. 1993) (a miscalculation or erroneous sentence estimation by defense counsel is not a constitutionally deficient performance rising to the level of ineffective assistance of counsel).

Defendant does not allege in his § 2255 motion that, had counsel correctly informed him that his sentence would be served concurrently to his sentence on the firearms charges, or about the specific requirements of the guidelines relating to adjustments for acceptance of responsibility, he would have pleaded not guilty and insisted on going to trial. Accordingly, the Court concludes that Defendant has failed to show "prejudice" resulting from counsel's alleged errors.

(G) Failure to argue for a downward departure under § 5K2.0 based upon Defendant's recantation of the perjury plot

Defendant asserts that his conduct in admitting the perjury scheme at his trial on the firearms charges amounts to a mitigating circumstance that justifies a downward departure in his sentence. Thus, according to Defendant's reasoning, defense counsel was

constitutionally ineffective for failing to argue this point at sentencing. The Court again disagrees.

As discussed supra, departure is justified only in rare and atypical cases that present circumstances not adequately taken into account by the Sentencing Guidelines. In his trial on the firearms charges, Defendant testified to some part in the perjury scheme only after the prosecution had discovered the conspiracy and revealed it to the court and defense counsel and when faced with the availability of witnesses to testify as to the perjury plot. The Court does not agree that Defendant's self-serving acknowledgment of his scheme to defraud the justice system should result in a shortened sentence in the instant case. This view is bolstered by the Tenth Circuit's opinion that "defendant's admissions [in the trial on firearms violations] were untimely and incomplete." United States v. McMahon, 91 F.3d 1394, 1397 (10<sup>th</sup> Cir. 1996). Thus, any argument by defense counsel for downward departure based upon Defendant's testimony in the firearms trial would have been unsuccessful. Counsel's performance in failing to make this argument, therefore, was not constitutionally deficient.

(H) Failure to appeal the District Court's neglect in failing to advise the consequences of supervised release

Defendant claims that at his change of plea hearing the Court failed to advise him of the consequences "should the term of supervised release result in a revocation requiring him to serve all or part of the term in prison without credit for the time served post-release." (Docket Entry #181 at 31).

Defendant admits that at the change of plea hearing the Court informed him that he would be subject to a term of supervised release which would run concurrently with the lengthy sentence in the firearms case. The July 17, 1995 change of plea petition signed by Defendant also refers to the possibility of a three year term of supervised release to run after the main term of imprisonment, as does the Presentence Report. Further, Defendant raised no question whatsoever regarding supervised release at his sentencing hearing. At that hearing, the Court advised Defendant of the restrictions placed upon him during the term of supervised release. It seems disingenuous for Defendant now to claim that his guilty plea was uninformed because he was not advised of the possibility that, should his supervised release be revoked, he conceivably could serve more than 60 months imprisonment.

Because Defendant claims that counsel provided ineffective assistance in failing to appeal this issue, the Court considers the merits of the omitted issue. See United States v. Cook, 45 F.3d 388, 393 (10<sup>th</sup> Cir. 1995) ("If the omitted issue is without merit, counsel's failure to raise it does not constitute constitutionally ineffective assistance of counsel.") (quotation omitted). After due consideration, the Court finds that this issue is without merit.

First, the Court does not view Defendant's argument as a "dead bang winner," one obvious from the trial record that would have resulted in a different result. See United States v. Kissick, 69 F.3d 1048, 1054-56 (10<sup>th</sup> Cir. 1995); Cook, 45 F.3d at 392-95. The Court notes that Defendant does not allege that he was unaware or

uninformed that he would be subject to a term of supervised release following the 60 month imprisonment term. Instead, Defendant claims that he was confused about how any revocation of supervised release would affect his maximum term of imprisonment in light of his concurrent 235 month sentence on the firearms charges.

The Court finds that Defendant's alleged confusion as to the amount of time to be served upon a revocation of supervised release does not involve impairment of a substantial right sufficient to render his guilty plea involuntary. See, United States v. Gomez-Cuevas, 917 F.2d 1521, 1525 (10<sup>th</sup> Cir. 1990). At the change of plea hearing, the Court correctly informed Defendant that the term of supervised release would run concurrently with his sentence on the underlying firearms conviction. As Plaintiff correctly points out, because Defendant's 60 month, 3 year supervised release term runs concurrently with his 235 month, 5 year supervised release term on the firearms conviction, "there simply is no chance that the period of supervised release will, effectively, affect the sentence McMahon must serve." (Docket Entry #176 at 10).

Finally, it is unclear how Defendant's alleged confusion on this point could have affected his decision to plead guilty, especially since a term of supervised release would have been applicable at sentencing even if he had not pleaded guilty and proceeded to a jury trial. See, United States v. Vance, 868 F.2d 1167, 1172 (10<sup>th</sup> Cir. 1989) (when record does not show that court's failure to inform defendant of possible restitution affected his decision to plead guilty, error is harmless).

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.")

2. Constitutionality of prior state convictions utilized for sentencing enhancement (Claims 2 and 3)

In accordance with § 4A1.1 of the Sentencing Guidelines, Defendant's criminal history category was determined by adding points for certain of his prior convictions. The Presentence Report contained a determination, which was adopted by the Court in its findings, that Defendant had a criminal history category of 28. Defendant alleges that the prior state convictions referred to in ¶¶ 33-35 and 37-40, altogether accounting for 20 of the 28 criminal history points, "are not constitutionally valid or acceptable for enhancing his sentence under the guidelines." Defendant alleges that the guilty pleas entered in those cases were not voluntary or knowing because the state court failed to: advise him of the elements of the crime, the burden of proof, the presumption of innocence, and the range of punishment; inquire as to the issue of competency; or ascertain whether a factual basis existed for the guilty pleas. With respect to the 1986 convictions, Defendant also alleges that his attorney provided ineffective assistance by failing to investigate possible defenses and advise him of certain fundamental rights.

Plaintiff responds that Defendant is precluded from raising these claims because they have been adversely decided by the Tenth Circuit. Plaintiff also raises the defense of procedural bar to the extent Defendant failed to raise these issues on appeal. Defendant denies that any of these claims have been the subject of any litigation in the federal courts. (Docket Entry #181 at 35).

In support of its collateral estoppel argument, Plaintiff cites two decisions, United States v. McMahon, No.92-5193, 1993 WL 88299 (10<sup>th</sup> Cir. Mar. 19, 1993) and McMahon v. Maynard, No.93-5069, 1994 WL 413296 (10<sup>th</sup> Cir. Aug. 1, 1994). In the first opinion, the Tenth Circuit affirmed the denial of § 2255 relief relating to a previous federal conviction for drug possession. The Court determined that Defendant's claim relating to "invalid prior convictions used to enhance his sentence" was, among other claims, procedurally barred because Defendant failed to raise it on appeal or show cause and prejudice sufficient to overcome the bar. McMahon, 1993 WL 88299 at \*2. The latter case involved the Tenth Circuit's affirmance of the denial of Defendant's § 2254 petition based upon, inter alia, his claim that 1981 convictions used for enhancement were unconstitutional. After holding an evidentiary hearing concerning Defendant's claim of ineffective assistance of counsel, the district court found that counsel had acted competently and held that Defendant's claim challenging the 1981 convictions was procedurally barred based upon Defendant's informed decision not to appeal those convictions. McMahon, 1994 WL 413296 at \*1.

Upon review of these opinions, the Court is not persuaded that the doctrine of collateral estoppel applies in this instance. Under that doctrine, once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case. Allen v. McCurry, 449 U.S. 90, 94 (1980) (citing Montana v. United States, 440 U.S. 147, 153 (1979)). In the prior judgments, the courts did not "decide" the merits of Defendant's claims that his prior state convictions were unconstitutional. Rather, they declined to reach those claims due to the procedural bar. Thus, collateral estoppel does not operate to prevent litigation of Defendant's claims in this forum.

However, the Court concludes that Defendant is nonetheless barred from now raising these issues. None of Defendant's claims relating to the alleged unconstitutionality of the 1981 and 1986 convictions were raised on direct appeal. Plaintiff, in its response brief, has argued that Defendant is procedurally barred from raising these issues 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 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. Defendant does not put forth any reason why these issues were not raised on appeal.

The only other avenue by which Defendant can have his claims reviewed is by showing that a "fundamental miscarriage of justice" will result if the procedural bar is invoked. This exception applies "in an extraordinary case, where a constitutional violation has probably resulted in the conviction of one who is actually innocent." Murray v. Carrier, 477 U.S. at 496 (1986). Defendant does not claim that he is actually innocent of the charge to which he pled guilty (e.g., conspiracy to present false testimony); he claims only that his sentence was improperly determined. Therefore, the Court finds that Defendant is procedurally barred from raising the defaulted issues.<sup>4</sup>

#### CONCLUSION

Based upon the foregoing, Defendant's Motion to Vacate, Set Aside, or Correct Sentence, as amended (Docket Entries #161 and 172) is DENIED. Defendant's Motion to Expand the Record (Docket Entry #179) is DENIED. Judgment shall issue forthwith.

ENTERED this 17<sup>th</sup> day of November, 1999

  
MICHAEL BURRAGE  
UNITED STATES DISTRICT JUDGE

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<sup>4</sup>A defendant may establish cause for default by showing ineffective assistance of counsel. Cox, 83 F.3d at 341. Although Defendant alleged ineffective assistance of counsel based upon various grounds, he did not allege that his counsel was ineffective in failing to appeal the purported impropriety of using the prior convictions to determine his sentence.

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

**FILED**

NOV 16 1999

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA, )

Plaintiff, )

-vs- )

STACEY ALVAREZ, )

Defendant. )

No. 99-CR-66-C

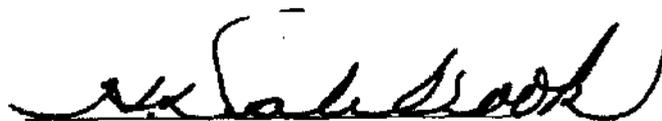
ENTERED ON DOCKET

DATE NOV 17 1999

**ORDER**

Now on this 15<sup>th</sup> day of November, 1999, this cause comes on to be heard in the matter of the plaintiff's Motion for Leave to Dismiss, without prejudice, the ~~Superseding~~ Indictment against STACEY ALVAREZ in the above styled cause. The Court finds that said request ought to be granted and the ~~Superseding~~ Indictment against defendant STACEY ALVAREZ is dismissed, without prejudice.

IT IS SO ORDERED.



H. DALE COOK  
United States District Judge

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

**FILED**

NOV 16 1999

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA, )

Plaintiff, )

-vs- )

No. 99-CR-66-C )

TRACY TORRES aka "Tracy Anne  
Staggs" aka "Tracy Anne Wells", )

Defendant. )

ENTERED ON DOCKET

DATE NOV 17 1999

**ORDER**

Now on this 15<sup>th</sup> day of November, 1999, this cause comes on to be heard in the matter of the plaintiff's Motion for Leave to Dismiss, without prejudice, the Superseding Indictment against TRACY TORRES aka "Tracy Anne Staggs" aka "Tracy Anne Wells" (hereinafter TRACY TORRES) in the above styled cause. The Court finds that said request ought to be granted and the Superseding Indictment against defendant TRACY TORRES is dismissed, without prejudice.

IT IS SO ORDERED.



H. DALE COOK  
United States District Judge

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

**F I L E D**

NOV 15 1999

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 TIM LANDRY, )  
 )  
 Defendant. )

No. 96-CR-011-B ✓  
~~98-CV-556-B (E)~~

ENTERED ON DOCKET

DATE NOV 16 1999

ORDER

Before the Court is the *pro se* Defendant Tim Landry's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 (Docket #36) together with his brief in support of his § 2255 motion (#38). The government has filed a response (#40) and a supplement to the response (#42). Defendant has filed a reply to both the response (#41) and the supplemental response (#43). In addition, Defendant has filed a motion for an evidentiary hearing (#47), a motion to invoke limited discovery (#48) and supporting memorandum (#49), a motion to set date for evidentiary hearing and for appointment of counsel for indigent movant (#51). The government has filed a response to Defendant's motion for limited discovery (#50) to which Defendant has replied (#52). After reviewing the entire record in this case, the Court finds that an evidentiary hearing is not necessary and that the motion pursuant to §2255 lacks merit and should be denied. Defendant's motions for an evidentiary hearing, for appointment of counsel, and to invoke limited discovery should also be denied.

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C/107

## **BACKGROUND**

According to information contained in the Presentence Investigation Report (“PSR”) (#37, Ex. N), an officer of the San Diego, California International Airport Narcotics Task Force contacted an agent at the Tulsa, Oklahoma office of the Drug Enforcement Administration (“DEA”) on January 16, 1996, to report that Defendant and another individual, Dewayne Curry, were flying via American Airlines flight 1648 from San Diego to Tulsa and were transporting methamphetamine. The San Diego officer provided flight information and baggage claim numbers for checked baggage. Upon arrival in Tulsa, a drug detection dog alerted to luggage belonging to Defendant and Curry. Both men were stopped by DEA agents after removing their bags from the baggage carousel. They were escorted to the airport’s security office where they were advised of information indicating that they were transporting narcotics. As agents prepared to search Defendant’s person, Defendant produced a white paper bag from his front pants pocket containing a substance that field-tested positive for methamphetamine. Subsequent laboratory analysis of the methamphetamine indicated a net weight of 110.2 grams of a mixture containing methamphetamine or 84 grams of actual methamphetamine.

On February 6, 1996,<sup>1</sup> Defendant was charged in a single count indictment with knowingly and intentionally possessing with the intent to distribute approximately four ounces of methamphetamine, a Schedule II controlled substance, in violation of 21 U.S.C. § 841(a)(1). See Docket #1.

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<sup>1</sup>The date-stamp placed on the Indictment by the Court Clerk bears the date “February 6, 1995.” However, the government has provided under seal the Affidavit of Custodian of the Grand Jury Records (#46, Ex. A). According to the Custodian’s affidavit, “February 6, 1996 is the correct date of the Indictment and that the stamped date of February 6, 1995, is a clerical error.” (*Id.*)

Defendant pled guilty to the charge pursuant to a plea agreement signed on July 12, 1996 by the Assistant U.S. Attorney, Defendant, and Defendant's retained attorney, Rex Earl Starr. In the plea agreement, Defendant admitted that he knowingly, willfully, and intentionally committed or caused to be committed the acts constituting the crime alleged in the indictment and confessed to the Court that he was in fact guilty of the crime. (Plea Agreement at 4). Defendant acknowledged that the statute called for imprisonment of ten years to life and a fine of up to \$4 million for this offense, but that the Court retained final discretion to sentence Defendant pursuant to the United States Sentencing Guidelines ("sentencing guidelines" or "U.S.S.G."). (Plea Agreement at 8-11).

At the change of plea hearing, Defendant testified that he was guilty as charged because "[i]n January 1996 I flew from Tulsa, Oklahoma to San Diego, California and returned with intent to buy and possess methamphetamine. I was arrested at the Tulsa International Airport in possession of the methamphetamine on 16 January '96." (Change of Plea trans. at 23). Defendant further testified that he and Curry "got our heads together and decided we would go to California. He was from California, had friends out there, said he could make a deal, we could do a deal, and I thought it sounded good, so I went out there and – he bought it from his friend, and we flew back on the plane and got arrested in the airport." (Change of Plea Trans. at 25). Defendant also testified that he was planning to keep half of the methamphetamine for his own use and to "get rid" of the other half to pay for the trip. (Change of Plea Trans. at 28).

Prior to sentencing, the United States Probation Office prepared the Presentence Report ("PSR"), referenced above, to which neither Defendant nor his counsel objected at the time of sentencing. According to the PSR, the statutory sentencing range was a minimum of 5 years to a maximum of 40 years imprisonment. The Probation Officer determined that the appropriate base

offense level in this case, based on Defendant's possession of 84 grams of actual methamphetamine, was 30. However, based on the government's determination that Defendant satisfied the requirements of the "safety valve" provision of 18 U.S.C. § 3553(f)(1) through (5), found in the sentencing guidelines at U.S.S.G. § 5C1.2 (1) through (5), Defendant was credited with a two point reduction. Defendant was also credited with a three level reduction for Acceptance of Responsibility pursuant to U.S.S.G. § 3E1.1 (a) and (b). The resulting total offense level as determined in the PSR was 25. Because Defendant had a criminal history category of I, the resulting guideline range for imprisonment was 57 to 71 months, with a supervised release term of four years. On January 12, 1997 the Court held sentencing proceedings at which neither Defendant nor his counsel stated an objection to the PSR. After hearing defense counsel's argument concerning Defendant's good work record and status as a good citizen but finding no additional basis for sentence reduction, the Court adopted the recommendations of the PSR. The Court sentenced Defendant to 57 months imprisonment, the minimum sentence available under the sentencing guidelines, to be followed by four years of supervised release, and imposed a fine of \$1,000 (#15). The Court explained that it sentenced Defendant at the low end of the guidelines range because of Defendant's lack of a prior criminal history. The judgment was entered on January 31, 1997 (#15).

Defendant appealed his conviction and sentence. On August 15, 1997, the Tenth Circuit Court of Appeals entered an Order dismissing the appeal, citing 10th Circuit Rule 27.3(i) and stating, "Appellant's letter received and filed in this court on August 11, 1997 is construed as a motion to dismiss and is granted." (#28).

On July 24, 1998, Defendant filed this *pro se* motion pursuant to § 2255 (#36), raising three (3) grounds for relief. Specifically, Defendant alleges that:

1. Landry's sentence and conviction must be vacated, because his plea was neither voluntary, nor knowingly and intelligently made.
2. Landry's sentence must be vacated, because his counsel was ineffective by failing to provide meaningful representation during Landry's sentencing process.
3. Landry's sentence must be vacated, because appellate counsel was ineffective by only filing an *Anders* brief on direct appeal.

(#36 at 5a). Defendant requests that his sentence and conviction be vacated, "so that he may exercise his original intent of going to trial . . . ." (#38 at 63).

The government responds that the transcript from the change of plea hearing contradicts Defendant's contention that his plea was involuntary, that Defendant did not receive ineffective assistance of counsel, and that appellate counsel did not provide ineffective assistance by filing an *Anders* brief.

In his reply to the government's response, Defendant accuses the government of intentionally withholding discovery material and states that the government used "deception, misrepresentation, and out right lies" to gain his conviction. Defendant further alleges that the government made material misrepresentations concerning the statutory sentencing range in order to obtain his plea of guilty, that he was coerced into pleading guilty by the government's threats to prosecute his wife, and that he received ineffective assistance of counsel during all phases of his criminal proceeding.

## ***ANALYSIS***

### **A. Preliminary motions.**

#### *1. Motions for evidentiary hearing*

Section 2255 provides that "[u]nless the motion and the files and records of the case

conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto.” 28 U.S.C. § 2255. Contrary to Defendant’s assertions, the Court finds that an evidentiary hearing is not necessary in this case because, as discussed in Part B below, the issues can be resolved on the basis of the record. See Townsend v. Sain, 372 U.S. 293, 318 (1963), overruled in part by Keeney v. Tamayo-Reyes, 504 U.S. 1 (1992). Therefore, Defendant’s motion for evidentiary hearing (#47) and motion to set date for evidentiary hearing (#51-1) should be denied.

2. *Motion for appointment of counsel*

After carefully reviewing the complexity of the legal and factual issues involved, the Court exercises its discretion to deny Defendant's motion for appointment of counsel. There is no constitutional right to counsel beyond the direct appeal of a conviction. See Swazo v. Wyoming Department of Corrections, 23 F.3d 332 (10th Cir. 1994). Further, there is no statutory right to appointed counsel, under Rule 8(c) of the Rules Governing 2255 Proceedings, when relief is denied without an evidentiary hearing. See United States v. Vasquez, 7 F.3d 81, 83 (5th Cir.1993). As discussed above, the Court determines that no evidentiary hearing is necessary. Therefore, Defendant’s motion for appointment of counsel (#51-2) should be denied.

3. *Motion for limited discovery*

In his motion to invoke limited discovery (#48), Defendant requests leave to conduct limited discovery to require the government “to produce certain documents and other things believed by Landry to be in the Government’s possession.” However, Rule 6(a), *Rules Governing Section 2255 Proceedings For the United States District Courts*, provides that a § 2255 movant is entitled to

undertake discovery only when "the judge in the exercise of his discretion and for good cause shown grants leave to do so, but not otherwise." In this case, the Court, in its discretion, finds that Defendant's motion should be denied. As discussed below, the issues raised by Defendant in his § 2255 motion may be resolved on the basis of the motion and the case file. No further discovery is necessary.

**B. Defendant is not entitled to relief under 28 U.S.C. § 2255**

*1. Defendant's guilty plea was knowing and voluntary*

As his first proposition of error, Defendant maintains that his guilty plea was not "knowing and voluntary" and, as a result, was constitutionally invalid. The plea must be "a voluntary and intelligent choice among the alternative courses of action open to the defendant." Parke v. Raley, 506 U.S. 20, 28-29 (1992). This is because "a guilty plea constitutes a waiver of three constitutional rights: the right to a jury trial, the right to confront one's accusers, and the privilege against self-incrimination." Id.

At Defendant's July 12, 1996, change of plea hearing, this Court held a plea colloquy in accordance with Fed. R. Crim. P. 11. At that hearing, in direct contravention of his current allegations, Defendant acknowledged that he had voluntarily entered a plea of guilty (Change of Plea Trans. at 11), denied that anyone had forced him or threatened him in any way in order to secure a guilty plea (Change of Plea Trans. at 11), acknowledged that he was mentally competent and knew what he was doing at the time he entered his plea (Change of Plea Trans. at 18), acknowledged he had consulted with his attorney about entering a plea of guilty (Change of Plea Trans. at 19), and stated that he was satisfied with the representation provided by his attorney (Change of Plea Trans.

at 19). Also, as discussed above, the Court established that a factual basis for a plea of guilty existed. (Change of Plea Trans. at 23-28). Based on the record, the Court finds Defendant has failed to show that his decision to enter a formal plea of guilty was anything but a voluntary choice he knowingly made after adequate opportunity for reflection and thought. "Solemn declarations in open court carry a strong presumption of verity." Blackledge v. Allison, 431 U.S. 63, 74 (1977). In light of Defendant's plea hearing testimony, the Court concludes that Defendant knowingly and voluntarily chose to plead guilty.

Furthermore, the Court finds that none of Defendant's grounds allegedly contributing to render the plea involuntary has merit. Defendant asserts three grounds supporting his contention that his guilty plea was involuntary: (1) it was premised on "coercion" by his attorney and the government, (2) it was based on material misrepresentations made in the plea agreement and at the change of plea hearing, and (3) his counsel was ineffective throughout the plea process.

Because each of Defendant's claims has an ineffective assistance of counsel component, the Court will begin its analysis of Defendant's arguments concerning the voluntariness of his guilty plea by addressing his ineffective assistance of counsel allegations. Where a defendant enters a guilty plea upon the advice of counsel, the voluntariness of the plea depends on whether the defendant received effective assistance of counsel. See Hill v. Lockhart, 474 U.S. 52, 56-57 (1985). The two-prong standard adopted in Strickland v. Washington, 466 U.S. 668, 687 (1984), applies to guilty plea challenges based on ineffective assistance of counsel and requires that a defendant show both that counsel's performance fell below an objective standard of reasonableness (the performance prong) and that, but for counsel's unprofessional errors, the result of the proceeding would have been different (the prejudice prong). Hill, 474 U.S. at 57. To satisfy the prejudice prong, the defendant

must show that there was a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial. Id. at 59. Where a defendant alleges that his counsel failed to investigate or discover potentially exculpatory evidence or failed to advise the defendant of a potential defense to the crime charged, the resolution of the "prejudice" inquiry depends largely on whether the evidence would have changed the outcome of a trial or whether the defense would have succeeded at trial. Id.; see also United States v. Gray, 182 F.3d 762, 767 (10<sup>th</sup> Cir. 1999).

Furthermore, as to the "performance prong" of the Strickland standard, there is a very strong presumption that the strategic and tactical decisions of counsel were within the range of professional competency considered reasonable. Strickland, 466 U.S. at 689. The test in assessing trial counsel's performance is one of objective reasonableness. Strickland, 466 U.S. at 687-88. In addition, courts should avoid viewing trial counsel's tactical decisions with hindsight, and give deference to the strategy employed by defendant's attorney. Id. at 689. The reasonableness standard is exercising all of the "skill, judgment and diligence of a reasonably competent defense attorney." Osborn v. Shillinger, 861 F.2d 612, 625 (10th Cir.1988) (citations omitted). Also, defense counsel must advise the defendant based upon his familiarity with the facts and law. See Scott v. Wainwright, 698 F.2d 427, 429 (11<sup>th</sup> Cir. 1983). "Counsel's advice need not be errorless, and need not involve every conceivable defense, no matter how peripheral to the normal focus of counsel's inquiry, but it must be within the realm of competence demanded of attorneys representing criminal defendants." Id.; see also McMann v. Richardson, 397 U.S. 759, 771 (1970).

As to Defendant's first assertion that his plea was involuntary because it was coerced by his attorney, Defendant maintains that he was the victim of a "reverse sting" operation by the

government, that “he had been set-up from the very beginning, and that Curry was working for the DEA.” (#38 at 6). Defendant argues that his attorney failed to investigate and develop his claims of “entrapment, duress, and illegal search and seizure[.]” (#38 at 7). Defendant further argues that his claims were meritorious. As discussed above, where the alleged error of counsel is a failure to investigate or discover potentially exculpatory evidence, the determination whether the error “prejudiced” the defendant by causing him to plead guilty rather than go to trial will depend on the likelihood that discovery of the evidence would have led counsel to change his recommendation as to the plea. This assessment, in turn, will depend in large part on a prediction whether the evidence likely would have changed the outcome of a trial.

As to Defendant’s claim that he was “set-up” by the government in the instant case, it is well-established that a defense of entrapment has two elements: government inducement of the crime and the absence of predisposition to commit the crime on the part of the defendant. See, e.g., United States v. Garcia, 182 F.3d 1165, 1168 (10th Cir. 1999). Assuming *arguendo* that Defendant could demonstrate government inducement of the crime, nothing indicates an absence of a predisposition on Defendant’s part to commit the crime. Defendant’s illegal search and seizure argument fares no better (see discussion, at p. 12 below). Thus, even if counsel did fail to investigate and develop either an entrapment or an illegal search and seizure claim, the claims are without merit and they would not have changed the outcome of a trial. Defendant cannot satisfy either the deficient performance prong or the prejudice prong of the Strickland standard.

Defendant also alleges that his guilty plea was rendered involuntary by his attorney’s advice that he would be placing his entire family at risk of being charged with conspiracy if Defendant insisted on proceeding to trial rather than entering a plea of guilty. Defendant specifically asserts

that "he would not have pled guilty but for Starr's threats that the Government would prosecute his wife and her family if he proceeded to trial." However, as stated by the government in its response to Defendant's § 2255 motion, the fairly presented ramifications of a guilty jury verdict and future prosecutions are well within the range of required competence. Mosier v. Murphy, 790 F.2d 62, 66 (10th Cir. 1986). Thus, even if Defendant's allegations are true, his attorney's advice concerning the drawbacks of proceeding to trial and the benefits of pleading guilty does not constitute deficient performance under Strickland and cannot be viewed as rendering Defendant's guilty plea involuntary.

Defendant also asserts that his counsel, John Street and Rex Starr, were both ineffective throughout the plea process. Defendant discharged attorney Street at the March 8, 1996 pretrial conference. Thereafter, Defendant hired attorney Starr to replace Street. Defendant asserts that Street failed to investigate Defendant's claims thereby failing to provide effective assistance of counsel and questions Street's tactics. As to the representation provided by Starr, Defendant alleges that counsel abandoned his loyalties to his client in advising Defendant to plead guilty and in refusing to withdraw Defendant's guilty plea. Of course, a defense attorney who abandons his duty of loyalty to his client and effectively joins the prosecution in an effort to attain a conviction suffers from an obvious conflict of interest. Such an attorney, like unwanted counsel, " 'represents' the defendant only through a tenuous and unacceptable legal fiction." See Osborn v. Shillinger, 861 F.2d 612, 629 (10th Cir. 1988) (quoting Faretta v. California, 422 U.S. 806, 821 (1975)). However, after reviewing the case file, the Court finds in this case, given the evidence against Defendant, counsel did not provide ineffective assistance in their representation of Defendant during the plea process. The letters provided by Defendant in his Appendix to the § 2255 motion (#37) indicate that

his attorneys attempted to secure the best outcome possible for Defendant. They attempted to work with the government so that Defendant could be considered for a downward departure from the sentencing guidelines for cooperating and providing assistance in the on-going investigations of drug activity. See #37, Exs. G and H. In addition, upon receipt of the PSR and prior to sentencing, attorney Starr corresponded with Assistant U. S. Attorney McLoughlin to discuss previously undisclosed information contained in the PSR. (#37, Ex. I). Furthermore, as referenced in counsel's September 20, 1996 letter (id.), Defendant's sentencing was delayed pending satisfactory explanation of the information. Based on the record, the Court finds Defendant has failed to demonstrate that either attorney abandoned his loyalty to Defendant. Therefore, the performance of Defendant's attorneys did not fall outside the wide range of reasonable professional assistance. Strickland, 466 U.S. at 689. Defendant's guilty plea was not rendered involuntary due to ineffective assistance of counsel.

Lastly, Defendant attempts to tie the voluntariness of his plea to counsel's failure to move for suppression of all evidence obtained during the search at the airport. The Court finds that Defendant's argument is patently without merit. Based on the facts of this case, any challenge to the airport search would have failed. It is undisputed that a drug sniffing dog alerted to Defendant's luggage at the airport. According to Tenth Circuit case law, a drug sniffing dog's detection of contraband itself establishes probable cause enough for an arrest. See United States v. Williams, 726 F.2d 661, 663 (10th Cir. 1984). Any subsequent search of Defendant's person would have been a valid search incident to arrest. See Lavicky v. Burnett, 758 F.2d 468, 474 (10th Cir. 1985). Because Defendant's search and seizure argument is meritless, his counsel did not provide ineffective assistance to the extent they may have failed to investigate the claim. As a result, Defendant's guilty

plea was not rendered involuntary.

The Court also finds that Defendant's plea was not rendered involuntary by any action of the government. Although Defendant asserts that the government somehow coerced his plea, his specific accusations concern only his counsels' actions. Those arguments have been considered and rejected above. The Court finds nothing in the record otherwise supporting Defendant's claim that he was coerced by the government. Defendant does argue, however, that his plea was involuntary because of "material misrepresentations" in the plea agreement and at the change of plea hearing. (#38 at 20). Landry complains that "[t]hroughout the entire plea process, [he] was repeatedly battered with the threat of 10 years to life in prison." Landry contends that the sentencing range represented by the government and his own attorney was erroneous. However, the Court finds no error in the sentencing range representation made in the plea agreement and at the change of plea hearing. As cited by Defendant in his brief, the parties stipulated that "for purposes of the Guideline Sentencing, the amount of methamphetamine involved in the offense conduct was approximately a total net weight of 106.1 grams." See #37, Ex. M. Pursuant to the relevant statute in effect at the time of the plea agreement, the sentencing range for a violation involving "100 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 1 kilogram or more of a mixture . . ." is not less than 10 years to a maximum of life imprisonment. 21 U.S.C. § 841(b)(1)(A)(viii) (1996). No misrepresentation of the sentencing range occurred.

In summary, the Court finds Defendant's guilty plea was informed and voluntary. The transcript from the Change of Plea hearing indicates the Court fully complied with the requirements of Fed. R. Crim. P. 11 by making a careful and searching inquiry to insure that the plea was made voluntarily and with full understanding of the charges and the consequences of a guilty plea.

Defendant, by his own admission in the courtroom, was afforded effective assistance of counsel when he entered his plea. Furthermore, none of Defendant's arguments concerning actions by his counsel or the government contributing to render his plea involuntary has merit.

*2. Counsel did not provide ineffective assistance during the sentencing process*

As his second proposition of error, Defendant asserts that his sentence must be vacated because counsel was ineffective by failing to provide meaningful representation during the sentencing process. Specifically, Defendant asserts that "counsel failed to provide effective representation when (A) counsel failed to address the discrepancies in the Presentence Investigation Report; and (B) counsel allowed a breakdown to occur at the sentencing hearing." (# 38 at 46).

Upon a review of the record, the Court finds that the PSR "discrepancies" identified by Defendant would have had no impact on the sentence received by Defendant and that counsel did not provide ineffective assistance in failing to object to the PSR. First, Defendant again argues that he was "set-up" by the government and that the government withheld information concerning an informant, believed by Defendant to be Curry. Defendant asserts that the information contained in ¶ 5 of the PSR allegedly revealing for the first time the involvement of an agent in San Diego constitutes a "discrepancy" to which his counsel voiced no objection. However, the letter from attorney Starr to Assistant U.S. Attorney McLoughlin, provided by Defendant in his Appendix (#37, Ex. I) and discussed above, indicates counsel did seek clarification of the information contained in the PSR prior to the sentencing hearing. Also, the letter indicates counsel continued his efforts to secure the best outcome possible for Defendant by cooperating with the government during its investigation of drug activity in Defendant's area.

As stated in the Background section above, Defendant was arrested at Tulsa International Airport upon his arrival from San Diego, California, with over 100 grams (net weight) of methamphetamine in his possession. However, Defendant now argues that because he was “set-up,” he “shared only a mitigating role as a minimal participant in the offense by being the one to transport the alleged drugs from one point to another under strict DEA surveillance and escort.” He further contends that he would have not only qualified for a sentence reduction under the safety valve provision but also a mitigating role adjustment under U.S.S.G. § 3B1.2 had his counsel objected to the PSR. The Court finds Defendant’s argument unpersuasive. Under U.S.S.G. § 3B1.2, if a defendant was a “minimal participant” in the criminal activity, the offense level is reduced by four; if the defendant was a “minor participant,” the level is reduced by two. § 3B1.2(a), (b). Application Note 1 provides that a minimal participant is “plainly among the least culpable of those involved in the conduct of a group. Under this provision, the defendant’s lack of knowledge or understanding of the scope and structure of the enterprise and of the activities of others is indicative of a role as minimal participant.” See also United States v. Harfst, 168 F.3d 398 (10th Cir. 1999). Application Note 3 defines a “minor participant” as “any participant who is less culpable than most other participants, but whose role could not be described as minimal.” Other than Defendant’s own self-serving statements, nothing in the record supports Defendant’s contention that he was a minimal or minor participant, acting merely as a courier, transporting the methamphetamine from one point to another. At the time of sentencing, Defendant had already advised the Court at his change of plea hearing that he had purchased the methamphetamine both for his own use and to sell to cover the cost of the trip to California. (Change of Plea Trans. at 26-28). That testimony defeated the possibility of invoking the mitigating role adjustment under U.S.S.G. § 3B1.2. Counsel did not

provide ineffective assistance of counsel in failing either to object to the PSR or to move for additional sentence reduction based on U.S.S.G. § 3B1.2.

The second PSR “discrepancy” identified by Defendant as a ground for his ineffective assistance of counsel claim concerns the weight of methamphetamine used in determining the Guideline sentence. According to Defendant, the amount identified in the Plea Agreement was 106.1 grams (net weight) methamphetamine. Using that weight and methamphetamine designation, Defendant asserts that the base offense level would have been 26 pursuant to U.S.S.G. § 2D1.1(c)(7). However, in the PSR, the Probation Office used 84 grams (actual) methamphetamine to arrive at a base offense level of 30 pursuant to U.S.S.G. § 2D1.1(c)(5). Defendant claims that his counsel provided ineffective assistance in failing to object to this “discrepancy.” The Court finds Defendant’s claim to be without merit. Even if the weight of the methamphetamine is viewed as a “discrepancy,” Defendant acknowledged in the Plea Agreement that “[p]ursuant to Sentencing Guidelines § 6B1.4(d), it is understood that neither the Court nor the United States Probation Office is bound by the foregoing stipulations [regarding weight and methamphetamine designation], either as to questions of fact or as to determination of the correct sentencing guidelines to apply to the facts and the defendant shall not be allowed to withdraw the plea of guilty entered pursuant to this agreement if the Court rejects the parties’ stipulations.” (#37, Ex. M at 16-17). Based on Defendant’s acknowledgment concerning the effect of the stipulation on the Court and the Probation Office, the Court finds that counsel did not render ineffective assistance in failing to object to the PSR on this basis.

The third PSR “discrepancy” identified by Defendant as a ground for his ineffective assistance of counsel claim concerns the applicable statutory sentence identified in ¶ 42 of the PSR.

In ¶ 42, the Probation Office identifies the applicable statutory range as 5 years to 40 years. Defendant complains that his attorney and the government had erroneously advised him that the sentencing range was 10 years to a maximum of life imprisonment in order to gain his guilty plea. He asserts that he agreed to plead guilty in order to avoid a sentence of life imprisonment. However, returning again to the Plea Agreement, Defendant acknowledged that “the sentence to be imposed upon the defendant will be determined solely by the sentencing judge. The United States cannot and does not make any promise or representation as to what sentence the defendant will receive.” The fact that counsel did not object to the Probation Office’s determination that a lower statutory minimum and maximum sentencing range applied in this case does not amount to ineffective assistance of counsel under Strickland. Quite simply, Defendant cannot prove that he was prejudiced by counsel’s failure to object to a sentencing range lower than that specified and agreed to by Defendant in the Plea Agreement. See also discussion at p.13, above.

As to Defendant’s claim that counsel provided ineffective assistance by allowing a breakdown to occur at the sentencing hearing, the Court finds, after reviewing the transcript from the sentencing hearing, that Defendant has failed to satisfy the deficient performance prong of the Strickland standard. As discussed above, neither counsel’s failure to address the “discrepancies” in the PSR nor his failure to object to a lower statutory minimum sentence than that specified in the plea agreement constitutes ineffective assistance of counsel. Similarly, counsel’s failure to move for a downward departure below the statutory minimum based on Defendant’s rehabilitation efforts does not constitute ineffective assistance. As discussed in the Background section above, Defendant was credited with a three level reduction for Acceptance of Responsibility pursuant to U.S.S.G. § 3E1.1 (a) and (b). A three level adjustment is the maximum allowed under § 3E1.1. Because no

further reduction would have been allowed by the guidelines, Defendant's counsel did not provide ineffective assistance in failing to move for additional sentence reduction for Defendant's rehabilitation efforts. In summary, after review of counsel's overall performance, the Court concludes that defense counsel's representation at sentencing clearly fell "within the range of reasonable professional assistance" expected of attorneys in criminal cases.

*3. Appellate counsel did not provide ineffective assistance*

As his third proposition of error, Defendant alleges that his sentence must be vacated because appellate counsel was ineffective by filing only an *Anders* brief on direct appeal. According to Defendant, Julia L. O'Connell, an attorney in the Federal Public Defender's Office, was appointed to represent him on appeal on March 27, 1997. On July 30, 1997, after conferring and corresponding with Defendant, O'Connell filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967), with the Tenth Circuit Court of Appeals, advising that after thorough review of the case file, transcripts and the law, she found no meritorious issues for direct appeal. Defendant now claims that by filing an *Anders* brief, appellate counsel failed to pursue meritorious issues. Defendant states that "had counsel took a thorough look at the entire documentary trail of the case, many issues and several 'dead bang winners' could have been raised on appeal." In his reply to the government's response, Defendant identifies the following as being meritorious claims that could have been and were not raised on direct appeal: "(1) the Rule 11 violations occurring at Landry's change of plea hearing and at sentencing; (2) the government's material misrepresentations in the Plea Agreement; (3) the government's breach of the Plea Agreement at sentencing; (4) the coercion used to induce Landry into pleading guilty; (5) the government failing to be held to their burden of proof at sentencing; and

(6) Landry's eligibility for a downward departure based on post offense rehabilitation." The Court rejects Defendant's argument. Although the mere filing of an *Anders* brief cannot form the basis for a claim of ineffective assistance of counsel, see United States v. Martinez-Lomeli, No. 95-4102, 1996 WL 282211 (10th Cir. May 29, 1996) (unpublished opinion), it is possible that the filing of an *Anders* brief that fails to point out meritorious issues can, in principle, constitute ineffective assistance. See, e.g., Steward v. Gilmore, 80 F.3d 1205, 1213 (8th Cir. 1996) (citing Robinson v. Black, 812 F.2d 1084 (8th Cir.1987)). Each of the claims identified by Defendant in his reply has been considered and rejected by the Court *supra*. In addition, after reviewing the case file and the relevant law, this Court has not found a meritorious claim that could have been raised on direct appeal. As a result, the Court rejects Defendant's claim that he received ineffective assistance of appellate counsel when his counsel filed an *Anders* brief on direct appeal.

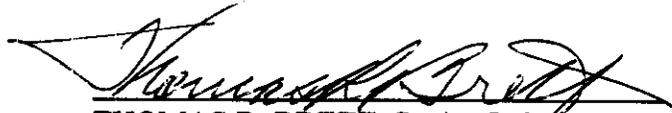
### **CONCLUSION**

Defendant has failed to demonstrate that his plea of guilty was involuntary or uninformed or that he received ineffective assistance of counsel, either during plea proceedings, at sentencing or on appeal. Therefore, his motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 should be denied.

**ACCORDINGLY, IT IS HEREBY ORDERED that:**

1. Defendant's motions for evidentiary hearing (#s 47 and 51) are **denied**.
2. Defendant's motion for appointment of counsel (#51) is **denied**.
3. Defendant's motion for limited discovery (#48) is **denied**.
4. Defendant's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 (Docket #36) is **denied**.

SO ORDERED THIS 15<sup>th</sup> day of Nov., 1999.

  
THOMAS R. BRETT, Senior Judge  
UNITED STATES DISTRICT COURT

NOV 9 1999 B

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: 89-CR-115-001-E ✓

Richard Allan Hubbard

Francis R. Courbois  
Defendant's Attorney

THE DEFENDANT:

ENTERED ON DOCKET

Pleaded guilty to Count 1 of the Information on July 14, 1999.

DATE 11/9/99

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

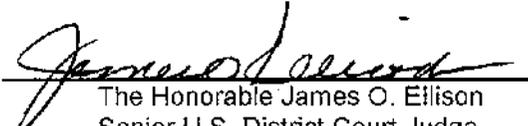
<u>Title and Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count</u>
18 USC 3146(a)(1)	Failure to Appear	5/27/94	1

As pronounced on October 14, 1999, the defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

Counts 1-4 of the Superseding Indictment are dismissed on the motion of the United States.

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

Signed this the 8<sup>th</sup> day of November, 1999.

  
The Honorable James O. Ellison  
Senior U.S. District Court Judge

Defendant's Soc. Sec. No.: 556-48-9873  
Defendant's Date of Birth: 5/24/31  
Defendant's USM No.: 71899-098  
Defendant's Residence and Mailing Address: 355 Staten Avenue, Apt. #101, Oakland CA 94610

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons for time already served of five months and 10 days. The defendant shall therefore be released from custody this date.

**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 two (2) 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 is directed by the Court to serve as the primary care giver for his mother and his daughter, one at a time. Should the mother or the daughter precede the other in death, the defendant is instructed to be the primary care giver for the other.

**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**

\$9,000.00

**ASSESSMENT**

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

**FINE**

The defendant shall pay a fine of \$9,000 for Count 1 of the Information. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid during the term of supervised release.

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

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

All criminal monetary penalty payments are to be made to the United States District Court Clerk, 333 West 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:	II	
Imprisonment Range:	8 to 14 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 reason: the sentence is imposed with a downward departure of approximately two months because of the defendant's age, physical condition, and extraordinary family circumstances, including two terminally ill close relatives, which takes the case out of the heartland.

BJS

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA

V.

Monica Chandler

ENTERED ON DOCKET  
DATE 11-5-99

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

Case Number: 99-CR-098-001-M

Jack Schisler  
Defendant's Attorney

FILED

NOV 04 1999

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

THE DEFENDANT:

Pleaded guilty to Count 1 of the Information on July 21, 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 1167(a)	Theft from Indian Gaming Establishment	6/14/99	1

As pronounced on November 1, 1999, the defendant is sentenced as provided in pages 2 through 4 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

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

Signed this the 4th day of NOV., 1999.

Frank H. McCarthy  
The Honorable Frank H. McCarthy  
U.S. Magistrate Judge

Defendant's Soc. Sec. No.: 516-76-3224  
Defendant's Date of Birth: 08/29/62  
Defendant's USM No.: 08514-062  
Defendant's Residence and Mailing Address: Box 26, Catoosa OK 74015

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

By J. Mayer  
Deputy

**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.
2. The defendant shall perform 60 hours of community service, as directed by the Probation Office.

**CRIMINAL MONETARY PENALTIES**

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

**ASSESSMENT**

\$25.00

**RESTITUTION**

\$0.00

**FINE**

\$100.00

**ASSESSMENT**

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

**FINE**

The 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 \$100 for Count 1 of the Information. 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:	2	
Criminal History Category:	1	
Imprisonment Range:	0 to 6 months	Count 1
Supervised Release Range:	1 year	Count 1
Fine Range:	\$100 to \$5,000	Count 1

Total amount of Restitution: \$ Not Applicable

The sentence is within the guideline range, that range does not exceed 24 months, and the sentence is imposed for the following reason: because of the defendant's lack of criminal history.

BJJ

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-079-001-BU

**FILED**

Neville David Ewell

Cindy Hodges Cunningham  
Defendant's Attorney

NOV 2 - 1999 *int*

THE DEFENDANT:

Pleaded guilty to Count 1 of the Indictment on July 28, 1999.

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

Phil Lombardi, Clerk  
U.S. DISTRICT COURT  
ENTERED ON DOCKET  
DATE 11-2-99

<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	3/25/99	1

As pronounced on October 27, 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 1<sup>ST</sup> day of NOVEMBER, 1999.



The Honorable Michael Burrage  
U.S. District Court Judge

Defendant's Soc. Sec. No.: 440-56-2836  
Defendant's Date of Birth: 11/26/75  
Defendant's USM No.: 08537-062  
Defendant's Residence and Mailing Address: 9105 E. 46<sup>th</sup> Place, Tulsa OK 74145

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 64 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.

**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**

\$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.

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:	21	
Criminal History Category:	IV	
Imprisonment Range:	57 to 71 months	Count 1
Supervised Release Range:	2 to 3 years	Count 1
Fine Range:	\$7,500 to \$75,000	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 sentence is imposed for the following reason: Because of the defendant's lengthy criminal history.

AJS

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA

V.

Steven John McGuire

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

Case Number: 98-CR-077-001-BU

Jack Schisler  
Defendant's Attorney

FILED

OCT 28 1999 /rm

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

ENTERED ON DOCKET

DATE 11-1-99

THE DEFENDANT:

Pleaded guilty to Count 1 of the Indictment on ~~March~~<sup>June</sup> 18, 1998.

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

<u>Title and Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count</u>
18 USC 1344 (1)	Bank Fraud	3/16/97	1

As pronounced on October 27, 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 28<sup>th</sup> day of October, 1999.



The Honorable Michael Burrage  
U.S. District Court Judge

Defendant's Soc. Sec. No.: 446-64-3321

Defendant's Date of Birth: 1/22/65

Defendant's USM No.: 08253-062

Defendant's Residence and Mailing Address: 4844 S. 74<sup>th</sup> East Avenue, Apt. # 60-7, Tulsa OK 74145

**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 be placed on home detention to include electronic monitoring at the discretion of the U. S. Probation Office for a period of six (6) months, to commence within 72 hours of sentencing date. During this time, the defendant shall remain at place of residence except for employment and other activities approved in advance by the probation office. The defendant shall maintain a telephone at place of residence without any special services, modems, answering machines, or cordless telephones for the above period. The defendant shall wear an electronic device and shall observe the rules specified by the Probation Office. The entire cost of this program shall be paid by the defendant.
2. 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.
3. 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 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 guideline application in the presentence report except:

the Court finds that the two-level enhancement for "more than minimal planning" does not apply

**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:	3 to 5 years	Count 1
Fine Range:	\$1,000 to \$1,000,000	Count 1

Total amount of Restitution: \$ Not Applicable

The sentence is within the guideline range, that range does not exceed 24 months, and the sentence is imposed for the following reason: Based on the defendant's repayment of restitution and lack of criminal history.

BJJ

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA

V.

Gwenna Kay Lynch

THE DEFENDANT:

Pleaded guilty to Count 1 of the Information on June 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 513(a)	Uttering a Forged Security of an Organization	2/10/99	1

As pronounced on October 27, 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 28 day of October, 1999.

  
The Honorable Michael Burrage  
U.S. District Court Judge

Defendant's Soc. Sec. No.: 525-51-5718  
Defendant's Date of Birth: 4/6/70  
Defendant's USM No.: 07558-062  
Defendant's Residence and Mailing Address: HC 67 Box 861, Skiatook OK 74070

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

Case Number: 99-CR-061-001-BU

Stanley Monroe  
Defendant's Attorney

FILED

OCT 28 1999 *tm*

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

ENTERED ON DOCKET

DATE 11-1-99

### PROBATION

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

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

1. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.

### STANDARD CONDITIONS OF PROBATION

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

### ADDITIONAL CONDITIONS:

1. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgment shall be provided to the U. S. Probation Office immediately upon taking residency.
2. The defendant shall abide by the "Special Financial Conditions" enumerated in 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	\$355.00	\$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 Information, which shall be due immediately.

**RESTITUTION**

The defendant shall make restitution in the total amount of \$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>
Keystone Chevrolet Inc., Attn: Debbie Stewart	8700 Charles Page Blvd.	Sand Springs OK 74063	\$355

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.

The defendant shall pay restitution directly to the dealership, as directed by the US Probation Office. The defendant shall provide proof of payment to the US Probation Office. 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	Count 1
Supervised Release Range:	2 to 3 years	Count 1
Fine Range:	\$1,000 to \$10,000	Count 1

Total amount of Restitution: \$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 does not exceed 24 months, and the Court finds no reason to depart from the sentence called for by application of the guidelines.

RTS

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA

V.

Paul Ray Tuggle

THE DEFENDANT:

Pleaded guilty to Count 1 of the Indictment on July 28, 1999.

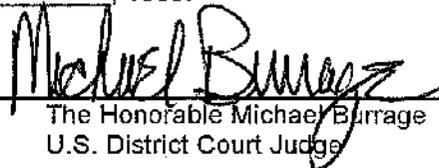
Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

<u>Title and Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count</u>
18 USC 1702 & 2	Obstruction of Correspondence and Aiding & Abetting	1/10/99	1

As pronounced on October 27, 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 28<sup>th</sup> day of October, 1999.

  
The Honorable Michael Burrage  
U.S. District Court Judge

Defendant's Soc. Sec. No.: 448-58-4740  
Defendant's Date of Birth: 7/26/55  
Defendant's USM No.: 08527-062  
Defendant's Residence and Mailing Address: 1461 North 155<sup>th</sup> East Avenue, Tulsa OK 74116

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

FILED

Case Number: 99-CR-075-001-BU

OCT 28 1999

Larry Gullekson  
Defendant's Attorney

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

ENTERED ON DOCKET

DATE 11-1-99

### 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 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	\$6,977.62	\$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 \$6,977.62. 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>
First USA, Attn: Gary L. Forsythe	1601 Elm Street, 46 <sup>th</sup> Floor	Dallas TX 75201	\$6,977.62

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:	8	
Criminal History Category:	1	
Imprisonment Range:	0 to 6 months	Count 1
Supervised Release Range:	2 years	Count 1
Fine Range:	\$500 to \$5,000	Count 1

Total amount of Restitution: \$6,977.62.

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

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

BJS