

NO. _____

In The
Supreme Court of the United States

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DERRICK PITTMAN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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PETITION FOR WRIT OF CERTIORARI

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Dated: July 2, 2018

QUESTION PRESENTED

Whether the period of post-release supervision mandated for offenders punished under the North Carolina Justice Reinvestment Act is part of the term of imprisonment when determining whether a defendant has predicate felonies for application of the career offender enhancement pursuant to United States Sentencing Guideline § 4B1.1.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
OPINIONS BELOW	1
JURISDICTION	1
PROVISIONS BELOW	1
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE PETITION	5
I. The Fourth Circuit's Decision in <u>United States v. Barlow</u> Conflicts With This Court's Decision in <u>Carachuri-Rosendo v. Holder</u> , As Well As It's Own Decision In <u>United States v. Simmons</u>	5
CONCLUSION	9
Appendix:	
Unpublished Opinion of The United States Court of Appeals For the Fourth Circuit entered April 3, 2018	1a
Judgment of The United States Court of Appeals For the Fourth Circuit entered April 3, 2018	6a
Judgment in a Criminal Case of The United States Court of Appeals For the Fourth Circuit filed May 11, 2016	7a

TABLE OF AUTHORITIES

	Page(s)
CASES	
<u>Anders v. California</u> , 386 U.S. 738 (1967)	3
<u>Carachuri-Rosendo v. Holder</u> , 570 F.3d 263 (2009).....	6
<u>Carachuri-Rosendo v. Holder</u> , 130 S. Ct. 2577 (2010)	5, 6, 7, 8
<u>Lopez v. Gonzalez</u> , 549 U.S. 47 (2006)	6
<u>United States v. Barlow</u> , 811 F.3d 133 (4 th Cir. 2015)	<i>passim</i>
<u>United States v. Burns-Johnson</u> , 864 F.3d 313 (4 th Cir. 2017)	4
<u>United States v. Clay</u> , 627 F.3d 959 (4 th Cir. 2010)	4
<u>United States v. Simmons</u> , 649 F. 3d 237 (2011).....	5, 6, 7, 8
<u>United States v. Smith</u> , 638 Fed. Appx. 216 (4 th Cir. 2016).....	3
STATUTES	
18 U.S.C. § 924(c).....	3
18 U.S.C. § 3231.....	3
18 U.S.C. § 3742.....	3
28 U.S.C. § 1254(1)	1
28 U.S.C. § 1291.....	3

N.C. Gen. Stat. § 15A-1368.2(a)	2, 7
N.C. Gen. Stat. § 15A-1368.3.....	8
N.C. Gen. Stat. § 15A-1368.4.....	8

GUIDELINES

U.S.S.G. § 4B1.1(a)	1
U.S.S.G. § 4B1.1(b)	1
U.S.S.G. § 4B1.1(c).....	3
U.S.S.G. § 4B1.2(a)	4

PETITION FOR A WRIT OF CERTIORARI

Petitioner Derrick Pittman respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The unreported decision of the Fourth Circuit in this case is available at ____ Fed. Appx. ___, 2018 WL 1603010. Pet. App. 1a. The Fourth Circuit's judgment is reproduced at Pet. App. 6a, and the district court judgment is reproduced at Pet. App. 7a.

JURISDICTION

The Fourth Circuit issued its opinion on April 3, 2018. Pet. App. 1a. 28 U.S.C. § 1254(1) confers on this Court jurisdiction to review on writ of certiorari the Fourth Circuit's judgment.

PROVISIONS INVOLVED

U.S. Sentencing Guidelines Manual § 4B1.1(a) (2015) provides:

A defendant is a career offender if (1) the defendant was at least eighteen years old at the time the defendant committed the instant offense of conviction; (2) the instant offense of conviction is a felony that is either a crime of violence or a controlled substance offense; and (3) the defendant has at least two prior felony convictions of either a crime of violence or a controlled substance offense.

U.S. Sentencing Guidelines Manual § 4B1.2(b) (2015) provides:

The term "controlled substance offense" means an offense under federal or state law, punishable by imprisonment for a term exceeding one year, that prohibits the manufacture, import, export, distribution, or dispensing of a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense.

North Carolina General Statute § 15A-1368.2(a) (emphasis added), provides:

Except as otherwise provided in this subsection, a prisoner to whom this Article applies shall be released from prison for post-release supervision on the date equivalent to his maximum imposed prison term less 12 months in the case of Class B1 through E felons and less nine months in the case of Class F through I felons[.]

STATEMENT OF THE CASE

On October 22, 2015, a grand jury indicted Derrick Pittman for conspiring to possess with intent to distribute 500 grams or more of cocaine (Count One), possessing a firearm as a felon (Count Three), and carrying and using a firearm during and in relation to a drug trafficking crime (Count Four). See Indictment, D.E. 16.¹ Mr. Pittman pled guilty, pursuant to a written agreement, to Counts One and Four. Memorandum of Plea Agreement, D.E. 110; Judgment, D.E. 175.

Prior to the sentencing hearing, the United States Probation Office completed its Presentence Investigation Report (hereafter referred to as “PSR”). The PSR determined that Mr. Pittman was a career offender based on the following two predicate North Carolina convictions: (1) robbery with a dangerous weapon, for which he was sentenced to imprisonment for 38 to 55 months, and (2) possession with intent to sell or deliver cocaine, for which he was sentenced to a suspended term of imprisonment for 10 to 21 months. PSR, D.E. 149. Consequently, the career offender enhancement increased Mr. Pittman’s base offense level from 24 to 34. Id. In the end, the PSR calculated a total base offense level of 31 and a criminal history category of VI. Id. After application of the career offender enhancement, the PSR concluded

¹ “D.E.” refers to the district court docket entries, Case. No. 4:15-cr-00068-F-2.

that the Guideline range applicable to Mr. Pittman was 262 months to 327 months.²

Id.

The sentencing hearing was held on May 11, 2016. During the hearing, Mr. Pittman objected to the application of the career offender enhancement. Id.; Sentencing Transcript, D.E. 262. In making this objection, Mr. Pittman conceded that under the then-recent opinion in United States v. Barlow, 811 F.3d 133 (4th Cir. 2015), he would be considered a career offender under the Guidelines. Id. Nevertheless, Mr. Pittman requested the issue be preserved on the record. Id.

The sentencing court ultimately overruled Mr. Pittman's objection, and adopted the findings contained in the PSR. Sentencing Transcript, D.E. 262. Mr. Pittman received a sentence of imprisonment for 137 months on Count One, and a consecutive sentence of imprisonment for 60 months on Count Four, totaling a term of 197 months. Pet. App. 7a.

The district court had subject matter jurisdiction over Mr. Pittman's case pursuant to 18 U.S.C. § 3231. Mr. Pittman timely appealed the district court's judgment, and the Fourth Circuit had jurisdiction pursuant to 18 U.S.C. § 3742 and 28 U.S.C. § 1291.

In Mr. Pittman's appeal, his counsel filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The brief conceded that the career offender enhancement appeared to apply to Mr. Pittman under current Fourth Circuit law, including United States v. Smith, 638 Fed. Appx. 216, 219 (4th Cir. 2016) (holding

² Probation determined that U.S.S.G. § 4B1.1(c) applied in this case because Mr. Pittman was convicted of 18 U.S.C. § 924(c).

that robbery with a dangerous weapon is a crime of violence under the Armed Career Criminal Act)³ and United States v. Barlow, 811 F.3d 133 (4th Cir. 2015) (holding that North Carolina law renders post-release supervision part of the term of imprisonment, thus exposing all felons to terms of imprisonment exceeding one year). Nevertheless, counsel asked the court to review whether Mr. Pittman’s prior North Carolina convictions constituted predicate felonies necessary for the application of the Guidelines’ career offender enhancement. Id.

The Fourth Circuit concluded that Mr. Pittman’s North Carolina convictions for robbery with a dangerous weapon and possession with intent to sell or deliver cocaine both qualified as predicate offenses for career offender purposes. In regard to the robbery with a dangerous weapon conviction, the court explained that its recent opinion in United States v. Burns-Johnson, 864 F.3d 313 (4th Cir. 2017), decided after Mr. Pittman was sentenced, held that this North Carolina offense categorically qualified as a violent felony under the Armed Career Criminal Act’s force clause. See Pet. App. at 4a.

Next, the court explained that Mr. Pittman’s sentence for felony possession with intent to sell or deliver cocaine consisted of 10 to 12 months imprisonment, plus a 9-month term of supervised release. Id. At sentencing, Mr. Pittman argued that this conviction was not punishable by a term exceeding one year because North

³ It follows that the same offense is a crime of violence for career offender purposes. See United States v. Clay, 627 F.3d 959, 965 (4th Cir. 2010) (stating that precedents evaluating whether an offense constitutes a violent felony under the Armed Career Criminal Act should be relied upon interchangeably with precedents evaluating whether an offense constitutes a crime of violence under § 4B1.2(a)).

Carolina law required the last nine months of his sentence be spent on post-release supervision. Id. at 4a-5a. The court determined that its decision in United States v. Barlow foreclosed Mr. Pittman's argument. Id. at 5a. It explained that, “[w]e rejected the defendant's contention that the nine-month supervised release term shortened his term of imprisonment to less than a year, finding that the North Carolina law intentionally includes post-release supervision as part of the term of imprisonment.” Id.

REASONS FOR GRANTING THE PETITION

I. The Fourth Circuit's Decision in United States v. Barlow Conflicts With This Court's Decision in Carachuri-Rosendo v. Holder, As Well As Its Own Decision In United States v. Simmons

The sentencing court in Mr. Pittman's case relied on United States v. Barlow to apply the career offender enhancement and increase his base offense level from 24 to 34, exposing him to a term of imprisonment much greater than otherwise would have applied. This Court's decision in Carachuri-Rosendo v. Holder, 130 S. Ct. 2577 (2010), dictates a different outcome. Mr. Pittman and other defendants like him continuously receive erroneous sentences based on law that cannot be reconciled with this Court's binding precedent. Therefore, it is necessary for this Court to resolve such a significant and far-reaching conflict.

The petitioner in Carachuri-Rosendo v. Holder was a lawful permanent resident of the United States facing deportation after committing two misdemeanor drug offenses in Texas. 130 S. Ct. 2577, 2580 (2010). After his second offense, the federal government initiated removal proceedings against him. Id. The Immigration and

Nationality Act allows for a lawful permanent resident subject to removal to apply for cancellation of removal if he has not been convicted of an aggravated felony. Id. at 2580-81. An aggravated felony must be a crime for which the maximum term of imprisonment authorized is more than one year. Id. at 2581. In contrast, Carachuri-Rosendo had only received a 10-day sentence for a misdemeanor simple possession offense. Still, the government argued that removal was appropriate because he *could have* received a two-year sentence based on his prior simple possession offense if he had been prosecuted in federal court. Id. at 2582.

This Court disagreed with the government's argument. In doing so, it rejected the Court of Appeal's "hypothetical approach" of going "beyond the state statute's elements to look at the hypothetical conduct a state statute proscribes." Id. at 2584 (quoting Carachuri-Rosendo v. Holder, 570 F.3d 263, 266, n. 3 (2009) (reversed)). This Court explained that, "[w]hen interpreting the statutory provisions under dispute, we begin by looking at the terms of the provisions and the 'commonsense conception' of those terms. Id. at 2585 (quoting Lopez v. Gonzalez, 549 U.S. 47, 53 (2006)). It also cautioned that a court, "cannot, *ex post*, enhance the state offense of record just because facts known to it would have authorized a greater penalty under either state or federal law." Id. at 2586.

A year later, the Fourth Circuit decided United States v. Simmons, 649 F. 3d 237 (2011), in light of this Court's holding in Carachuri-Rosendo v. Holder. In that case, the government attempted to enhance Simmons' sentence based on a North Carolina felony that is only punishable by a sentence exceeding twelve months'

imprisonment if the State proved aggravating factors *and* that the defendant had fourteen or more criminal history points. Simmons, 649 F.3d at 240-41. The State had not proven either condition.

The Fourth Circuit admitted that, “Carachuri also forbids us from considering hypothetical aggravating factors when calculating Simmons’s maximum punishment...the “mere possibility that [Simmons’s] conduct, coupled with facts outside the record of conviction, could have authorized” a conviction of a crime punishable by more than one year’s imprisonment cannot and does not demonstrate that Simmons was actually convicted of such a crime.” Id. at 244-45 (quoting Carachuri-Rosendo v. Holder, 130 S. Ct. 2577, 2589 (2010)). The court concluded that, “reliance on ‘facts not at issue in the crime of conviction’ runs afoul of Carachuri, regardless of how many hypotheticals pervade the overall inquiry. Accordingly, because no findings of recidivism or aggravation appear in Simmons’s state record of conviction, those enhancements may not be considered in determining whether Simmons’s offense constitutes a ‘felony drug offense’ under the CSA.” Id. at 248-49 (internal citations omitted).

Mr. Pittman’s criminal history was examined in a way that is specifically proscribed by this Court in Carachuri-Rosendo v. Holder and the Fourth Circuit’s decision in United States v. Simmons. Under North Carolina law, those convicted of less serious felonies (like Mr. Pittman) must be released from custody “on the date equivalent to his maximum imposed prison term...less nine months.” N.C. Gen. Stat. § 15A-1368.2(a). Therefore, based on a “commonsense” reading of the North Carolina

statute mandating post-release supervision, Mr. Pittman and similarly situated individuals have to be released from imprisonment after serving twelve months or less in custody. It follows that Mr. Pittman only could be convicted of a “felony” for career offender purposes if the court were to consider “hypothetical” factors outside of the record of conviction that *may* lead to violation *and* revocation of post-release supervision, which *may* result in his reimprisonment for a period that *may* make his total sentence greater than twelve months. See also N.C. Gen. Stat. § 15A-1368.3, § 15A-1368.4. That analysis involves a lot of assumptions. This sort of approach is exactly what this Court has cautioned against.

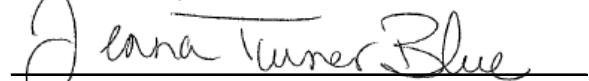
The Fourth Circuit’s decision in United States v. Barlow, which was relied upon in affirming Mr. Pittman’s conviction and sentence, cannot be reconciled with Carachuri-Rosendo v. Holder and United States v. Simmons. In Barlow, the defendant argued that his prior North Carolina convictions did not constitute felonies because the law required his release on post-release supervision nine months prior to the expiration of his maximum sentence. 811 F.3d 133, 136. The court disagreed with Barlow, reasoning that [t]he ‘sentence or sentences’ imposed do not terminate until a ‘supervisee completes the period of post-release supervision.’ State law accordingly places time spent on post-release supervision within, not outside of or in addition to, the maximum term of imprisonment.” Id. at 138. (internal citations omitted) The court went on to explain that even though a federal judge can impose supervised release in addition to and subsequent to a term of imprisonment, “[t]he North Carolina legislature did not follow the federal model.” Id.

Barlow unlawfully revived the same hypothetical approach that this court has rejected. Furthermore, it's reasoning does not comport with a commonsense reading of the language outlining North Carolina's post-release supervision law. Precedent does not allow for courts following Barlow to infer a finding of aggravation or wrongdoing that no judge has made, or to use facts outside the record of conviction to impose a sentence enhancement that otherwise would not apply. This Court can resolve these discrepancies by granting this petition.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,



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July 2, 2018

APPENDIX

APPENDIX TABLE OF CONTENTS

	<u>Page</u>
Unpublished Opinion of The United States Court of Appeals For the Fourth Circuit entered April 3, 2018	1a
Judgment of The United States Court of Appeals For the Fourth Circuit entered April 3, 2018	6a
Judgment in a Criminal Case of The United States Court of Appeals For the Fourth Circuit filed May 11, 2016	7a

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-4613

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DERRICK PITTMAN,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Greenville. James C. Fox, Senior District Judge. (4:15-cr-00068-F-2)

Submitted: August 31, 2017

Decided: April 3, 2018

Before GREGORY, Chief Judge, DIAZ, Circuit Judge, and SHEDD, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Jenna Turner Blue, BLUE LLP, Raleigh, North Carolina, for Appellant. Jennifer P. May-Parker, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Derek Pittman pled guilty to conspiring to possess with intent to distribute 500 grams or more of cocaine and carrying and using a firearm during and in relation to a drug trafficking crime. The district court sentenced Pittman to a below-Sentencing Guidelines range of 197 months of imprisonment. His counsel filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), asserting that there are no meritorious issues for appeal, but raising for the court's consideration whether Pittman had the requisite predicate felonies to receive the career offender enhancement. Pittman did not file a pro se supplemental brief and the Government did not file a brief.¹ After a careful review of the record, we affirm.

We review a sentence for reasonableness, applying "a deferential abuse-of-discretion standard." *Gall v. United States*, 552 U.S. 38, 41 (2007). The court first determines whether the district court committed significant procedural error, such as incorrect calculation of the Guidelines range, inadequate consideration of the 18 U.S.C. § 3553(a) (2012) sentencing factors, or insufficient explanation of the sentence imposed. *United States v. Dowell*, 771 F.3d 162, 170 (4th Cir. 2014).

In evaluating the district court's Guidelines calculations, we review the district court's factual findings for clear error and its legal conclusions de novo. *United States v.*

¹ The Government also did not move to dismiss this untimely appeal. In accordance with our opinion in *United States v. Oliver*, 878 F.3d 120 (4th Cir. 2017), we address the merits of Pittman's *Anders* appeal and are bound to complete a full review of the record on appeal for meritorious issues.

White, 771 F.3d 225, 235 (4th Cir. 2014). In her *Anders* brief, counsel concedes that Pittman’s North Carolina robbery with a dangerous weapon and felony drug offenses are properly classified as predicate convictions under the career offender guideline. In light of recent authority from the Supreme Court and this court, this concession is well taken.

Under the career offender guideline, “crime of violence” is defined as an offense punishable by more than one year of imprisonment that “(1) has as an element the use, attempted use, or threatened use of physical force against the person of another [(the “force clause”)], or (2) is burglary of a dwelling, arson, or extortion, involves use of explosives [(the “enumerated offenses clause”)], or otherwise involves conduct that presents a serious potential risk of physical injury to another [(the “residual clause”)].” U.S. Sentencing Guidelines Manual § 4B1.2(a) (2015).² The commentary to USSG § 4B1.2 enumerates other offenses as crimes of violence, including “robbery.” USSG § 4B1.2 cmt. n.1.

In *Johnson v. United States*, 135 S. Ct. 2551 (2015), the Supreme Court determined that the residual clause of the Armed Career Criminal Act (ACCA), reaching offenses that “involve[] conduct that presents a serious potential risk of physical injury to another,” *see* 18 U.S.C. § 924(e)(2)(B)(ii) (2012), is unconstitutionally vague. 135 S. Ct. at 2556-63. In *Beckles v. United States*, 137 S. Ct. 886 (2017), however, the Supreme Court declined to extend the reasoning in *Johnson* to the Guidelines, holding that the

² Section 4B1.2(a)(2) was amended in August 2016 to remove the residual or “otherwise” clause, as well as to remove burglary and add robbery to the offenses enumerated in the Guideline’s text. USSG app. C supp., amend. 798 (2016).

Guidelines are not subject to a due process vagueness challenge and that the residual clause under USSG § 4B1.2(a) is not void for vagueness. 137 S. Ct. at 895. In light of *Beckles*, Pittman cannot raise a vagueness challenge to his predicate crime of violence under *Johnson*.

Any potential challenge Pittman could raise to the classification of his predicate crime of violence also is foreclosed by recent precedent from this Circuit. The district court relied on Pittman's conviction for robbery with a dangerous weapon in applying the career offender guideline. We recently held that the North Carolina offense of robbery with a dangerous weapon categorically qualifies as a "violent felony" under the ACCA's force clause. *See United States v. Burns-Johnson*, 864 F.3d 313, 315, 320 (4th Cir.), *cert denied*, 138 S. Ct. 461 (2017). As this court relies on decisions evaluating whether an offense qualifies as an ACCA violent felony "interchangeably" with decisions evaluating whether an offense qualifies as a Guidelines crime of violence, *United States v. Montes-Flores*, 736 F.3d 357, 363 (4th Cir. 2013) (internal quotation marks omitted), we determine that Pittman's North Carolina conviction for robbery with a dangerous weapon equally qualifies as a crime of violence under the force clause of USSG § 4B1.2(a). In view of this authority, Pittman cannot raise a meritorious challenge to his enhanced base offense level based on his conviction for a crime of violence.

Pittman's North Carolina conviction for felony possession with intent to sell or deliver cocaine also properly qualified as a felony drug offense under the Guidelines. Pittman's sentence for the offense consisted of 10 to 12 months of imprisonment plus a 9-month term of supervised release. Counsel suggested at sentencing that Pittman's prior

North Carolina felony conviction was not punishable by a term exceeding one year because the North Carolina Justice Reinvestment Act of 2011 required that nine months of his sentence be spent in post-release supervision. Counsel noted, however, that this court addressed this issue in *United States v. Barlow*, 811 F.3d 133 (4th Cir. 2015). In *Barlow*, we held that the defendant's convictions for speeding to elude arrest and breaking and entering were felony convictions supporting his conviction for being a felon in possession of a firearm. We rejected the defendant's contention that the nine-month supervised release term shortened his term of imprisonment to less than a year, finding that the North Carolina law intentionally includes post-release supervision as part of the term of imprisonment. *Id.* at 138-40. Accordingly, as counsel asserts, Pittman's challenge on this ground is foreclosed. There was no procedural error in the district court's sentence.

In accordance with *Anders*, we have reviewed the entire record in this case and have found no meritorious issues for appeal. We therefore affirm Pittman's convictions and sentence. This court requires that counsel inform Pittman, in writing, of the right to petition the Supreme Court of the United States for further review. If Pittman requests that a petition be filed, but counsel believes that such a petition would be frivolous, then counsel may move in this court for leave to withdraw from representation. Counsel's motion must state that a copy thereof was served on Pittman. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

FILED: April 3, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-4613
(4:15-cr-00068-F-2)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

DERRICK PITTMAN

Defendant - Appellant

JUDGMENT

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

UNITED STATES DISTRICT COURT

Eastern

District of

North Carolina

UNITED STATES OF AMERICA
V.

DERRICK PITTMAN

JUDGMENT IN A CRIMINAL CASE

Case Number: 4:15-CR-68-2F

USM Number: 59723-056

Robert Edward Nunley

Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) 1 and 4 (Indictment)

pleaded nolo contendere to count(s) _____ which was accepted by the court.

was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21 U.S.C. § 846 and 21 U.S.C. § 841(b)(1)(B)	Conspiracy to Possess With Intent to Distribute 500 Grams or More of Cocaine	10/22/2015	1
18 U.S.C. § 924(c) and 18 U.S.C. § 924(c)(1)(A)(i)	Possession of a Firearm in Furtherance of a Drug-Trafficking Crime	10/22/2015	4

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) _____

Count(s) 3 of Indictment is are dismissed on the motion of the United States.

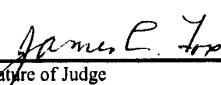
It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

Sentencing Location:

Wilmington, North Carolina

5/11/2016

Date of Imposition of Judgment


Signature of Judge

JAMES C. FOX, SENIOR US DISTRICT JUDGE

Name and Title of Judge

5/11/2016

Date

DEFENDANT: DERRICK PITTMAN
CASE NUMBER: 4:15-CR-68-2F

IMPRISONMENT

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

COUNT 1 - 137 MONTHS
COUNT 4 - 60 MONTHS, TO BE SERVED CONSECUTIVELY, PRODUCING A TOTAL TERM OF 197 MONTHS

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

The court recommends the Intensive Drug Treatment Program, Vocational and Educational Training while Incarcerated.

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

The defendant shall surrender to the United States Marshal for this district:

at _____ a.m. p.m. on _____.

as notified by the United States Marshal.

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

before p.m. on _____.

as notified by the United States Marshal. Or

as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

a _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: DERRICK PITTMAN

CASE NUMBER: 4:15-CR-68-2F

SUPERVISED RELEASE

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

COUNTS 1 AND 4 - 5 YEARS. ALL SUCH TERMS TO RUN CONCURRENTLY

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse.

The defendant shall not possess a firearm, destructive device, or any other dangerous weapon. (Check, if applicable.)

The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)

The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)

The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1. The defendant shall not leave the judicial district or other specified geographic area without the permission of the court or probation officer.
2. The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five (5) days of each month.
3. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
4. The defendant shall support the defendant's dependents and meet other family responsibilities.
5. The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
6. The defendant shall notify the probation officer at least then (10) days prior to any change of residence or employment.
7. The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use distribute, or administer any controlled substance, or any paraphernalia related to any controlled substance, except as prescribed by a physician.
8. The defendant shall not frequent places where controlled substances are illegally sold, used distributed, or administered, or other places specified by the court.
9. The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
10. The defendant shall permit a probation officer to visit the defendant at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
11. The defendant shall notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer.
12. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
13. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: DERRICK PITTMAN
CASE NUMBER: 4:15-CR-68-2F

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall provide the probation office with access to any requested financial information.

The defendant shall not incur new credit charges or open additional lines of credit without the approval of the probation office.

The defendant shall participate as directed in a program approved by the probation office for the treatment of narcotic addiction, drug dependency, or alcohol dependency which will include urinalysis testing or other drug detection measures and may require residence or participation in a residential treatment facility.

The defendant shall consent to a warrantless search by a United States probation officer or, at the request of the probation officer, any other law enforcement officer, of the defendant's person and premises, including any vehicle, to determine compliance with the conditions of this judgment.

The defendant shall cooperate in the collection of DNA as directed by the probation officer.

The defendant shall participate in a vocational training program as directed by the probation office.

DEFENDANT: DERRICK PITTMAN
CASE NUMBER: 4:15-CR-68-2F

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 200.00	\$ 12,900.00	\$

- The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.
- The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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TOTALS	\$0.00	\$0.00
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- Restitution amount ordered pursuant to plea agreement \$ _____

- The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

- The court determined that the defendant does not have the ability to pay interest and it is ordered that:
 - the interest requirement is waived for the fine restitution.
 - the interest requirement for the fine restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: DERRICK PITTMAN
CASE NUMBER: 4:15-CR-68-2F

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A Lump sum payment of \$ _____ due immediately, balance due
 not later than _____, or
 in accordance C, D, E, or F below; or

B Payment to begin immediately (may be combined with C, D, or F below); or

C Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F Special instructions regarding the payment of criminal monetary penalties:

The special assessment imposed shall be due in full immediately. The fine imposed shall be due immediately and the interest is waived.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

The defendant shall pay the cost of prosecution.
 The defendant shall pay the following court cost(s):

The defendant shall forfeit the defendant's interest in the following property to the United States:

THE DEFENDANT SHALL FORFEIT TO THE UNITED STATES THE DEFENDANT'S INTEREST IN THE PROPERTY SPECIFIED IN THE PRELIMINARY ORDER OF FORFEITURE ENTERED ON 3/21/2106 AT DE # 137.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.