No.

In The
Supreme Court of the United States

CORVAIN T. COOPER,
Petitioner,
v.

UNITED STATES OF AMERICA,
Respondent.

On Petition For A 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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July 6, 2018

QUESTION PRESENTED

1. Whether a Petitioner Who Was Sentenced to Life Without the Possibility of Parole, Which was Enhanced By Two Later Invalidated State Convictions, May Apply for Resentencing Under 28 U.S.C. § 2255?

PARTIES TO THE PROCEEDING

The caption of the case in this Court contains the names of all parties to the proceedings in the United States Court of Appeals for the Fourth Circuit. Rule 14.1(b) of the Supreme Court Rules.

TABLE OF CONTENTS

Page(s)

APPENDIX

TABLE OF AUTHORITIES

CASES **Page(s)**

CONSTITUTIONAL PROVISIONS AND STATUTES

RULES

PETITION FOR WRIT OF CERTIORARI

Petitioner, Corvain Cooper, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth entered in the above-entitled case on March 8, 2018.

DECISIONS BELOW

The March 8, 2018 opinion of the United States Court of Appeals for the Fourth Circuit, whose judgment is herein sought to be reviewed, is not reported, and is reprinted in the separate Appendix to this Petition, page App. 4-11.

STATEMENT OF JURISDICTION

The decision of the United States Court of Appeals for the Fourth Circuit to be reviewed was entered March 8, 2018. The mandate issued November 18, 2015. The instant Petition is filed within 90 days of the date of decision and one 10-day extension granted by this Court on February 8, 2016. Sup. Ct. R. 13.1. Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, RULES AND REGULATIONS INVOLVED

21 U.S.C §851 states as follows:

> (a) Information filed by United States Attorney
> (1) No person who stands convicted of an offense under this part shall be sentenced to increased punishment by reason of one or more prior convictions, unless before trial, or before entry of a plea of guilty, the United States attorney files an information with the court (and serves a copy of such information on the person or counsel for the person) stating in writing the previous convictions to be relied upon. Upon a showing by the United States attorney that facts regarding prior convictions could not with due diligence be obtained prior to trial or before entry of a plea of guilty, the court may postpone the trial or the taking of the plea of guilty for a reasonable period for the purpose of obtaining such facts. Clerical mistakes in the information may be amended at any time prior to the pronouncement of sentence.
> (2) An information may not be filed under this section if the increased punishment which may be imposed is imprisonment for a term in excess of

three years unless the person either waived or was afforded prosecution by indictment for the offense for which such increased punishment may be imposed.

(b) Affirmation or denial of previous conviction

If the United States attorney files an information under this section, the court shall after conviction but before pronouncement of sentence inquire of the person with respect to whom the information was filed whether he affirms or denies that he has been previously convicted as alleged in the information and shall inform him that any challenge to a prior conviction which is not made before sentence is imposed may not thereafter be raised to attack the sentence.

(c) Denial; written response; hearing

(1) If the person denies any allegation of the information of prior conviction, or claims that any conviction alleged is invalid, he shall file a written response to the information. A copy of the response shall be served upon the United States attorney. The court shall hold a hearing to determine any issues raised by the response which would except the person from increased punishment. The failure of the United States attorney to include in the information the complete criminal record of the person or any facts in addition to the convictions to be relied

upon shall not constitute grounds for invalidating the notice given in the information required by subsection (a)(1) of this section. The hearing shall be before the court without a jury and either party may introduce evidence. Except as otherwise provided in paragraph (2) of this subsection, the United States attorney shall have the burden of proof beyond a reasonable doubt on any issue of fact. At the request of either party, the court shall enter findings of fact and conclusions of law.

(2) A person claiming that a conviction alleged in the information was obtained in violation of the Constitution of the United States shall set forth his claim, and the factual basis therefor, with particularity in his response to the information. The person shall have the burden of proof by a preponderance of the evidence on any issue of fact raised by the response. Any challenge to a prior conviction, not raised by response to the information before an increased sentence is imposed in reliance thereon, shall be waived unless good cause be shown for failure to make a timely challenge.

(d) Imposition of sentence

(1) If the person files no response to the information, or if the court determines, after hearing, that the person is subject to increased punishment by reason of prior convictions, the court shall proceed

> to impose sentence upon him as provided by this part.
> (2) If the court determines that the person has not been convicted as alleged in the information, that a conviction alleged in the information is invalid, or that the person is otherwise not subject to an increased sentence as a matter of law, the court shall, at the request of the United States attorney, postpone sentence to allow an appeal from that determination. If no such request is made, the court shall impose sentence as provided by this part. The person may appeal from an order postponing sentence as if sentence had been pronounced and a final judgment of conviction entered.
> (e) Statute of limitations
> No person who stands convicted of an offense under this part may challenge the validity of any prior conviction alleged under this section which occurred more than five years before the date of the information alleging such prior conviction.

U.S. CONST. amend. V (App. 24)

U.S. CONST. amend. XIV (App. 24)

STATEMENT OF THE CASE

Corvain Cooper was charged in the United States District Court for the Western District of North Carolina with conspiracy to distribute and possession with intent to distribute 1000 kilograms or more of marijuana (21 U.S.C. § 841(b)(1)(A)), conspiracy to commit money laundering (18 U.S.C. § 1956(h)), and structuring transactions (31 U.S.C. § 5313(a)). (App. 5-6). A special information pursuant to 21 U.S.C. § 851 was also filed against Cooper, alleging two prior felony convictions for possession of drugs (one for marijuana, one for codeine cough syrup) in the California state courts. (App. 52). The filing of the § 851 information triggered a mandatory life sentence without parole in the event of a conviction.

Prior to trial, the Government filed a Rule 404(b) notice of its intent to introduce evidence of a prior arrest of Cooper in California, where Cooper was in possession of approximately one pound of marijuana and an alleged drug ledger. The Government sought to introduce evidence of Cooper's two prior felonies in California for possession of marijuana and argued that the evidence proffered in its 404(b) notice was "inextricably intertwined" with the conduct concerning the charged crimes. The District Court deemed the evidence admissible, ruling it was "linked in time, place and pattern of conduct." (App. 4-11).

On August 7, 2013, former Attorney General Eric Holder announced that the Department of Justice

instituted a new policy regarding reduced sentencing of non-violent drug offenders.

Cooper and two co-defendants were tried before a jury from October 15, 2013 – October 18, 2013. At no time prior to trial (or sentencing) did the Government withdraw the § 851 information filed against Cooper, or otherwise indicate that it would not seek a mandatory sentence of life without parole.

The evidence presented at trial established that on January 9, 2009, a cargo crate containing approximately 338 pounds of marijuana was intercepted by joint State and Federal task force agents in Charlotte, North Carolina. The Government linked this shipment to Cooper through investigation of co-conspirators telephone records, records of past shipments that had not been intercepted, and through several cooperating witnesses. Those cooperating witnesses generally testified that Cooper was involved in the acquisition and distribution of marijuana from California to North Carolina through the use of third-party cargo carriers. The sale proceeds were deposited into several bank accounts, some of which were opened under the two co-defendants' names, who worked as bank tellers, and were withdrawn from by Cooper and others.

At trial, no recorded conversations intercepted were produced. Other than the relatively small amount of marijuana and a cell phone recovered pursuant to his prior arrest in California, Cooper was not found in possession of any marijuana, packaging material, other drug paraphernalia, or weapons.

The main witness who testified for the Government at trial was Detective James Beaver, an employee of the Charlotte-Mecklenburg Police Department assigned to a joint Federal task force. Without objection, Detective Beaver, a non-expert, was allowed to testify about his familiarity with different grades of marijuana and the street prices of those grades. He also testified, without objection, as to the methods of shipping bulk marijuana, the use of masking agents to cover the smell and the process of transporting marijuana via vehicles.

Detective Beaver also testified about shipping crates a business owner found on his property and Beaver opined them to have held marijuana in them, subsequently, past transactions were entered into the record yet again this evidence was accepted without objection. Beaver used these past transactions and the recovered 338 pounds to calculate, based off his opinion, 5,000 pounds of marijuana had been shipped from California to Charlotte.

Lastly Beaver testified about going through Cooper's phone without a warrant. Beaver used images recovered from the warrantless search as evidence against Cooper as well as asserting that recorded phone calls from Mecklenburg County Jail were made in Cooper's voice.

On October 18, 2013, the jury returned guilty verdicts against all three defendants on all substantive counts. The case was continued for sentencing to a future date.

Represented now by undersigned counsel, prior to sentencing Cooper filed objections to the Pre-Sentence Report and a sentencing memorandum with the District Court. In those documents, Cooper presented extensive mitigation evidence, objected to an enhancement for firearms possession, drug amount, and leadership role, and objected to a mandatory life sentence without parole on Eighth Amendment grounds, pointing out the disparity in sentences meted out to the co-defendants and others similarly-situated.

On June 18, 2014, Cooper appeared for sentencing. The District Court recognized the severity of the mandatory life sentence, noting that it "would want to have discretion before imposing a life sentence. The absence of discretion is a troubling thing for the Court." (App. 36-37). Later, the District Court stated that

> [T]he Court is not comfortable with imposing a mandatory life sentence on a 34 year old individual without some discretion to consider the 3553(a) factors that a court normally is entitled to consider…The Court has no discretion. I'm not sure what I would do if I had discretion, but the absence of discretion is a difficult thing for the Court.

(App. 45).

Nevertheless, the District Court overruled the Eighth Amendment objection, and his other objections with the exception of one. As a consequence, Cooper was sentenced to life imprisonment without the possibility of parole.

Cooper appealed his conviction and sentence to the Fourth Circuit, arguing that (1) the Eighth Amendment prohibits the cruel and unusual punishment of mandatory life imprisonment without parole for a 34-year old man with two prior convictions for possession of possession of a controlled substance (marijuana and codeine) and no history of violence; (2) the District Court's admission of other-crimes evidence under Rule 404(b) deprived Cooper of his right to a fair trial; (3) the District Court's denial of severance deprived Cooper of a fair trial where he and his testifying co-defendants had mutually exclusive and antagonistic defenses; (4) the evidence was legally insufficient to sustain a conviction for conspiracy to possess with intent to distribute 1000 kilograms or more of marijuana where there was no reliable evidence of the weight of the marijuana actually trafficked; and (5) Cooper received ineffective assistance of counsel where his attorney failed to object to foundationless expert testimony based on hearsay, opinion testimony based upon hearsay, and calculations of drug amounts based on speculation.

The Fourth Circuit affirmed his conviction and sentenced without oral argument in an unpublished opinion on October 2, 2015. (App. 4-11).

Cooper filed a petition for rehearing en banc on October 15, 2015, pursuant to FED. R. APP. P. 35, which was denied on November 10, 2015. (App. 4-11). Subsequently Cooper filed a petition for certiorari to this Court. On March 28, 2016 this Court denied certiorari, rendering the conviction final.

In 2014, the State of California enacted Proposition 47, codified in the California Penal Code § 1170.18, which recategorized several non-violent offenses as misdemeanors, rather than felonies, and permitted people who had felony convictions under the old statute to vacate them and replace them with misdemeanor convictions.

On July 22, 2016, Cooper filed a petition pursuant to California Penal Code § 1170.18 seeking vacatur of the felony conviction entered in Case # INGYA08050901, California Superior Court (Inglewood), Los Angeles County. The petition was granted on July 22, 2016, the felony was vacated, and a misdemeanor conviction was substituted. That conviction was one of the predicate felony convictions used to enhance his sentence in the instant case. (App. 53-61).

On November 9, 2016, the State of California enacted Proposition 64, the Adult Use of Marijuana Act (Codified at California Health and Safety Code § 11361.8), which legalized recreational use of marijuana. The Act permitted certain people who had been convicted of marijuana offenses to apply for vacatur of those convictions.

On November 10, 2016, Cooper filed a petition pursuant to 28 U.S.C. § 2255, seeking to vacate the sentence and conviction on the grounds of one of the predicate convictions had been vacated, and he received ineffective assistance of counsel in the instant case. This motion was amended the following day to correct a formatting error. (App. 4-11).

While the petition was pending, Cooper applied for relief under Proposition 64, seeking to vacate the predicate conviction in Case # BH SA 07215401, Beverly Hills, California, as alleged in the § 851 enhancement. The state court granted his application, the conviction was vacated and substituted with a misdemeanor conviction on May 24, 2017. (App. 53-61). This conviction was the second predicate felony used to enhance his sentence in the instant case.

On February 16, 2017, the Government filed a motion to dismiss the Petitioner's motion to vacate, set aside, or correct the sentence. Six days later Petitioner filed a response, requesting dismissal of the motion made by the Government. On June 8, 2017 Cooper moved to supplement his § 2255 petition arguing the second predicate felony conviction further required resentencing. (App. 4-11)

The District Court granted the Government's motion to dismiss the § 2255 petition on October 2, 2017, thus denying Cooper relief and declining to issue a Certificate of Appealability. (App. 4-11). Cooper timely appealed to the United States Court of Appeals for the Fourth Circuit, seeking a Certificate of Appealability on the same issue raised in this petition.

The Fourth Circuit denied Cooper of a Certificate of Appealability on March 8, 2018. (App. 1-3).

This timely Petition follows.

REASONS FOR GRANTING THE WRIT

REVIEW IS NECESSARY FOR THIS COURT TO RESOLVE A SPLIT AMONGST THE CIRCUITS AND TO RESOLVE A CIRCUIT DEPARTURE FROM THIS COURT'S BINDING PRECEDENT THAT WHERE A FEDERAL SENTENCE IS ENHANCED BY A STATE COURT CONVICTION THAT IS SUBSEQUENTLY VACATED OR SET ASIDE, WHETHER THE FEDERAL PRISONER IS ENTITLED TO RESENTENCING

In Custis v. United States, 511 U.S. 485 (1994), this Court held that if a defendant "is successful in attacking [his] state sentences, he may then apply for reopening of any federal sentence enhanced by the state sentences." Id. at 497. Seven years later, this Court decided in Daniels v. United States, 532 U.S. 374 (2001), that "after an enhanced federal sentence has been imposed…the person sentenced may pursue any channels of direct or collateral review still available to challenge his prior conviction." Id. at 382. The Court further stated "[i]f any such challenge to the

underlying conviction is successful, the defendant may then apply for reopening of his federal sentence." Id.

In 2005, this Court decided Johnson v. United States, 544 U.S. 295, 125 S.Ct. 1571, 1577, 161 L.Ed.2d 542 (2005) (emphasis added). In Johnson, the defendant received an enhanced sentence for his Federal drug conspiracy conviction by virtue of a state court conviction. He petitioned in the state court to vacate his conviction and succeeded. He later filed a § 2255 petition to challenge his enhanced sentence after the 1-year statute of limitations expired and was denied relief by the District Court and the Eleventh Circuit.

This Court affirmed, finding that Johnson's petition was untimely and therefore relief was barred. However, the Court re-affirmed the validity of the underlying theory for relief, holding "a defendant given a sentence enhanced for a prior conviction is **entitled** to a reduction if the earlier conviction is vacated." Id. at 303. (emphasis added).

The Eleventh Circuit has applied this Court's precedent in several cases. In United States v. Martinez, 606 F .3d 1303 (11th Cir. 2010), the Eleventh Circuit held that when a criminal sentence is vacated, "it becomes void in its entirety; the sentence - including any enhancements - has 'been wholly nullified and the slate wiped clean.'" Id. at 1304. See also Spencer v. United States, 773 F .3d 1132, 1139 (11th Cir. 2014). (indicating a prisoner may challenge a sentencing error as a "fundamental defect" on collateral review when he can prove that he is

either actually innocent of his crime or that a prior conviction used to enhance his sentence has been vacated), Stewart v. United States, 646 F.3d 856, 859 (11th Cir. 2011) (holding that "[t]he vacatur order gives a defendant ... the basis to challenge an enhanced federal sentence....").

Up until the advent of this case, the Fourth Circuit likewise applied this Court's precedent in several cases. In United States v. Gadsden, the Fourth Circuit held "sentence enhancements based on previous convictions should be reconsidered if those previous convictions are later vacated." 332 F .3d 224, 228 (4th Cir. 2003) (noting that a defendant may apply for a reopening of his federal sentence once he has successfully challenged the underlying conviction); see also United States v. Dorsey, 611 Fed.Appx. 767 (4th Cir. 2015) (granting a Certificate of Appealability from the denial of 28 U.S.C. § 2255 petition seeking resentencing after vacatur of a state sentence); United States v. Mobley, 96 Fed.Appx. 127 (4th Cir. 2004) (same).

In the case of United States v. Diaz, 838 F.3d 968 (9th Cir. 2016) cert. denied sub nom. Vasquez v. United States, 137 S.Ct. 840 (2017), the Ninth Circuit turned away from this Court's precedent. In Diaz, the defendant was convicted of Federal drug conspiracy charges and sentenced to life imprisonment as a result of two California state drug convictions. One of those convictions was vacated and reclassified as a misdemeanor under Proposition 47, and Diaz applied for relief from his Federal sentence. The District Court denied relief, and the Ninth Circuit affirmed,

finding that "Proposition 47 does not change the historical fact that Vasquez violated § 841 "after two or more prior convictions for a felony drug offense [had] become final." Id. at 971.

Here, the Fourth Circuit turned away not only from its own precedent, but from this Court's precedent as well in the instant case. Here, the Fourth Circuit and the District Court adopted the Ninth Circuit's view in Diaz, finding that "Proposition 47 'does not undermine a prior conviction's felony-status for purposes of § 841,' since the state's later actions cannot change the fact that a defendant committed his federal offense after his conviction for a felony drug offense became final." App. 12-13.

There are several problems with this view. The first is that it disregards the inherent power of the California courts to modify their own judgments pursuant to California law, and for those judgments to be given the full faith and credit due under the Constitution.

Another problem with this view is that it disregards the power of the California legislature to decide what is, and what is not, illegal and punishable under state law. Here, the California legislature spoke and declared marijuana legal. It recognized that its citizens who were convicted under the old law should receive relief from convictions for that which was no longer illegal. The legislature also intended that those who were previously convicted of felonies under the old law should not suffer the same disabilities associated with a felony conviction. It is

inherently unjust to enhance a Federal prisoner's punishment based upon a conviction that has been effectively nullified because the state has legalized what had previously been illegal.

The reality of the situation is that drug law reform, especially marijuana reform, is at the forefront in many state legislature's agendas. Marijuana is now legalized, decriminalized, or approved for medicinal use in one form or another in the majority of states in the Union. Further anticipated reforms will relieve persons with criminal convictions for marijuana from the disabilities associated with those convictions. As these reforms continue, the Federal courts will be faced with the same issue present in this case repeatedly. Clarity in the law is therefore necessary to give the District Courts and the Circuits clear, unequivocal guidance as to how to ameliorate Federal sentences that were enhanced by virtue of now-invalidated prior state convictions.

Due Process and fundamental fairness are at the heart of this case. Boiled down to its essence, the question for this Court is whether a sentence of life without parole is justified for a person who now has no predicate felony convictions.

CONCLUSION

For the reasons set forth herein, Petitioner, Corvain Cooper, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit entered in the above-entitled case on March 8, 2018.

Respectfully submitted on this 6th day of July, 2018.

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FILED: March 8, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-7359
(3:11-cr-00337-RJC-DSC-12)
(3:16-cv-00781-RJC)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

CORVAIN T. COOPER, a/k/a CV

Defendant - Appellant

J U D G M E N T

In accordance with the decision of this court, a certificate of appealability is denied and the appeal is dismissed.

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

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-7359

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CORVAIN T. COOPER, a/k/a CV,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of North Carolina, at Charlotte. Robert J. Conrad, Jr., District Judge. (3:11-cr-00337-RJC-DSC-12; 3:16-cv-00781-RJC)

Submitted: February 28, 2018 Decided: March 8, 2018

Before KING and WYNN, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Patrick Michael Megaro, APPEALS LAW GROUP, Orlando, Florida, for Appellant. Elizabeth Margaret Greenough, OFFICE OF THE UNITED STATES ATTORNEY, Charlotte, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Corvain T. Cooper seeks to appeal the district court's order denying relief on his 28 U.S.C. § 2255 (2012) motion. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(B) (2012). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2012). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists would find that the district court's assessment of the constitutional claims is debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see Miller-El v. Cockrell*, 537 U.S. 322, 336-38 (2003). When the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable, and that the motion states a debatable claim of the denial of a constitutional right. *Slack*, 529 U.S. at 484-85.

We have independently reviewed the record and conclude that Cooper has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal. 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.

DISMISSED

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:16-cv-781-RJC
(3:11-cr-337-RJC-DSC-12)

CORVAIN T. COOPER,	)	
	)	
Petitioner,	)	
	)	
vs.	)	**ORDER**
	)	
UNITED STATES OF AMERICA,	)	
	)	
	)	
Respondent.	)	
	)	

THIS MATTER is before the Court on Petitioner's Motion to Vacate, Set Aside or Correct Sentence under 28 U.S.C. § 2255, (Doc. No. 1). Also pending are the following motions: the Government's Motion to Dismiss, (Doc. No. 6), the Government's Motion to Amend/Correct Motion to Dismiss, (Doc. No. 8), and Petitioner's Motion to Supplement Motion to Vacate, (Doc. No. 9). Petitioner is represented by Patrick Michael Megaro.

I. BACKGROUND

From 2004 through 2013, Petitioner Corvain T. Cooper participated in a drug conspiracy that distributed marijuana from California to co-conspirators on the East Coast, including those in North Carolina. See (Crim. Case No. 3:11-cr-337-RJC-DSC-12, Doc. No. 400 at 171-74: Trial Tr.). Petitioner worked with others to obtain marijuana in California and then to package and ship it to co-conspirators on the East Coast. (Id.). The East Coast co-conspirators distributed the marijuana and returned the proceeds to Petitioner and his co-conspirators in California. Petitioner used FedEx, UPS, and other private shippers to transport thousands of pounds of marijuana. (Id. at 196, 263).

Distributors deposited proceeds into bank accounts in the names of several individuals, including Natalia Wade and Evelyn LaChapelle, and in amounts below $10,000. (Id. at 175; 264-65; Doc. No. 401 at 27-30). Petitioner enlisted assistance from others to withdraw the marijuana proceeds from banks in California, also in amounts below $10,000. (Id., Doc. No. 400 at 135-36; 214-16). The marijuana distribution operation generated millions of dollars. (Id. at 229).

As a result of these activities, Petitioner was charged in a third superseding indictment with conspiracy to distribute and to possess with intent to distribute 1,000 kilograms or more of marijuana, in violation of 21 U.S.C. §§ 841(b)(1)(A), 846 (Count One); money laundering, in violation of 18 U.S.C. § 1956(h) (Count Two); and structuring and aiding and abetting the structuring of financial transactions to avoid reporting requirements, in violation of 31 U.S.C. § 5324(a)(3), (d)(1), (d)(2); 18 U.S.C. § 2, and 31 C.F.R. §§ 103.11, 103.22 (Count Four). (Id., Doc. No. 288: Third Superseding Indictment). The Government filed an Information pursuant to 21 U.S.C. § 851, identifying Petitioner's two prior California felony drug convictions: a July 2011 conviction for selling/furnishing marijuana and hashish, and an August 2011 conviction for possession of a controlled substance (codeine). (Id., Doc. No. 419 at ¶ 52: PSR). Petitioner was sentenced to two years of imprisonment for each conviction. See (Id. at ¶¶ 51, 52).

Petitioner was tried with two of his co-conspirators, LaChapelle and Wade. A number of witnesses, including co-conspirators Leamon Moseley, Darrick Johnson, and Daniel Crockett, testified that they personally worked with or observed Petitioner when Petitioner obtained marijuana in California, prepared it for shipment, and shipped it to the East Coast. Johnson testified that Petitioner procured marijuana from a Mexican source at Johnson's direction, and Moseley testified that he accompanied Petitioner when Petitioner procured marijuana from his

source. (Id., Doc. No. 400 at 129-30, 181). Johnson and Moseley both testified that Petitioner packaged the marijuana for transport. (Id. at 127, 182). Johnson testified that Petitioner shipped marijuana at his direction, and Moseley testified that he helped Petitioner with shipping. (Id. at 127, 181-82). Crockett testified that he and Petitioner both obtained marijuana, obtained money or packaging materials, and prepared and shipped marijuana. (Id. at 199-201). Crockett also testified that he accompanied Petitioner to Charlotte to investigate when a crate of marijuana that they shipped was stolen. (Id. at 205-06).

Shondu Lynch and Sharon Janette Kelsey-Brown (Brown), two of the distributors operating in North Carolina with whom Petitioner worked, testified about what happened to the marijuana after it was shipped and how the distributors paid for it. Lynch testified that he received the marijuana by FedEx and by crate and that he paid for it by depositing money into bank accounts in the name of Wade and LaChapelle. (Id. at 263-65). Brown testified that she received marijuana by FedEx and by crate and that Petitioner discussed with her when the marijuana was to arrive, how much was coming, and how much money she was to send back. (Id., Doc. No. 401 at 26-27, 30-31). Brown also testified that she was told to deposit the money into particular accounts, including those of Wade and LaChapelle, in amounts below $10,000. (Id. at 27, 29-30). Multiple witnesses testified about how Petitioner and Crockett retrieved marijuana proceeds in California. (Id., Doc. No. 400 at 135-36, 210, 212-16, 227).

A number of witnesses who participated in the drug-trafficking operation testified about the quantity of marijuana that was shipped from California to the East Coast. Crockett testified that he and Petitioner shipped 40-80 pounds of marijuana five days a week, year round, every year. (Id. at 195-96, 263). Crockett also testified that on about 40-50 occasions he and Petitioner shipped crates containing 300-500 pounds of marijuana by truck. (Id. at 197-203).

Brown testified that she received approximately a dozen crates and that she received approximately 500 pounds of marijuana per day from California. (Id., Doc. No. 401 at 26, 31-32, 36). Johnson testified that when he was working with Petitioner, he was distributing 100-120 pounds of marijuana per week, and that he worked with Petitioner from about 2004 until 2009 and then again from 2012 until 2013. (Id., Doc. No. 400 at 171-72, 177). Lynch testified that he received approximately 40 pounds a day from Petitioner and Crockett five days a week from January through May 2009. (Id. at 263). Lynch also testified that Petitioner was involved in selling him marijuana on three separate occasions that totaled 550 pounds. (Id. at 262, 269-70).

During the trial, law enforcement agents testified about the results of their extensive investigation of the marijuana distribution operation in which Petitioner participated. Detective James Beaver, who worked with the Charlotte-Mecklenburg Police Department and who was a task force officer with Homeland Security Investigations, testified that he had been involved in hundreds of marijuana investigations. (Id., Doc. No. 403 at 31-32). Beaver testified that he had more than 21 years of experience investigating drug-trafficking charges and through that experience had become "familiar with the methods of trafficking to include packaging, distribution, movement of proceeds, [and] pricing" of marijuana. (Id. at 32). Beaver testified that on January 9, 2009, he discovered 338 pounds of a substance that tested positive for marijuana in a crate that had been sent from California to North Carolina. (Id. at 31, 39-41). Through surveillance of this crate, Beaver was able to identify the man who picked up the crate as Gerren Darty. (Id. at 42-43, 46). Darty met with Crockett after he picked up the crate. (Id. at 47). Phone records showed Darty called Petitioner the same day that the crate arrived. (Id. at 62-63). Shipping records for the crate showed that it was sent through the Freight Center, a Florida company. (Id. at 70-71).

In February 2009, Beaver found two abandoned crates almost identical to the one found on January 9, 2009. (Id. at 71). Although the crates were opened, they smelled like marijuana. (Id. at 73). A shipping label from the crates was connected to Darty through records obtained from the Freight Center. (Id. at 73-75). In July 2009, officers discovered a third crate that had been discarded behind a business in Charlotte. (Id. at 75). Records showed that it had been sent from California by Crockett. (Id. at 77-78). Based on records from the Freight Center, Beaver was able to determine that approximately 24 crates had been shipped from California to Charlotte. (Id. at 78). Phone numbers associated with the shipping records were connected to members of the conspiracy. See, e.g., (Id. at 84-87). Based on the weight of the original crate, which contained 338 pounds of marijuana, or approximately 48% of the crate's total weight, and the weight of the crates from the shipping records, Beaver estimated that the 24 crates contained approximately 5,000 pounds of marijuana. (Id. at 80-81).

Agents also testified about the results of surveillance they conducted of participants in the drug-trafficking operation in California and North Carolina, searches they conducted, and interviews of people who interacted with the participants. (Id. at 104-15). Agents additionally described telephone records that revealed a host of contacts between Petitioner and other co-conspirators, including 1,336 contacts from January to March of 2009 between Petitioner and LaChapelle. (Id. at 66). Agents reviewed records of cash deposits and withdrawals in bank accounts of individuals involved in the drug-trafficking operation, including those of Petitioner and LaChapelle. (Id. at 176-97; Doc. No. 400 at 7-10). Special Agent Glen MacDonald with Homeland Security Investigations testified that he had investigated over 100 people for money laundering and that the term "CTR" referred to a cash transaction report, which is a report that a bank must complete for cash transactions that involve over $10,000. (Id., Doc. No. 403 at 168-

69). MacDonald testified that people often make transactions under $10,000 in the hope of avoiding a CTR. (Id. at 171). He testified that, in this case, money was being deposited in North Carolina and elsewhere and then, shortly thereafter, was being withdrawn in California. (Id.).

Officer David Rudy of the Beverly Hills, California, police department testified that he had been involved with investigating drug offenses for eleven years. (Id., Doc. No. 400 at 97-98). Rudy testified that he recovered marijuana from Petitioner in Beverly Hills in January 2009. (Id. at 98-99). Rudy stopped Petitioner after observing his black Jaguar speeding and weaving in and out of traffic. (Id. at 99-100). Rudy detected the smell of marijuana, and Petitioner granted consent to search the vehicle. (Id. at 100-01). Rudy found a brick of marijuana wrapped in plastic wrap in the vehicle's trunk, as well as a "pays and owes" document, which Rudy recognized as a drug dealer's checkbook. (Id. at 101-03). Petitioner told Rudy that he was delivering the marijuana to his mother. (Id. at 101).

Petitioner was not arrested on the charges in the indictment until January 2013. Detective Beaver was present and spoke with Petitioner at the time of his arrest. (Id., Doc. No. 403 at 118, 125, 136-37). Petitioner called no defense witnesses at trial. (Id., Doc. No. 401 at 187). The jury convicted him of all three charges. (Id., Doc. No. 351: Jury Verdict). A probation officer prepared a presentence report, calculating Petitioner's base offense level as 38, based on the offense involving 45,000 pounds of marijuana and Petitioner having possessed a dangerous weapon. (Id., Doc. No. 419 at ¶ 22). A two-level enhancement applied because Petitioner was convicted under § 1956. (Id. at ¶ 23). A four-level enhancement applied because Petitioner was an organizer or leader of criminal activity that involved five or more participants, and a two-level increase for obstruction of justice applied because Petitioner sent a letter threatening a co-defendant. (Id. at ¶¶ 25-26). Based on these calculations, the probation officer found that

Petitioner's total offense level was 46, but under the Guidelines this was treated as an offense level of 43. (Id. at ¶¶ 27, 38). Petitioner had 17 criminal history points, which placed him in criminal history category VI. (Id. at ¶ 55). Based on a total offense level of 43 and a criminal history category of VI, the guidelines range was life imprisonment. (Id. at ¶ 83). Pursuant to § 841(b)(1)(A), a mandatory life term applied to Petitioner's conviction of Count One because he had two prior felony drug convictions. (Id. at ¶ 82).

At sentencing, Petitioner conceded the validity of the predicate convictions, but argued that imposition of a mandatory life sentence violated the Eighth Amendment. (Id., Doc. No. 488 at 3-6). This Court overruled that objection, but granted his objection to the two-level enhancement for obstruction of justice. (Id. at 6, 9). Although this reduced Petitioner's offense level to 44, it did not reduce his guidelines range. See (U.S.S.G. Ch. 5, Pt. A, cmt. 2 (offense levels above 43 are treated as level 43)). This Court sentenced Petitioner to concurrent sentences of life imprisonment on Count One, 240 months of imprisonment on Count Two, and 120 months of imprisonment on Count Four. (Id., Doc. No. 461: Judgment).

Petitioner appealed, arguing that this Court erred in admitting evidence of his 2009 traffic stop and marijuana conviction, by denying his motion to sever, and by finding that the mandatory life sentence was not unconstitutional. United States v. Cooper, 624 F. App'x 819, 820 (4th Cir. 2015), cert. denied, 136 S. Ct. 1502 (2016). He also asserted that there was insufficient evidence to show that the conspiracy to distribute 1,000 kilograms or more of marijuana was reasonably foreseeable to him, and that he had received ineffective assistance of counsel. Id. The Fourth Circuit affirmed Petitioner's conviction and sentence and dismissed his claims of ineffective assistance, finding that "his attorney's ineffectiveness does not appear on

the face of the record," and that such claims could be pursued under Section 2255. Cooper, 624 F. App'x at 823.

Petitioner timely filed the present Section 2255 motion in November 2016, arguing that he should be resentenced because his August 2011 conviction for possession of a controlled substance (codeine) has been re-characterized as a misdemeanor and that his attorney provided ineffective assistance. (Civ. Doc. Nos. 1, 2). The Government filed its response and motion to dismiss on February 16, 2017, arguing in part that the motion is time-barred. (Civ. Doc. No. 6). On February 22, 2017, Petitioner filed a reply to the Government's response. (Civ. Doc. No. 7). On March 1, 2017, the Government filed a motion to amend/correct the Government's motion to dismiss to concede that the petition is timely. (Civ. Doc. No. 8).

On June 8, 2017, Petitioner filed a motion to supplement, noting that on May 24, 2017, a California court vacated one of Petitioner's felony convictions (selling/furnishing marijuana) that was used to enhance his sentence in this Court and replaced it with a misdemeanor conviction. Specifically, Petitioner notes that he "has applied for Proposition 64 relief from the predicate conviction in Case # BH SA 07215401, Beverly Hills, California, as alleged in the 851 enhancement, through California counsel. On May 24, 2017, the California court vacated the felony conviction and replaced it with a misdemeanor conviction." (Doc. No. 9 at 1). On June 22, 2017, the Government filed a response in opposition to Petitioner's motion to supplement. (Doc. No. 10). This matter is therefore ripe for disposition.

II. STANDARD OF REVIEW

Rule 4(b) of the Rules Governing Section 2255 Proceedings provides that courts are to promptly examine motions to vacate, along with "any attached exhibits and the record of prior proceedings . . ." in order to determine whether the petitioner is entitled to any relief on the

claims set forth therein. After examining the record in this matter, the Court finds that the arguments presented by Petitioner can be resolved without an evidentiary hearing based on the record and governing case law. See Raines v. United States, 423 F.2d 526, 529 (4th Cir. 1970).

III. DISCUSSION

A. Petitioner's claim that he is entitled to resentencing based on California's reclassification of Petitioner's state drug offense for codeine possession as a misdemeanor.

In November 2014, California voters passed Proposition 47. Proposition 47 allows certain offenders, including those charged with unlawful possession of a controlled substance under California Health and Safety Code § 11350(a), to apply to have their sentences reduced to or designated as a misdemeanor. See CAL. PENAL CODE § 1170.18. In his first claim, filed in his original motion to vacate, Petitioner asserts that he applied for relief under Proposition 47 in June 2016, and the state court subsequently granted his motion and imposed a misdemeanor sentence for his August 2011 codeine offense. (Civ. Doc. No. 2). Based on this subsequent reclassification, Petitioner argues that he should be resentenced. (Id. at 8-11).

Petitioner's claim fails. Although the Proposition 47 statute provides that any felony conviction that is re-designated a misdemeanor "shall be considered a misdemeanor for all purposes," § 1170.18(k), it also provides that "[r]esentencing pursuant to this section does not diminish or abrogate the finality of judgments in any case that does not come within the purview of this act," § 1170.18(n). Furthermore, the Ninth Circuit held in United States v. Diaz, 838 F.3d 968, 975 (9th Cir. 2016), cert. denied, 2017 WL 276254 (Jan. 23, 2017), that Proposition 47 "does not undermine a prior conviction's felony-status for purposes of § 841," since the state's later actions cannot change the fact that a defendant committed his federal offense after his

conviction for a felony drug offense became final. See also McFarland v. United States, 2016 WL 6600071, at *4 (E.D. Mo. Nov. 8, 2016) (rejecting the argument that reclassification of a predicate state felony as a misdemeanor entitled petitioner to relief under Section 2255).

A prior conviction is considered a felony drug offense if it is a drug "offense that is punishable by imprisonment for more than one year under any law . . . of a State." 21 U.S.C. § 802(44). As long as the prior conviction meets this definition, it is a felony drug offense for purposes of Section 841(b), regardless of whether a state labels the offense a misdemeanor or a felony. See Burgess v. United States, 553 U.S. 124, 126-27 (2008). Here, Petitioner was sentenced to two years of imprisonment for this prior offense. See (Crim. Case No. 3:11-cr-337-RJC-DSC-12, Doc. No. 419 at ¶ 52). Accordingly, California's reclassification of his offense as a misdemeanor does not change the fact that it was a felony drug offense under federal law.[1]

Finally, in support of his argument that he should be resentenced, Petitioner relies on United States v. Dorsey, 611 F. App'x 767 (4th Cir. 2015), United States v. Mobley, 96 F. App'x 127 (4th Cir. 2004), and United States v. Gadsen, 332 F.3d 224 (4th Cir. 2003). In each of those decisions, however, the prior state predicate offense was vacated or expunged, not downgraded. Here, there is no infirmity in Petitioner's prior conviction—rather, state law was changed, but that did not alter the propriety of his previously imposed federal sentence. See McNeill v. United States, 563 U.S. 816, 820-22 (2011) (holding that state change in maximum term of imprisonment for an offense did not retroactively alter the maximum term of imprisonment that applied when a defendant committed the offense); cf. United States v. Foote, 784 F.3d 931, 932, 941 (4th Cir.) (holding petitioner's claim was not cognizable under Section 2255, where he was

[1] Furthermore, as the Government notes in its response, even without considering this second drug offense, Petitioner would still be subject to a life sentence under the Guidelines and under § 841. See § 841(b)(1)(A); U.S.S.G. Ch. 5, Pt. A (Table).

improperly sentenced as a career offender, but his prior state convictions had not been vacated so there was no fundamental miscarriage of justice), cert. denied, 135 S. Ct. 2850 (2015). In sum, because the retroactive reclassification of Petitioner's prior state offenses as a misdemeanor does not change the federal classification of that offense, his claim that he should be resentenced is dismissed.

B. Petitioner's claims that his counsel rendered ineffective assistance of counsel.

The Sixth Amendment to the U.S. Constitution guarantees that in all criminal prosecutions, the accused has the right to the assistance of counsel for his defense. See U.S. CONST. amend. VI. To show ineffective assistance of counsel, Petitioner must first establish a deficient performance by counsel and, second, that the deficient performance prejudiced him. See Strickland v. Washington, 466 U.S. 668, 687-88 (1984). In making this determination, there is "a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Id. at 689; see also United States v. Luck, 611 F.3d 183, 186 (4th Cir. 2010). Furthermore, in considering the prejudice prong of the analysis, the Court "can only grant relief under . . . Strickland if the 'result of the proceeding was fundamentally unfair or unreliable.'" Sexton v. French, 163 F.3d 874, 882 (4th Cir. 1998) (quoting Lockhart v. Fretwell, 506 U.S. 364, 369 (1993)). Under these circumstances, the petitioner "bears the burden of affirmatively proving prejudice." Bowie v. Branker, 512 F.3d 112, 120 (4th Cir. 2008). If the petitioner fails to meet this burden, a "reviewing court need not even consider the performance prong." United States v. Rhynes, 196 F.3d 207, 232 (4th Cir. 1999), opinion vacated on other grounds, 218 F.3d 310 (4th Cir. 2000). To establish ineffective assistance of counsel at sentencing, a petitioner must show that but for counsel's deficient performance, there is a reasonable probability that he would have received a lower sentence. See Royal v. Trombone,

188 F.3d 239, 249 (4th Cir. 1999). If a petitioner fails to conclusively demonstrate prejudice, the reviewing court need not consider whether counsel's performance was deficient. United States v. Terry, 366 F.3d 312, 315 (4th Cir. 2004).

i. Petitioner's allegation that counsel was deficient for failing to object to the officers' testimony.

In support of his ineffective assistance of counsel claim, Petitioner first argues that counsel was ineffective for failing to object to testimony by law enforcement officers at Petitioner's trial. Petitioner does not cite any specific portions of the record, but contends generally that "the testimony of Detective Beaver, Agent McDonald, and Officer Rudy regarding the drug business and money laundering" was based on hearsay. (Doc. No. 2 at 13). He asserts that counsel should have objected to their testimony because it relied on information from debriefing cooperators, suspects, and other law enforcement sources. (Id.). For the following reasons, this claim will be dismissed.

The Court first notes that because Petitioner has failed to identify any specific testimony to which counsel should have objected, this claim is subject to dismissal as conclusory. See United States v. Dyess, 730 F.3d 354, 359-60 (4th Cir. 2013) (holding it was proper to dismiss § 2255 claims based on vague and conclusory allegations). In any event, the claim fails on its merits. Each of the law enforcement agents whose testimony Petitioner contends was objectionable testified based on the agent's own personal knowledge and experience. Detective Beaver testified that he had more than 21 years of experience investigating drug-trafficking charges and through that experience became "familiar with the methods of trafficking to include packaging, distribution, movement of proceeds, and pricing" of marijuana. (Crim. Case No. 3:11-cr-337-RJC-DSC-12, Doc. No. 403 at 32). Agent MacDonald testified that he had

investigated drugs and money laundering since graduating from a training academy in 2002 and that he had investigated more than 100 people for money laundering. (Id. at 168-69). Finally, Officer Rudy testified that he had been involved in investigating drug offenses for his entire eleven-year career, and he described his personal observations from when he stopped Petitioner's vehicle in January 2009 and found marijuana in the car's trunk. (Id., Doc. No. 400 at 98-101). Petitioner's attorney was not deficient because he could reasonably have concluded that no objections were warranted because the testimony of Detective Beaver, Agent MacDonald, and Officer Rudy was admissible. See, e.g., United States v. Ayala-Pizzarro, 407 F.3d 25, 26-28 (1st Cir. 2005) (holding that testimony from a law enforcement officer "about drug distribution points and how they operate as well as how heroin is normally packaged for distribution at these points" based on his previous experience was admissible under Federal Rule of Evidence 701).

Moreover, even if Petitioner's counsel had concluded that the law would support an objection, it would not have been unreasonable for counsel to conclude that an objection would have prompted the Government to successfully seek to qualify these officers as experts, United States v. Wilson, 484 F.3d 267, 273-74 (4th Cir. 2007) (describing the discretion a district court has to admit testimony of a law enforcement officer as an expert in the field of investigating drug-trafficking), and that such a qualification might bolster the credibility of these witnesses in a manner unhelpful to Petitioner's defense.

In support of his claim, Petitioner relies on the Second Circuit's decision in United States v. Mejia, 545 F.3d 179, 194-99 (2d Cir. 2008). In that case, however, the concern was that someone testifying as an expert witness would testify as to matters that did not require expert testimony or would submit hearsay to the jury under the guise of expert testimony and this would carry undue weight due to the witness's status as an expert. See United States v. Johnson, 587

F.3d 625, 636 (4th Cir. 2009) (distinguishing Meija and finding as proper admission of expert testimony that was based on independent judgment and subject to cross-examination). Here, the officer's training and experience qualified them as experts in the field. Although Petitioner points to no specific instances in which testimonial hearsay statements were submitted to the jury, the officers would have been permitted to rely on hearsay to form an opinion, see United States v. Palacios, 677 F .3d 234, 242 (4th Cir. 2012), . Accordingly, counsel's performance was not deficient.

Additionally, Petitioner cannot show prejudice. This was a particularly strong case. Petitioner cannot show that, absent this testimony regarding the drug business and money laundering, there is a reasonable probability that the result of the proceeding would have been different. See Strickland, 466 U.S. at 687-88, 694. Accordingly, this claim of ineffective assistance of counsel is denied.

ii. Petitioner's allegation that counsel was deficient for failing to object to Detective Beaver's identification of Petitioner's voice based on Beaver's prior interaction with Petitioner.

Petitioner next contends that counsel was deficient for failing to object to Detective Beaver's identification of Petitioner's voice based on Beaver's prior interaction with Petitioner. For the following reasons, this contention is without merit. Under Federal Rule of Evidence 901(b)(5), an opinion regarding voice recognition need not be made by an expert. FED. R. CIV. P. 901(b)(5). Rather, an opinion as to the identification of a voice is admissible "based on hearing the voice at any time under circumstances that connect it with the alleged speaker." (Id.). "All that is required is that the witness have the requisite familiarity with the speaker's voice." United States v. Robinson, 707 F.2d 811, 814 (4th Cir. 1983). Here, Detective Beaver

testified that he was able to recognize Petitioner's voice on a recording of a phone call from jail based on his prior interaction with Petitioner at the time of Petitioner's arrest in January 2013. (Crim. Case No. 3:11-cr-337-RJC-DSC-12, Doc. No. 403 at 136-37). This was sufficient to allow admission of this testimony. See United States v. Ware, 29 F. App'x 118, 119 (4th Cir. 2002) (affirming admission of police officer's testimony to identify defendant's voice on a tape recording); United States v. Jackson, No. 97-4102, 1997 WL 764523, at *3 (4th Cir. Dec. 12, 1997) (holding that a law enforcement agent who spoke with a defendant when processing him during his arrest was competent to identify the defendant's voice on a tape). Additionally, Petitioner stated his identification number at the beginning of the call, and Beaver confirmed that this number belonged to Petitioner. (Crim. Case No. 3:11-cr-337-RJC-DSC-12, Doc. No. 403 at 137). Therefore, Petitioner's attorney did not perform unreasonably by declining to object to Beaver's identification of Petitioner's voice because such an objection would have been meritless. Additionally, there were other methods for admitting this evidence, see Fed. R. Evid. 901(b), so any objection also would have been fruitless. In sum, Petitioner cannot show deficient performance or prejudice based on counsel's failure to object to Beaver's voice recognition testimony. See Strickland, 466 U.S. at 687-88, 694. Accordingly, this claim of ineffective assistance of counsel is denied.

iii. Petitioner's allegation that counsel was deficient for failing to object to testimony by Detective Beaver regarding certified shipping records and drug amounts.

Petitioner next alleges that counsel was deficient for failing to object to testimony at trial regarding certified shipping records and drug amounts. For the following reasons, this contention is without merit. Records kept in the course of a regularly conducted business activity are admissible as an exception to the hearsay rule. FED. R. EVID. 803(6)(B). Such

records are self-authenticating where they are certified. FED. R. EVID. 902(11). Here, Detective Beaver testified that he had reviewed certified records from the Freight Center, which he had obtained after discovery of the first crate containing marijuana. (Crim. Case No. 3:11-cr-337-RJC-DSC-12, Doc. No. 403 at 39, 43, 78). He was able to connect those records to the conspiracy through phone records and names, as well as descriptions of the contents of the crates. (See, e.g., id. at 38, 70-71, 74-77, 81-87).

Petitioner's attorney did not perform deficiently by declining to object to the admission of the shipping records about which Beaver testified. Petitioner's attorney could reasonably have concluded that any objection would have been meritless because the records were of a regularly conducted business activity and admissible without the live testimony of a records custodian. FED. R. EVID. 902(11) (deeming certified domestic records of regularly conducted activities as self-authenticating); United States v. Mallory, 461 F. App'x 352, 357 (4th Cir. 2012) ("[T]he Sixth Amendment right to confront witnesses does not include the right to confront a records custodian who submits a Rule 902(11) certification of a record that was created in the course of a regularly conducted business activity."). Moreover, Petitioner's attorney could reasonably have concluded that even a successful objection would not have assisted Petitioner because, if necessary, the Government would have responded by calling a document custodian as a witness. Because the records were properly admitted, Petitioner also cannot show prejudice.

Finally, Petitioner's attorney did not perform deficiently by declining to object to Detective Beaver's estimate of the amount of marijuana transported in the 24 shipments that Beaver reviewed. Beaver's testimony was based on his personal participation in the seizure of marijuana and his review of shipping records that recorded the gross weight of each shipment included within his calculation. Based on the one crate from which the marijuana was recovered,

Beaver estimated that only 48% of each crate's gross weight was marijuana. See (Crim. Case No. 3:11-cr-337-RJC-DSC-12, Doc. No. 403 at 80-81). Petitioner's attorney could reasonably have concluded that this testimony was not speculative. See United States v. Levy, 207 F. App'x 833, 837-38 (9th Cir. 2006) (upholding a sentence based on a drug quantity derived from the "ratio of total package weight to amount of Ecstasy" from a seized shipments applied to other shipments about which "it knew from the UPS airbills the exact total weights"). Moreover, Beaver's estimate of 5,000 pounds of marijuana was considerably lower than the 12,000 pounds that Crockett testified that he and Petitioner shipped by crate. See (Crim. Case No. 3:11-cr-337-RJC-DSC-12, Doc. No. 400 at 197-203 (stating they shipped 300-500 pounds of marijuana in crates on 40-50 occasions). This estimate was also well below the more than 10,000 kilograms of marijuana that Crockett and Johnson each testified were transported as part of their participation in the trafficking activities. See (Id. at 171-72, 177, 195-203). Petitioner's attorney therefore could reasonably have concluded either that Beaver's testimony did more good than harm for Petitioner's defense, or that it was inconsequential and an objection would only distract from more fruitful challenges. Thus, counsel's performance was not deficient.

Petitioner has also failed to show prejudice. Although Petitioner contends that Beaver's testimony was crucial to establishing the 1,000 kilograms of marijuana charged in Count One of the Indictment, Doc. No. 2 at 14, he cannot show prejudice from Beaver's testimony, given the testimony from Petitioner's co-conspirators that his offense involved over four times the amount of marijuana to which Beaver testified. Petitioner's contention that such testimony was necessary to connect him to the Western District of North Carolina is also misplaced, particularly in light of Crockett's testimony that he went to Charlotte with Petitioner to look for a missing crate. See (Crim. Case No. 3:11-cr-337-RJC-DSC-12, Doc. No. 400 at 205-06). In sum,

Petitioner cannot show deficient performance or prejudice based on his counsel's failure to object to Detective Beaver's testimony regarding certified shipping records and drug amounts. Accordingly, this claim of ineffective assistance of counsel is denied.

C. Petitioner's Motion to Supplement based on California's reclassification of Petitioner's state drug offense for selling marijuana as a misdemeanor.

The Court next considers Petitioner's motion to supplement his 28 U.S.C. § 2255 motion. In his motion to supplement, filed on June 8, 2017, Petitioner seeks to add information regarding his July 2011 conviction for selling marijuana and the fact that a California state court has re-characterized this conviction as a misdemeanor. Specifically, Petitioner notes that on May 24, 2017, a California state court re-designated Petitioner's prior felony conviction for selling marijuana as a misdemeanor conviction. See (Doc. No. 9-1). Petitioner contends that he is therefore entitled to sentencing relief for the same reason he contends he is entitled to sentencing relief based on the fact that his prior codeine conviction has also been reclassified as a misdemeanor conviction.

Federal Rule of Civil Procedure 15(d) provides that a "court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented." FED. R. CIV. P. 15(d). Rule 15(d) is construed similarly to motions to amend pursuant to Rule 15(a). See Franks v. Ross, 313 F.3d 184, 198 n.15 (4th Cir. 2002). "[L]eave to amend shall be given freely, absent bad faith, undue prejudice to the opposing party, or futility of amendment." United States v. Pittman, 209 F.3d 314, 317 (4th Cir. 2000). Where an amendment seeks to add an entirely new claim that would otherwise be barred, leave should be denied if the claim does not relate back to the original pleading. Id. at 317. New claims do not relate back where they are based on "separate

occurrences of both time and type." Id. at 318 (internal quotation and citation omitted) (denying leave to amend where the appellant had originally challenged his sentence enhancement, but sought to amend to challenge his sentence enhancement on another basis).

Petitioner's request to supplement his Section 2255 motion with information relating to the reclassification of his state marijuana conviction from a felony to a misdemeanor is denied because any supplement to his original motion would be futile. That is, even if the Court considers the contents of the motion to supplement, the reclassification of Petitioner's marijuana conviction from a felony to a misdemeanor does not alter that fact that it still constitutes a prior felony drug offense under Section 841. As the Court has already discussed, supra, a state's later reclassification of an offense "does not undermine a prior conviction's felony-status for purposes of § 841." Diaz, 838 F.3d at 975. Nor does a state's label of an offense as a misdemeanor matter, if, as here, the prior conviction is a drug offense that is punishable by more than a year of imprisonment. See Burgess v. United States, 553 U.S. 124, 126-27 (2008); 21 U.S.C. § 802(44); Cal. Health & Safety Code § 11360(a) (2011). Accordingly, Petitioner's motion to supplement his Section 2255 motion is denied.

IV. CONCLUSION

For the foregoing reasons, the Court denies and dismisses Petitioner's Section 2255 petition.

IT IS, THEREFORE, ORDERED that:

1. Petitioner's Motion to Vacate, Set Aside or Correct Sentence under 28 U.S.C. § 2255, (Doc. No. 1), is **DENIED** and **DISMISSED**.
2. The Government's Motion to Amend/Correct Motion to Dismiss, (Doc. No. 8), and the Government's Motion to Dismiss, (Doc. No. 6), are both **GRANTED**.

3. Petitioner's Motion to Supplement Motion to Vacate, (Doc. No. 9), is **DENIED**.

4. **IT IS FURTHER ORDERED** that pursuant to Rule 11(a) of the Rules Governing Section 2254 and Section 2255 Cases, this Court declines to issue a certificate of appealability. See 28 U.S.C. § 2253(c)(2); Miller-El v. Cockrell, 537 U.S. 322, 338 (2003) (in order to satisfy § 2253(c), a petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong); Slack v. McDaniel, 529 U.S. 473, 484 (2000) (when relief is denied on procedural grounds, a petitioner must establish both that the dispositive procedural ruling is debatable and that the petition states a debatable claim of the denial of a constitutional right).

Signed: September 30, 2017

Robert J. Conrad, Jr.
United States District Judge

U.S. Const., Amend. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const., Amend. XIV

Section 1.
All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2.
Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Section 3.
No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4.
The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5.
The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

28 U.S.C. § 2255

(a) A prisoner in custody under sentence of a court established by Act of Congress claiming the

right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

(b) Unless 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. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.

(c) A court may entertain and determine such motion without requiring the production of the prisoner at the hearing.

(d) An appeal may be taken to the court of appeals from the order entered on the motion as from a final judgment on application for a writ of habeas corpus.

(e) An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.

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

(1) the date on which the judgment of conviction becomes final;

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

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

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

(g) Except as provided in section 408 of the Controlled Substances Act, in all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.
(h) A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain—
(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or
(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

21 U.S.C. § 851

(a) Information filed by United States Attorney
(1) No person who stands convicted of an offense under this part shall be sentenced to increased punishment by reason of one or more prior convictions, unless before trial, or before entry of a plea of guilty, the United States attorney files an information with the court (and serves a copy of such information on the person or counsel for the person) stating in writing the previous convictions to be relied upon. Upon a showing by the United States attorney that facts regarding prior convictions could not with due diligence be obtained prior to trial or before entry of a plea of guilty, the court may postpone the trial or the taking of the plea of guilty for a reasonable period for the purpose of obtaining such facts. Clerical mistakes in the information may be amended at any time prior to the pronouncement of sentence.
(2) An information may not be filed under this section if the increased punishment which may be imposed is imprisonment for a term in excess of three years unless the person either waived or was afforded prosecution by indictment for the offense for which such increased punishment may be imposed.
(b) Affirmation or denial of previous conviction
If the United States attorney files an information under this section, the court shall after conviction but before pronouncement of sentence inquire of the person with respect to whom the information was filed whether he affirms or denies that he has been previously convicted as alleged in the information, and shall inform him that any challenge to a prior conviction which is not made before sentence is imposed may not thereafter be raised to attack the sentence.

(c) Denial; written response; hearing
(1) If the person denies any allegation of the information of prior conviction, or claims that any conviction alleged is invalid, he shall file a written response to the information. A copy of the response shall be served upon the United States attorney. The court shall hold a hearing to determine any issues raised by the response which would except the person from increased punishment. The failure of the United States attorney to include in the information the complete criminal record of the person or any facts in addition to the convictions to be relied upon shall not constitute grounds for invalidating the notice given in the information required by subsection (a)(1). The hearing shall be before the court without a jury and either party may introduce evidence. Except as otherwise provided in paragraph (2) of this subsection, the United States attorney shall

have the burden of proof beyond a reasonable doubt on any issue of fact. At the request of either party, the court shall enter findings of fact and conclusions of law.
(2) A person claiming that a conviction alleged in the information was obtained in violation of the Constitution of the United States shall set forth his claim, and the factual basis therefor, with particularity in his response to the information. The person shall have the burden of proof by a preponderance of the evidence on any issue of fact raised by the response. Any challenge to a prior conviction, not raised by response to the information before an increased sentence is imposed in reliance thereon, shall be waived unless good cause be shown for failure to make a timely challenge.
(d) Imposition of sentence
(1) If the person files no response to the information, or if the court determines, after hearing, that the person is subject to increased punishment by reason of prior convictions, the court shall proceed to impose sentence upon him as provided by this part.
(2) If the court determines that the person has not been convicted as alleged in the information, that a conviction alleged in the information is invalid, or that the person is otherwise not subject to an increased sentence as a matter of law, the court shall, at the request of the United States attorney, postpone sentence to allow an appeal from that determination. If no such request is made, the court shall impose sentence as provided by this part. The person may appeal from an order postponing sentence as if sentence had been pronounced and a final judgment of conviction entered.
(e) Statute of limitations
No person who stands convicted of an offense under this part may challenge the validity of any prior conviction alleged under this section which occurred more than five years before the date of the information alleging such prior conviction.

California Penal Code § 1170.18

ARTICLE 1. Initial Sentencing [1170 - 1170.91] (Article 1 added by Stats. 1976, Ch. 1139.)

1170.18.
(a) A person who, on November 5, 2014, was serving a sentence for a conviction, whether by trial or plea, of a felony or felonies who would have been guilty of a misdemeanor under the act that added this section ("this act") had this act been in effect at the time of the offense may petition for a recall of sentence before the trial court that entered the judgment of conviction in his or her case to request resentencing in accordance with Sections 11350, 11357, or 11377 of the Health and Safety Code, or Section 459.5, 473, 476a, 490.2, 496, or 666 of the Penal Code, as those sections have been amended or added by this act.

(b) Upon receiving a petition under subdivision (a), the court shall determine whether the petitioner satisfies the criteria in subdivision (a). If the petitioner satisfies the criteria in subdivision (a), the petitioner's felony sentence shall be recalled and the petitioner resentenced to a misdemeanor pursuant to Sections 11350, 11357, or 11377 of the Health and Safety Code, or Section 459.5, 473, 476a, 490.2, 496, or 666 of the Penal Code, as those sections have been amended or added by this act, unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety. In exercising its discretion, the court may consider all of the following:

(1) The petitioner's criminal conviction history, including the type of crimes committed, the extent of injury to victims, the length of prior prison commitments, and the remoteness of the crimes.

(2) The petitioner's disciplinary record and record of rehabilitation while incarcerated.

(3) Any other evidence the court, within its discretion, determines to be relevant in deciding whether a new sentence would result in an unreasonable risk of danger to public safety.

(c) As used throughout this code, "unreasonable risk of danger to public safety" means an unreasonable risk that the petitioner will commit a new violent felony within the meaning of clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667.

(d) A person who is resentenced pursuant to subdivision (b) shall be given credit for time served and shall be subject to parole for one year following completion of his or her sentence, unless the court, in its discretion, as part of its resentencing order, releases the person from parole. The person is subject to parole supervision by the Department of Corrections and Rehabilitation pursuant to Section 3000.08 and the jurisdiction of the court in the county in which the parolee is released or resides, or in which an alleged violation of supervision has occurred, for the purpose of hearing petitions to revoke parole and impose a term of custody.

(e) Resentencing pursuant to this section shall not result in the imposition of a term longer than the original sentence.

(f) A person who has completed his or her sentence for a conviction, whether by trial or plea, of a felony or felonies who would have been guilty of a misdemeanor under this act had this act been in effect at the time of the offense, may file an application before the trial court that entered the judgment of conviction in his or her case to have the felony conviction or convictions designated as misdemeanors.

(g) If the application satisfies the criteria in subdivision (f), the court shall designate the felony offense or offenses as a misdemeanor.

(h) Unless the applicant requests a hearing, a hearing is not necessary to grant or deny an application filed under subdivision (f).

(i) This section does not apply to a person who has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290.

(j) Except as specified in subdivision (p), a petition or application under this section shall be filed on or before November 4, 2022, or at a later date upon showing of good cause.

(k) A felony conviction that is recalled and resentenced under subdivision (b) or designated as a misdemeanor under subdivision (g) shall be considered a misdemeanor for all purposes, except that resentencing shall not permit that person to own, possess, or have in his or her custody or

control a firearm or prevent his or her conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6.

(l) If the court that originally sentenced the petitioner is not available, the presiding judge shall designate another judge to rule on the petition or application.

(m) This section does not diminish or abrogate any rights or remedies otherwise available to the petitioner or applicant.

(n) Resentencing pursuant to this section does not diminish or abrogate the finality of judgments in any case that does not come within the purview of this section.

(o) A resentencing hearing ordered under this section shall constitute a "post-conviction release proceeding" under paragraph (7) of subdivision (b) of Section 28 of Article I of the California Constitution (Marsy's Law).

(p) (1) A person who is committed to a state hospital after being found not guilty by reason of insanity pursuant to Section 1026 may petition the court to have his or her maximum term of commitment, as established by Section 1026.5, reduced to the length it would have been had the act that added this section been in effect at the time of the original determination. Both of the following conditions are required for the maximum term of commitment to be reduced.

(A) The person would have met all of the criteria for a reduction in sentence pursuant to this section had he or she been found guilty.

(B) The person files the petition for a reduction of the maximum term of commitment before January 1, 2021, or on a later date upon a showing of good cause.

(2) If a petitioner's maximum term of confinement is ordered reduced under this subdivision, the new term of confinement must provide opportunity to meet requirements provided in subdivision (b) of Section 1026.5. If a petitioner's new maximum term of confinement ordered under this section does not provide sufficient time to meet requirements provided in subdivision (b) of Section 1026.5, the new maximum term of confinement may be extended, not more than 240 days from the date the petition is granted, in order to meet requirements provided in subdivision (b) of Section 1026.5.

(Amended by Stats. 2017, Ch. 17, Sec. 26. (AB 103) Effective June 27, 2017. Note: This section was added on Nov. 4, 2014, by initiative Prop. 47.)

California Health and Safety Code § 11361.8

ARTICLE 2. Cannabis [11357 - 11362.9] (Heading of Article 2 amended by Stats. 2017, Ch. 27, Sec. 121.)

11361.8.

(a) A person currently serving a sentence for a conviction, whether by trial or by open or negotiated plea, who would not have been guilty of an offense, or who would have been guilty of a lesser offense under the Control, Regulate and Tax Adult Use of Marijuana Act had that act been in effect at the time of the offense may petition for a recall or dismissal of sentence before the trial court that entered the judgment of conviction in his or her case to request resentencing or dismissal in accordance with Sections 11357, 11358, 11359, 11360, 11362.1, 11362.2, 11362.3, and 11362.4 as those sections have been amended or added by that act.

(b) Upon receiving a petition under subdivision (a), the court shall presume the petitioner satisfies the criteria in subdivision (a) unless the party opposing the petition proves by clear and convincing evidence that the petitioner does not satisfy the criteria. If the petitioner satisfies the criteria in subdivision (a), the court shall grant the petition to recall the sentence or dismiss the sentence because it is legally invalid unless the court determines that granting the petition would pose an unreasonable risk of danger to public safety.

(1) In exercising its discretion, the court may consider, but shall not be limited to evidence provided for in subdivision (b) of Section 1170.18 of the Penal Code.

(2) As used in this section, "unreasonable risk of danger to public safety" has the same meaning as provided in subdivision (c) of Section 1170.18 of the Penal Code.

(c) A person who is serving a sentence and is resentenced pursuant to subdivision (b) shall be given credit for any time already served and shall be subject to supervision for one year following completion of his or her time in custody or shall be subject to whatever supervision time he or she would have otherwise been subject to after release, whichever is shorter, unless the court, in its discretion, as part of its resentencing order, releases the person from supervision. Such person is subject to parole supervision under Section 3000.08 of the Penal Code or post-release community supervision under subdivision (a) of Section 3451 of the Penal Code by the designated agency and the jurisdiction of the court in the county in which the offender is released or resides, or in which an alleged violation of supervision has occurred, for the purpose of hearing petitions to revoke supervision and impose a term of custody.

(d) Under no circumstances may resentencing under this section result in the imposition of a term longer than the original sentence, or the reinstatement of charges dismissed pursuant to a negotiated plea agreement.

(e) A person who has completed his or her sentence for a conviction under Sections 11357, 11358, 11359, and 11360, whether by trial or open or negotiated plea, who would not have been guilty of an offense or who would have been guilty of a lesser offense under the Control, Regulate and Tax Adult Use of Marijuana Act had that act been in effect at the time of the offense, may file an application before the trial court that entered the judgment of conviction in his or her case to have the conviction dismissed and sealed because the prior conviction is now legally invalid or redesignated as a misdemeanor or infraction in accordance with Sections 11357, 11358, 11359, 11360, 11362.1, 11362.2, 11362.3, and 11362.4 as those sections have been amended or added by that act.

(f) The court shall presume the petitioner satisfies the criteria in subdivision (e) unless the party opposing the application proves by clear and convincing evidence that the petitioner does not satisfy the criteria in subdivision (e). Once the applicant satisfies the criteria in subdivision (e), the court shall redesignate the conviction as a misdemeanor or infraction or dismiss and seal the conviction as legally invalid as now established under the Control, Regulate and Tax Adult Use of Marijuana Act.

(g) Unless requested by the applicant, no hearing is necessary to grant or deny an application filed under subdivision (e).

(h) Any felony conviction that is recalled and resentenced under subdivision (b) or designated as a misdemeanor or infraction under subdivision (f) shall be considered a misdemeanor or infraction for all purposes. Any misdemeanor conviction that is recalled and resentenced under subdivision (b) or designated as an infraction under subdivision (f) shall be considered an infraction for all purposes.

(i) If the court that originally sentenced the petitioner is not available, the presiding judge shall designate another judge to rule on the petition or application.

(j) Nothing in this section is intended to diminish or abrogate any rights or remedies otherwise available to the petitioner or applicant.

(k) Nothing in this and related sections is intended to diminish or abrogate the finality of judgments in any case not falling within the purview of the Control, Regulate and Tax Adult Use of Marijuana Act.

(l) A resentencing hearing ordered under the Control, Regulate and Tax Adult Use of Marijuana Act shall constitute a "post-conviction release proceeding" under paragraph (7) of subdivision (b) of Section 28 of Article I of the California Constitution (Marsy's Law).

(m) The provisions of this section shall apply equally to juvenile delinquency adjudications and dispositions under Section 602 of the Welfare and Institutions Code if the juvenile would not have been guilty of an offense or would have been guilty of a lesser offense under the Control, Regulate and Tax Adult Use of Marijuana Act.

(n) The Judicial Council shall promulgate and make available all necessary forms to enable the filing of the petitions and applications provided in this section.

(Added November 8, 2016, by initiative Proposition 64, Sec. 8.7.)

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

UNITED STATES OF AMERICA,	)	DOCKET NO. 3:11-cr-337
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
CORVAIN COOPER,	)	
	)	
Defendant.	)	
	)	

TRANSCRIPT OF SENTENCING HEARING
BEFORE THE HONORABLE ROBERT J. CONRAD, JR
UNITED STATES DISTRICT COURT JUDGE
JUNE 18, 2014

APPEARANCES:

On Behalf of the Government:

STEVEN R. KAUFMAN, ESQ.,
Assistant United States Attorney
227 West Trade Street, Suite 1700
Charlotte, North Carolina 28202

On Behalf of the Defendant:

PATRICK MICHAEL MEGARO, ESQ.,
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LAURA ANDERSEN, RMR
Official Court Reporter
United States District Court
Charlotte, North Carolina

P R O C E E D I N G S

JUNE 18, 2014, COURT CALLED TO ORDER 2:08 p.m.:

THE COURT: Good afternoon, everyone.

MR. KAUFMAN: Good afternoon, Your Honor.

MR. MEGARO: Good afternoon, Your Honor.

THE COURT: We're here in the matter of United States V Corvain Cooper for sentencing. Are the parties ready to proceed?

MR. KAUFMAN: Yes, Your Honor.

MR. MEGARO: Yes, Your Honor.

THE COURT: Mr. Cooper was found guilty by a jury on October 21st, and after that his case was referred to the Federal Probation Department for the purpose of preparing a presentence report.

Mr. Cooper, I have a few questions to ask you about that presentence report, if you would please stand.

Have you had a chance to read the presentence report?

DEFENDANT COOPER: Yes, sir.

THE COURT: Do you believe you understand it?

DEFENDANT COOPER: Yes, sir.

THE COURT: Have you had enough time to go over the presentence report with your attorney?

DEFENDANT COOPER: Yes, sir.

THE COURT: All right. You may sit down.

Is it Mr. Megaro, is that the correct pronunciation?

MR. MEGARO: Yes, Your Honor. Thank you.

THE COURT: Were there any objections to the presentence report?

MR. MEGARO: Yes, Your Honor. I had filed an objection letter on January 23rd, 2014, as well as an update on May 20th, 2014, and the Defendant's Sentencing Memorandum, which I believe was electronically filed on June 12th, which incorporates by reference and expands on some of those objections.

THE COURT: I've received all of those. It appears to me that there are two things going on here.

One is the statutory mandatory minimum issue, and the other is a series of guideline objections.

I guess, taking them in order. With respect to the 851, does the defendant deny the validity of any of the predicate convictions that were noticed by the Government in their 851?

MR. MEGARO: No, Your Honor. We don't -- we don't object to the validity of the underlying convictions. It's more or less an Eighth Amendment argument with respect to the cruel and unusual punishment with respect to the mandatory minimum.

THE COURT: So we've got that going on. And if the Eighth Amendment doesn't bar the imposition of the mandatory

life sentence, the Court has no discretion under the statute.

MR. MEGARO: I would agree with that statement. If the Court does not find that this violates the Eighth Amendment of the United States Constitution, the statute would strip the Court of any discretion.

THE COURT: And what is the argument that there is an Eighth Amendment issue here?

MR. MEGARO: I have laid it out in my sentencing memorandum at -- I think it was point 6, Your Honor, which begins on page -- I'm sorry -- page 10 of my memorandum.

And without rehashing everything that I've written, I know the Court has read it. The main thrust of the argument is that the punishment does not fit the crime for the factors that were laid out in the Supreme Court case.

And I would point out that if Mr. Cooper was prosecuted by the State of North Carolina rather than the United States government, he would be facing a sentence which would be in line with the highest sentence that a co-defendant or co-conspirator received in this case, and what I believe would be -- if the mandatory minimum did not apply, and the Court were to credit all of my objections -- would be a level 32, a criminal history category VI, which is 210 to 262 months. Which is roughly the same maximum sentence that the State of North Carolina would impose. He would not be able to receive a life sentence.

I'm unaware of any state in the United States that would impose a life sentence for trafficking marijuana without any other aggravating factor that would include violence.

THE COURT: Very well. What says the Government with respect to the Eighth Amendment claim?

MR. KAUFMAN: Your Honor, the convictions are valid. In terms of the Eighth Amendment, Mr. Cooper is an adult male of the age of majority. There's not an issue as to his age. I don't believe there's any issue as to his competence or I.Q. So I don't believe that there's a constitutional challenge.

In terms of the 851 notice that we filed, we did so knowing that Mr. Cooper had several factors that weighed in favor of us filing it, to include his very extensive criminal history. He's a VI, based on actual convictions not on status as a career offender. He had a leadership role. He had firearms in the course of the conspiracy. There was obstructive conduct.

I mean, there are numerous factors that our office internally would consider, and he hits many of those pistons not just one of them, in terms of using the 851 enhancement.

THE COURT: Mr. Megaro, I'm sympathic to your argument. I would want to have discretion before imposing a life sentence. The absence of discretion is a troubling thing for the Court. But it appears to the Court that from a statutory standpoint, the i's have been dotted, the t's have

been crossed. The imposition of a mandatory life sentence is what Congress has provided for someone who has been found guilty of this offense with the priors that Mr. Cooper has.

From a constitutional sense, it does appear to me that the Fourth Circuit has spoken in this area and has upheld the constitutionality of a mandatory life sentence for a crime such as this in the *Kratsas* case, and in the unpublished *Sylvester* case cited by the Government. I'm going to overrule the Eighth Amendment challenge in light of that case law.

Having done that, you having preserved your constitutional challenge, do you still wish to be heard on the guideline issues?

MR. MEGARO: Your Honor, I know that it would seem almost academic in light of the mandatory nature of the sentence, but I don't want to -- I'm ever conscious of possibly waiving any appellate rights.

THE COURT: Right. Well, why don't we do this: I have reviewed the objections with respect to the two level increase for a weapon; the drug amount, the -- seems like the leadership enhancement and the double counting.

I've reviewed your objections, as well as the government's response, and as to each I think the government has the better argument for the reasons specified, either in the probation office response to your objection or the government's response and supplemental response.

And so for the record, you have made each of those objections and I have overruled them.

MR. MEGARO: Thank you, Your Honor.

THE COURT: All right.

MR. KAUFMAN: And Your Honor, I apologize. I believe there was also an enhancement for the obstruction based upon the letter to Mr. Moseley.

THE COURT: There was. Do you have Government's Exhibit 45 with you?

MR. KAUFMAN: I should, Your Honor.

MR. MEGARO: I have -- Your Honor, I have seen Government's Exhibit 45.

THE COURT: All right. Let me hear the argument of the Government as to why this exhibit justified a two level obstruction enhancement.

MR. KAUFMAN: Your Honor, the context of his letter was after co-defendant Leamon Keishan Moseley, who was one of the testifying witnesses against Mr. Cooper eventually, but it was right after he had been arrested. In actuality, Your Honor had released him on bond. But it was not a fact yet known to Mr. Cooper.

He sent this letter to Mr. Cooper's mother with whom -- I'm sorry -- to Mr. Moseley's mother. Mr. Cooper and Mr. Moseley were very close friends. I believe that Mr. Moseley even talked about it almost like a brothership.

And that he was very close to Mr. Moseley's mother. So he addressed it to Mr. Moseley's mother, who is Ms. Scott. And in the letter he is giving an update to Mr. Moseley about the status of the case to include who's saying what.

He even at the very back attaches a list of -- the actual indictment and has handwritten who's cooperating, who's on the run, adding defendants who weren't even shown on this superseding indictment as to who is cooperating, good their friend Mr. Alegrete, Mr. Johnson, who Your Honor heard from during testimony. So he's clearly trying to keep Mr. Moseley abreast of what's going on during it. There were a couple of specific comments. For example, just below the signature block is one of the key comments.

"Call my mom or Susan." Susan is Mr. Cooper's girlfriend. "And any questions or concerning Keishan should be cool." Now, again, he's talking about Keishan in third party person because he thinks this is going to Keishan Moseley's mother.

And then very importantly, "If he did" -- "If he did the takes on the bank accounts, he can say that money came from anywhere."

This is a very important statement there, Your Honor. Because Mr. Cooper was aware that he was charged with money laundering. There were money laundering charges. And obviously one of the key things in a money laundering case

like this is, what is the source of the funds. The deposit slip doesn't say "drug proceeds" on it.

And so Mr. Cooper is trying to influence what Mr. Moseley will tell law enforcement, if and when he eventually is asked about these bank accounts. Which, very importantly, Mr. Moseley testified he opened on behalf of Mr. Cooper. So he was receiving funds for Mr. Cooper.

And so to say that the money came from anywhere, he's basically saying, it didn't come from me. The money in your account did not come from me. He's trying to influence the testimony of Mr. Moseley.

THE COURT: All right. I'm going to -- I'm going to grant the objection to the obstruction enhancement. I do believe that there's -- it's a very close call. The letter does not have overt threats. It comes very close to crossing the line. The government says it does cross the line with respect to either unlawfully influencing a witness or suborning perjury. I'm going to find that it comes just short of the line and overrule the objection.

Having done that, it appears that -- or not overruling the objection -- granting the objection to the obstruction enhancement.

Which I think would make the -- based upon the other rulings of the Court would make the offense level a 44, and still reduced to 43 because that's as high as the guidelines

go.

Are there any other objections?

MR. MEGARO: Other than what I've laid out in the letters, Your Honor, I believe the other big one would probably be -- or the other two big ones would be the firearm.

THE COURT: And the drug amounts?

MR. MEGARO: And not only the drug -- well, that would be --

THE COURT: -- and leadership.

MR. MEGARO: The drug amounts and the leadership role, which I believe has been carefully laid out and briefed by both parties.

THE COURT: It has, and I've read both sides, and I recall the testimony at trial, and I find as to each that the objection should be denied.

MR. MEGARO: Thank you.

THE COURT: Those are the findings of the Court. I think based upon those findings, the statute requires a mandatory life sentence. The guidelines -- advisory guideline range is life. And having made those findings I'll be glad to hear from you Mr. Megaro on behalf of Mr. Cooper at this time.

MR. MEGARO: Certainly, Your Honor.

Again, I've laid out a lot of the factual reasons for a possible departure or mitigating factors for this Court to take into consideration.

I did submit a number of letters of recommendation from friends and family, and it's clear to me that Mr. Cooper does have a very loving and caring family. They've been in touch with me throughout my representation on the case.

Because of the distance -- they all reside in California where Mr. Cooper is a resident of -- they were unable to make the trip out across the country. But they -- they have shown their support, and I think it speaks volumes that despite the amount of trouble that Mr. Cooper is in, that these people have stood by him, continued to support him, financially and emotionally.

I have laid out a number of mitigating factors for the Court to consider and I cannot stress enough that this is a case that did not involve any violence on Mr. Cooper's part. There was no acts of robbery or any physical violence.

I understand there's an enhancement for a weapon, but there was no use of that weapon or threatened use of that weapon, which to me is one of the most important factors.

It's how a person comports themselves. If they're in the drug business strictly for business purposes, that's one thing. But if they employ violence as a means themselves or directly or indirectly, or commit any violent acts, I think that places them in a whole different category. And certainly I don't think there's any indicia that Mr. Cooper used any violence or threatened any violence.

Other than that, I will rely upon my written submission and leave it to the Court's discretion.

I have spoken to my client about speaking today. He understands there will be an appeal. I have gone over every document that I filed on his behalf with respect to the sentencing, as well as the government's responses to my objections. And Mr. Cooper agrees with me that anything that he could have said, I've laid out in my sentencing memorandum. So based upon that he will not address the Court.

THE COURT: How old is Mr. Cooper?

DEFENDANT COOPER: I'm 34 years old.

THE COURT: All right. Thank you.

Mr. Cooper, I understand that you believe that Mr. Megaro has laid out the case for you in terms of mitigation, in terms of anything that can be said on your behalf, but I want to make sure that that's your -- if you wish to say anything, you're entitled to do that, and you have that opportunity. And if you don't wish to say anything, I have read everything that Mr. Megaro has filed on your behalf.

And so do you understand that you have a right to say anything you wish to say to me at this time?

DEFENDANT COOPER: Yes, sir.

THE COURT: And do you care to say anything further?

DEFENDANT COOPER: I just want to see my family again.

THE COURT: Thank you.

Mr. Kaufman.

MR. KAUFMAN: Your Honor, there's, I guess, not much to say. There's a statutorily required sentence here. I want to say that it's unfortunate that we're here in the circumstance. Although Mr. Cooper was a major marijuana trafficker, the firearms enhancement -- actually, interestingly, while the act of violence that we know of involving Mr. Cooper involved him initially as the victim of a drug related robbery, and that's why he then armed himself. But the danger inherent in arming himself, even to protect himself from other drug dealers is serious and has to be deterred.

His leadership role, the magnitude of the overall investigation -- very importantly I have to say that we have, throughout the process pretrial, sought his cooperation against others, and quite honestly, Your Honor, even post-trial. He did not testify, and we felt that we could still have him as a credible witness if he was so inclined. He declined to be a cooperator, even with our offer post-sentencing -- I'm sorry, post-trial.

So we've done what we could. We're continuing the investigation. Fortunately we've recently had some breakthroughs going up the chain, even from Mr. Cooper. And Your Honor will probably become aware of those pretty soon.

THE COURT: Thank you.

MR. KAUFMAN: Thank you, Your Honor.

THE COURT: Mr. Cooper, if you would please stand.

I've considered the information in the presentence report, the arguments of the attorneys, the pleadings filed by both sides, I also remember this trial quite well, presided over it, heard the testimony of the witnesses, and will take that into account in terms of announcing a sentence.

I do echo what I said earlier, and that is, the Court is not comfortable with imposing a mandatory life sentence on a 34 year old individual without some discretion to consider the 3553(a) factors that a court normally is entitled to consider.

Congress has essentially made the sufficient but not greater than necessary sentence in this case through that mandatory minimum sentence. The Court has no discretion. I'm not sure what I would do if I had discretion, but the absence of discretion is a difficult thing for the Court.

Nonetheless, the Court recalls the testimony, believes that Mr. Cooper was involved in a very serious way in a multi-million dollar drug trafficking organization, and that he has a lengthy criminal history. That I believe his total number of criminal history points were 17, even though several of the convictions didn't register any points.

A criminal history category of 17 at such a young

age shows a degree of recidivism that makes a substantial sentence necessary in order to protect the public from further crimes of the defendant and to serve some of the other purposes of sentencing.

Mr. Cooper's convictions go back to 1999 and were largely theft and fraud related until the 2000 -- post 2000 period of time where he got a conviction for battery, a marijuana conviction, and a second controlled substance conviction.

And so his serious -- the serious nature of his criminal history, the serious involvement of the defendant in this multi-state drug trafficking organization all combine to warrant a very substantial sentence.

Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that the defendant, Corvain Cooper, is hereby committed to the custody of the United States Bureau of Prisons to be in prison for a term of life on Count One, a term of 240 months on Count Two, and a term of 120 months on Count Four to be served concurrently.

A life sentence is the mandatory minimum sentence Congress has indicated is required in a case like this. The Court overruled the Eighth Amendment challenge and the Court is left with no discretion other than to impose a term of life on Count One.

A substantial sentence is required to reflect the

seriousness of the offense, promote respect for the law, just punishment, adequate deterrence, and as I said, importantly in this case, to protect the public from further crimes of the defendant. It takes into consideration the serious conspiracy Mr. Cooper was involved in, as well as his lengthy criminal history.

Further ordered that the defendant be required to support all dependents as outlined in the presentence report from prison earnings while incarcerated.

The Court calls to the attention of the custodial authorities that the defendant has a history of substance abuse and recommends that he be allowed to participate in any available substance abuse treatment program while incarcerated, and if eligible, receive the benefits of 18, United States Code, Section 3672(e)(2).

In the event the defendant is released from imprisonment, a 10 year term of supervised release is ordered.

Within 72 hours of release from the custody of the Bureau of Prisons the defendant shall report in person to the probation office in the district to which he is released.

While on supervised release he shall not commit another federal, state, or local crime. He shall comply with the standard conditions that have been adopted by the Court in the Western District of North Carolina.

Further ordered that the defendant pay to the United

States a special assessment of $300 due and payable immediately.

The Court declines to impose a fine or interest in this case but will order forfeiture of any interest the defendant has in any property seized by the United States in the course of this investigation.

With respect to the special assessment, if the defendant is unable to pay that assessment immediately -- the special assessment and the order that the defendant support all dependents -- the Court will require the defendant to participate in the Inmate Financial Responsibility Program.

Other than what we've discussed, is there any legal reason why the sentence should not be imposed as stated?

MR. MEGARO: Your Honor, the Fourth Circuit has taught me that if I don't register an objection after sentence has been imposed, then it is waived for purposes of appeal. So I would incorporate my prior objections and the Court's ruling, as if I set forth just now.

I neglected to ask if the Court would consider endorsing a recommendation that the Bureau of Prisons designate him -- designate him for a facility in California so that his family could visit him without undue hardship.

And finally, I had advised Mr. Cooper of his right to appeal, and it looks like I will be the appellate attorney. He has executed a in forma pauperis affidavit and a financial

affidavit which I will be filing. And I'm going to ask the Court to consider waiving the cost of filing the fee -- the filing fee for the notice of appeal and for the preparation of the transcripts.

THE COURT: Very well. I'll take that up after imposing the sentence.

Let me modify the sentence to this extent. The 10 year term is to Count One. There's a three year term on Count Two and Count Four. Those terms are to run concurrent with each other and the 10 year term.

I will make a recommendation to the Bureau of Prisons that Mr. Cooper be designated to a facility as close to -- is it central California -- is that --

MR. MEGARO: Yeah, central California.

THE COURT: As close to central California as possible, consistent with the needs of the Bureau of Prisons.

MR. MEGARO: Thank you.

THE COURT: Let me inform Mr. Cooper of your right to appeal your conviction and sentence.

Any notice of appeal must be filed within 14 days from the entry of judgment. If you are unable to pay the cost of an appeal, you may apply for leave to appeal with no cost to you. And if you request, the Clerk of Court will prepare and file a notice of appeal on your behalf.

Your attorney has indicated already that you are

prepared to make the necessary filings with respect to indigency status, and we'll take that up when those motions are filed.

But do you understand your rights to appeal as I've just explained them to you?

DEFENDANT COOPER: Yes, sir.

THE COURT: All right. Anything further from either side?

MR. MEGARO: No, Your Honor.

MR. KAUFMAN: No, Your Honor.

THE COURT: Then this matter is concluded.

Mr. Cooper, you're remanded to the custody of the Marshals at this time.

(The matter is concluded at 2:37 p.m.)

(End of Proceedings.)

* * * * * *

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CERTIFICATE OF OFFICIAL REPORTER

I, Laura Andersen, Federal Official Court Reporter, in and for the United States District Court for the Western District of North Carolina, do hereby certify that pursuant to Section 753, Title 28, United States Code that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this the 18th day of September, 2014.

S/Laura Andersen
Laura Andersen, RMR
Federal Official Court Reporter

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

UNITED STATES OF AMERICA	)	**Docket No. 3:11-cr-337-RJC**
v.	)	**INFORMATION PURSUANT TO 21 U.S.C. 851**
(12) CORVAIN T. COOPER, a/k/a "CV"	)	

NOW COMES the United States of America, by and through Anne M. Tompkins, United States Attorney for the Western District of North Carolina, and files this Information with the Court setting forth the defendant's previous convictions for felony drug offense(s):

Charge	**Conviction Date (Offense/Arrest Date)**	**Jurisdiction (Case number)**
Sell/Furnish Marijuana/Hash	7/27/2011 6/19/2009	Beverly Hills, CA BH SA 07215401
Possession of Narcotics Controlled Substance	8/5/2011 2/10/2011	Inglewood, CA INGYA08050901

Respectfully submitted this 15th day of March 2013.

ANNE M. TOMPKINS
UNITED STATES ATTORNEY

/s/ Steven R. Kaufman
STEVEN R. KAUFMAN
ASSISTANT UNITED STATES ATTORNEY
227 West Trade Street, Suite 1650, Charlotte, NC 28202
(704) 338-3117 (office); (704) 227-0254 (facsimile)

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of March 2013, the foregoing was duly served upon the defendants herein through defendants' attorneys of record via electronic filing:

Dianne Kathryn Jones McVay, Esq.

/s/ Steven R. Kaufman
STEVEN R. KAUFMAN
ASSISTANT UNITED STATES ATTORNEY

MINUTE ORDER
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE PRINTED: 06/01/17

CASE NO. SA072154

THE PEOPLE OF THE STATE OF CALIFORNIA
VS.
DEFENDANT 01: CORVAIN T COOPER

BAIL: APPEARANCE DATE	AMOUNT OF BAIL	DATE POSTED	RECEIPT OR BOND NO.	SURETY COMPANY	REGISTER NUMBER
09/17/09	$20,000.00	07/22/09	S501739611	SAFETY NTNL CAS CORP	

CASE FILED ON 08/31/09.

COMPLAINT FILED, DECLARED OR SWORN TO CHARGING DEFENDANT WITH HAVING COMMITTED, ON OR ABOUT 06/19/09 IN THE COUNTY OF LOS ANGELES, THE FOLLOWING OFFENSE(S) OF:

COUNT 01: 11360(A) H&S FEL

ON 05/24/17 AT 830 AM IN AIRPORT COURTHOUSE DEPT W82

CASE CALLED FOR JUDICIAL ACTION

PARTIES: LAUREN WEIS BIRNSTEIN (JUDGE) SHAWON WALKER (CLERK)

AMY SAYLOR (REP) KATERI MODDER (DA)

DEFENDANT IS NOT PRESENT IN COURT, BUT REPRESENTED BY ERROL STAMBLER PRIVATE COUNSEL
DEFENDANT APPEARING BY COUNSEL PURSUANT TO PENAL CODE SECTION 977 ET SEQ, BY ERROL STAMBLER PRIVATE COUNSEL

ON PEOPLES MOTION, COURT ORDERS COMPLAINT DEEMED AMENDED TO ALLEGE COUNT 01 AS A MISDEMEANOR PURSUANT TO 17B (1-5) OF THE PENAL CODE AND COUNT SHALL PROCEED AS A MISDEMEANOR.

THE COURT AND COUNSEL AGREE THAT THE DEFENDANT SATISFIES THE REQUIREMENTS FOR RELIEF UNDER HEALTH AND SAFETY CODE SECTION 11361.8.
.
THEREFORE, THE FELONY CONVICTION IN COUNT 1 IS RECALLED AND REDESIGNATED AS A MISDEMEANOR AS OF JULY 26, 2011.
.

CASE NO. SA072154
DEF NO. 01

DATE PRINTED 06/01/17

UNDER HEALTH AND SAFETY CODE SECTION 11361.8(H), THE DEFENDANT IS RESENTENCE TO THE MISDEMEANOR CHARGE.
.

NEXT SCHEDULED EVENT:
SENTENCING

AS TO COUNT (01):

COURT ORDERS PROBATION DENIED.

SERVE 180 DAYS IN LOS ANGELES COUNTY JAIL

DEFENDANT GIVEN TOTAL CREDIT FOR 180 DAYS IN CUSTODY 0 ACTUAL CUSTODY AND 0 GOOD TIME/WORK TIME

COUNT (01): DISPOSITION: CONVICTED

ABSTRACT ISSUED ON 05/24/17 FOR COUNT 01

CORRECTED 05/24/17

DMV JUDGMENT CODE J

NEXT SCHEDULED EVENT:
PROCEEDINGS TERMINATED

CUSTODY STATUS: DEFENDANT RELEASED

06/01/17

I HEREBY CERTIFY THIS TO BE A TRUE AND CORRECT COPY OF THE ELECTRONIC MINUTE ORDER ON FILE IN THIS OFFICE AS OF THE ABOVE DATE.

SHERRI R. CARTER ,EXECUTIVE OFFICER/CLERK OF SUPERIOR COURT, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

BY _____, DEPUTY

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

NO. YA080509 PAGE NO. 1
THE PEOPLE OF THE STATE OF CALIFORNIA VS. CURRENT DATE 07/29/16
DEFENDANT 01: CORVAIN TONY COOPER
LAW ENFORCEMENT AGENCY EFFECTING ARREST: LAPD - PACIFIC AREA

BAIL: APPEARANCE DATE	AMOUNT OF BAIL	DATE POSTED	RECEIPT OR BOND NO.	SURETY COMPANY	REGISTER NUMBER
03/11/11	$75,000.00	02/17/11	AUL2077852	AMERICAN CONTRACTORS	

CASE FILED ON 03/09/11.
COMPLAINT FILED, DECLARED OR SWORN TO CHARGING DEFENDANT WITH HAVING COMMITTED, ON OR ABOUT 02/10/11 IN THE COUNTY OF LOS ANGELES, THE FOLLOWING OFFENSE(S) OF:
COUNT 01: 11350(A) H&S FEL
AWAITING ORIGINAL BOND.
S.A.M. 03/09/11
NEXT SCHEDULED EVENT:
03/11/11 830 AM ARRAIGNMENT DIST INGLEWOOD COURTHOUSE DEPT 005

ON 03/11/11 AT 830 AM IN INGLEWOOD COURTHOUSE DEPT 005

CASE CALLED FOR ARRAIGNMENT
PARTIES: VICTOR L. WRIGHT (JUDGE) G.T. WALKER (CLERK)
ZUHAL RAHMAN FELIX (REP) RENEE Y. CHANG (DA)
COURT REFERS DEFENDANT TO THE PUBLIC DEFENDER.
PUBLIC DEFENDER APPOINTED. GREGG HAYATA - P.D.
DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY GREGG HAYATA DEPUTY PUBLIC DEFENDER
DEFENDANT WAIVES ARRAIGNMENT, READING OF COMPLAINT, AND STATEMENT OF CONSTITUTIONAL AND STATUTORY RIGHTS.
DEFENDANT PLEADS NOT GUILTY TO COUNT 01, 11350(A) H&S.
THE COURT ORDERS A PRE-PLEA REPORT PURSUANT TO PENAL CODE SECTION 1203.7.
THE DEFENDANT'S COUNSEL DOES NOT CONSENT TO A PRE-PLEA INTERVIEW.
DEFENDANT ENTERS 60 DAY STATUTORY TIME WAIVER.
NEXT SCHEDULED EVENT:
04/13/11 830 AM PRELIM SETTING/RESETTING DIST INGLEWOOD COURTHOUSE DEPT 005
DAY 00 OF 10

03/11/11 BAIL TO STAND, # AUL2077852

CUSTODY STATUS: BAIL TO STAND

ON 04/13/11 AT 830 AM IN INGLEWOOD COURTHOUSE DEPT 005

CASE CALLED FOR PRELIM SETTING/RESETTING
PARTIES: CMR. JOHN ROBERT JOHNSON (JUDGE) DEFOREST LOCKETT (CLERK)
ZUHAL RAHMAN FELIX (REP) SHANNON K. COOLEY (DA)
DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY JOE E GUALANO DEPUTY PUBLIC DEFENDER
COURT ORDERS AND FINDINGS:
-THE COURT ORDERS THE DEFENDANT TO APPEAR ON THE NEXT COURT DATE.
WAIVES STATUTORY TIME.
NEXT SCHEDULED EVENT:
UPON MOTION OF DEFENDANT
04/20/11 830 AM PRELIM SETTING/RESETTING DIST INGLEWOOD COURTHOUSE DEPT 005

DAY 00 OF 10
04/13/11 BAIL TO STAND, # AUL2077852

CUSTODY STATUS: BAIL TO STAND

ON 04/20/11 AT 830 AM IN INGLEWOOD COURTHOUSE DEPT 005

CASE CALLED FOR PRELIM SETTING/RESETTING
PARTIES: CMR. JOHN ROBERT JOHNSON (JUDGE) VIKKI JOHNSON (CLERK)
ZUHAL RAHMAN FELIX (REP) RENEE Y. CHANG (DA)
DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY JOE E GUALANO DEPUTY PUBLIC DEFENDER
THIS MATTER IS CONTINUED TO 05/04/2011.
COURT ORDERS AND FINDINGS:
-THE COURT ORDERS THE DEFENDANT TO APPEAR ON THE NEXT COURT DATE.
WAIVES STATUTORY TIME.
NEXT SCHEDULED EVENT:

05/04/11 830 AM PRELIM SETTING/RESETTING DIST INGLEWOOD COURTHOUSE DEPT 005
DAY 00 OF 10
04/20/11 BAIL TO STAND, # AUL2077852

CUSTODY STATUS: BAIL TO STAND

ON 05/04/11 AT 830 AM IN INGLEWOOD COURTHOUSE DEPT 005

CASE CALLED FOR PRELIM SETTING/RESETTING
PARTIES: CMR. JOHN ROBERT JOHNSON (JUDGE) DEFOREST LOCKETT (CLERK)
ZUHAL RAHMAN FELIX (REP) DAVID CHENG (DA)
DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY JOE E GUALANO DEPUTY PUBLIC DEFENDER
COURT ORDERS AND FINDINGS:
-THE COURT ORDERS THE DEFENDANT TO APPEAR ON THE NEXT COURT DATE.
WAIVES STATUTORY TIME.
NEXT SCHEDULED EVENT:
UPON MOTION OF DEFENDANT
05/27/11 830 AM PRELIM SETTING/RESETTING DIST INGLEWOOD COURTHOUSE DEPT 005
DAY 00 OF 10
05/04/11 BAIL TO STAND, # AUL2077852

CUSTODY STATUS: BAIL TO STAND

ON 05/27/11 AT 830 AM IN INGLEWOOD COURTHOUSE DEPT 005

CASE CALLED FOR PRELIM SETTING/RESETTING
PARTIES: CMR. JOHN ROBERT JOHNSON (JUDGE) DEFOREST LOCKETT (CLERK)
ZUHAL RAHMAN FELIX (REP) DAVID CHENG (DA)
PUBLIC DEFENDER DECLARES CONFLICT OF INTEREST.
DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY BOBBY BLACK ALTERNATE PUBLIC DEFENDER
A COPY OF THE COMPLAINT AND THE ARREST REPORT GIVEN TO DEFENDANTS COUNSEL.
COURT ORDERS AND FINDINGS:
-THE COURT ORDERS THE DEFENDANT TO APPEAR ON THE NEXT COURT DATE.
WAIVES STATUTORY TIME.

CASE NO. YA080509 PAGE NO. 3
DEF NO. 01 DATE PRINTED 07/29/16

NEXT SCHEDULED EVENT:
UPON MOTION OF DEFENDANT
07/28/11 830 AM PRELIM SETTING/RESETTING DIST INGLEWOOD COURTHOUSE DEPT 005
DAY 00 OF 10
05/27/11 BAIL TO STAND, # AUL2077852

CUSTODY STATUS: BAIL TO STAND

ON 07/28/11 AT 830 AM IN INGLEWOOD COURTHOUSE DEPT 005

CASE CALLED FOR PRELIM SETTING/RESETTING
PARTIES: CMR. JOHN ROBERT JOHNSON (JUDGE) VIKKI JOHNSON (CLERK)
ZUHAL RAHMAN FELIX (REP) TIMOTHY HU (DA)
DEFENDANT IS NOT PRESENT IN COURT, BUT REPRESENTED BY BOBBY BLACK ALTERNATE PUBLIC DEFENDER
DEFENDANT IS SENTENCED TO STATE PRISON ON CASE SA072154-01.

.
THIS MATTER IS TRAILED TO 08/01/2011.
.
REMOVAL ORDER ISSUED.
NEXT SCHEDULED EVENT:
08/01/11 830 AM PRELIM SETTING/RESETTING DIST INGLEWOOD COURTHOUSE DEPT 005
DAY 02 OF 10
07/28/11 BAIL TO STAND, # AUL2077852

CUSTODY STATUS: BAIL TO STAND

ON 08/01/11 AT 830 AM IN INGLEWOOD COURTHOUSE DEPT 005

CASE CALLED FOR PRELIM SETTING/RESETTING
PARTIES: CMR. JOHN ROBERT JOHNSON (JUDGE) DEFOREST LOCKETT (CLERK)
ZUHAL RAHMAN FELIX (REP) DAVID CHENG (DA)
THE DEFENDANT FAILS TO APPEAR, WITHOUT SUFFICIENT EXCUSE AND REPRESENTED BY BOBBY BLACK ALTERNATE PUBLIC DEFENDER
BAIL ORDERED FORFEITED.

DEFENDANT FAILS TO APPEAR.
BENCH WARRANT ORDERED AND ISSUED WITH BAIL SET AT $10,000.
COURT ORDERS AND FINDINGS:
-THE COURT ORDERS THE DEFENDANT TO APPEAR ON THE NEXT COURT DATE.
NEXT SCHEDULED EVENT:
BENCH/WARRANT ISSUED
08/01/11 FORFEITURE, # AUL2077852
08/01/11 BAIL FORFEITURE NOTICE PRINTED, # AUL2077852

08/01/11 BENCH WARRANT IN THE AMOUNT OF $10,000.00 BY ORDER OF JUDGE CMR. JOHN ROBERT JOHNSON ISSUED. (08/01/11).

ON 08/02/11 AT 900 AM :

NOTICE OF FORFEITURE WAS MAILED TO AGENT AND SURETY ON 08/02/11.
185TH DAY IS 020312. BOND # AUL2077852
SYM 080211

ON 08/04/11 AT 130 PM IN INGLEWOOD COURTHOUSE DEPT 005

CASE CALLED FOR PRELIM SETTING/RESETTING
PARTIES: CMR JOHN L. MASON (JUDGE) DEFOREST LOCKETT (CLERK)
ZUHAL RAHMAN FELIX (REP) DAVID CHENG (DA)
DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY BOBBY BLACK ALTERNATE PUBLIC DEFENDER
BAIL SET AT $10,000
BAIL/BOND VACATED, REINSTATED AND EXONERATED.
BENCH WARRANT RECALLED.
.
MATTER CONTINUED AS INDICATED BELOW.
COURT ORDERS AND FINDINGS:
-THE COURT ORDERS THE DEFENDANT TO APPEAR ON THE NEXT COURT DATE.
WAIVES STATUTORY TIME.
NEXT SCHEDULED EVENT:
UPON MOTION OF DEFENDANT

08/05/11 830 AM PRELIM SETTING/RESETTING DIST INGLEWOOD COURTHOUSE DEPT 005
DAY 01 OF 10
08/04/11 VACATED, REINSTD, & EXONERATED, # AUL2077852

08/04/11 BENCH WARRANT IN THE AMOUNT OF $10,000.00 RECALLED. (08/04/11).

CUSTODY STATUS: BAIL EXONERATED
CUSTODY STATUS: REMANDED TO CUSTODY

ON 08/05/11 AT 830 AM IN INGLEWOOD COURTHOUSE DEPT 005

CASE CALLED FOR PRELIM SETTING/RESETTING
PARTIES: CMR JOHN L. MASON (JUDGE) DEFOREST LOCKETT (CLERK)
ZUHAL RAHMAN FELIX (REP) JAMES TORO (DA)
DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY BOBBY BLACK ALTERNATE PUBLIC DEFENDER
DEFENDANT ADVISED OF AND PERSONALLY AND EXPLICITLY WAIVES THE FOLLOWING RIGHTS:
WRITTEN ADVISEMENT OF RIGHTS AND WAIVERS FILED, INCORPORATED BY REFERENCE HEREIN

TRIAL BY COURT AND TRIAL BY JURY
CONFRONTATION AND CROSS-EXAMINATION OF WITNESSES;
SUBPOENA OF WITNESSES INTO COURT TO TESTIFY IN YOUR DEFENSE;
AGAINST SELF-INCRIMINATION;
DEFENDANT ADVISED OF THE FOLLOWING:
THE NATURE OF THE CHARGES AGAINST HIM, THE ELEMENTS OF THE OFFENSE IN THE COMPLAINT, AND POSSIBLE DEFENSES TO SUCH CHARGES;
THE POSSIBLE CONSEQUENCES OF A PLEA OF GUILTY OR NOLO CONTENDERE, INCLUDING THE MAXIMUM PENALTY AND ADMINISTRATIVE SANCTIONS AND THE POSSIBLE LEGAL EFFECTS AND MAXIMUM PENALTIES INCIDENT TO SUBSEQUENT CONVICTIONS FOR THE SAME OR SIMILAR OFFENSES;
THE EFFECTS OF PROBATION;
IF YOU ARE NOT A CITIZEN, YOU ARE HEREBY ADVISED THAT A CONVICTION OF THE OFFENSE FOR WHICH YOU HAVE BEEN CHARGED WILL HAVE THE CONSEQUENCES OF DEPORTATION, EXCLUSION FROM ADMISSION TO THE UNITED STATES, OR DENIAL OF

NATURALIZATION PURSUANT TO THE LAWS OF THE UNITED STATES.
THE COURT FINDS THAT EACH SUCH WAIVER IS KNOWINGLY, UNDERSTANDINGLY, AND EXPLICITLY MADE; COUNSEL JOINS IN THE WAIVERS
THE DEFENDANT PERSONALLY WITHDRAWS PLEA OF NOT GUILTY TO COUNT 01 AND PLEADS NOLO CONTENDERE WITH THE APPROVAL OF THE COURT TO A VIOLATION OF SECTION 11350(A) H&S IN COUNT 01. THE COURT FINDS THE DEFENDANT GUILTY.
COUNT (01) : DISPOSITION: CONVICTED
COURT ORDERS AND FINDINGS:
-TAHL WAIVER IS ORDERED FILED.
COURT FINDS THAT THERE IS A FACTUAL BASIS FOR DEFENDANT'S PLEA, AND COURT ACCEPTS PLEA.
PLEA TAKEN PURSUANT TO PEOPLE VS. WEST.
NEXT SCHEDULED EVENT:
SENTENCING
DEFENDANT WAIVES ARRAIGNMENT FOR JUDGMENT AND STATES THERE IS NO LEGAL CAUSE WHY SENTENCE SHOULD NOT BE PRONOUNCED. THE COURT ORDERED THE FOLLOWING JUDGMENT:
AS TO COUNT (01):

COURT ORDERS PROBATION DENIED.
SERVE 2 YEARS IN ANY STATE PRISON
COURT SELECTS THE MID TERM OF 2 YEARS AS TO COUNT 01.
DEFENDANT GIVEN TOTAL CREDIT FOR 38 DAYS IN CUSTODY 19 DAYS ACTUAL CUSTODY AND 19 DAYS GOOD TIME/WORK TIME
FORTHWITH
COMMITMENT ISSUED
IN ADDITION:
-THE DEFENDANT IS TO PAY A RESTITUTION FINE PURSUANT TO SECTION 1202.4(B) PENAL CODE IN THE AMOUNT OF $ 200.00.
-DEFENDANT IS TO PAY A PAROLE RESTITUTION FINE, PURSUANT TO PENAL CODE SECTION 1202.45, IN THE AMOUNT OF $ 200.00. SAID FINE IS STAYED AND THE STAY IS TO BECOME PERMANENT UPON SUCCESSFUL COMPLETION OF PAROLE.
-DEFENDANT IS TO PAY A COURT SECURITY SURCHARGE IN THE AMOUNT OF $40.00 PURSUANT TO GOVERNMENT CODE SECTIONS 69926(A) AND PENAL CODE SECTION 1465.8(A)(1).
-DEFENDANT IS TO PAY A CRIMINAL CONVICTION ASSESSMENT IN THE AMOUNT OF $30.00 PURSUANT TO GOVERNMENT CODE SECTION 70373
-THE COURT AUTHORIZES THE DEPARTMENT OF CORRECTIONS TO COLLECT ANY FINES FROM FUNDS THAT THE DEFENDANT MAY EARN WHILE IN STATE

PRISON PURSUANT TO PENAL CODE SECTION 2085.5
COURT ORDERS AND FINDINGS:
-PURSUANT TO PC SECTION 296, THE DEFENDANT IS ORDERED TO PROVIDE BUCCAL SWAB SAMPLES, A RIGHT THUMB PRINT, A FULL PALM PRINT IMPRESSION OF EACH HAND, ANY BLOOD SPECIMENS OR OTHER BIOLOGICAL SAMPLES AS REQUIRED BY THIS SECTION FOR LAW ENFORCEMENT IDENTIFICATION.
THE COURT ORDERS THAT THE SENTENCE IMPOSED IN THIS CASE BE SERVED CONCURRENTLY WITH ANY OTHER TIME CURRENTLY BEING SERVED ON ANY OTHER CASE OR PAROLE VIOLATION.
.
DEFENDANT TO BE TRANSPORTED TO THE DEPARTMENT OF CORRECTIONS FORTHWITH.
.
COURT RECOMMENDS FIRE CAMP.

CASE NO. YA080509 PAGE NO. 6
DEF NO. 01 DATE PRINTED 07/29/16

COUNT (01): DISPOSITION: CONVICTED
DMV ABSTRACT NOT REQUIRED
NEXT SCHEDULED EVENT:
PROCEEDINGS TERMINATED

08/12/11 ARREST DISPOSITION REPORT SENT VIA FILE TRANSFER TO DEPARTMENT OF JUSTICE

ON 11/06/13 AT 900 AM :

CERTIFIED COPIES OF COMPLAINT AND DOCKET MAILED TO US PROBATION
DEPT. CHARLOTTE, NORTH CAROLINA.
VH 11/06/13
PROCEEDINGS TERMINATED

ON 06/08/16 AT 900 AM IN INGLEWOOD COURTHOUSE DEPT CLK

CASE CALLED FOR PETITION PER 1170.18(A) PC
PARTIES: NONE (JUDGE) NONE (CLERK)
NONE (REP) NONE (DDA)
DEFENDANT IS NOT PRESENT IN COURT, AND NOT REPRESENTED BY COUNSEL
APPLICATION/PETITION UNDER 1170.18 PC, RECEIVED AND FILED.
.
COURT DATE IS SET FOR JUNE 22, 2016
YF
NEXT SCHEDULED EVENT:
06/22/16 830 AM PROPOSITION 47 PETITION HRG DIST INGLEWOOD COURTHOUSE DEPT 005

ON 06/22/16 AT 830 AM IN INGLEWOOD COURTHOUSE DEPT 005

CASE CALLED FOR PROPOSITION 47 PETITION HRG
PARTIES: COMM. BARBARA J. MCDANIEL (JUDGE) GREGORY FRANCIS (CLERK)
MICHELLE CARMODY (REP) LINDA R. ROSBOROUGH (DA)

DEFENDANT IS NOT PRESENT IN COURT, BUT REPRESENTED BY BOBBY BLACK ALTERNATE PUBLIC DEFENDER
COURT ORDERS COMPLAINT DEEMED AMENDED TO ALLEGE COUNT 01 AS A MISDEMEANOR PURSUANT TO PENAL CODE SECTION 1170.18 ET SEQ. AND COUNT SHALL PROCEED AS MISDEMEANOR.
COURT ORDERS AND FINDINGS:
-THE COURT HAS READ AND CONSIDERED THE DEFENDANT'S PROP. 47 PETITION. THE COURT FINDS THAT THE DEFENDANT WAS CONVICTED OF COUNT 01 , A VIOLATION OF 11350(A) HS , A FELONY, WHICH IS A MISDEMEANOR UNDER PROP. 47. THE COURT FINDS THAT THE DEFENDANT IS ELIGIBLE AND SUITABLE FOR RELIEF. PURSUANT TO PENAL CODE SECTION 1170.18(B), DEFENDANT'S FELONY SENTENCE AS TO COUNT 01 IS RECALLED AND SET ASIDE, AND A MISDEMEANOR SENTENCE IS IMPOSED
(ENTRY BY G. HACKETT ON 7/13/16)
NEXT SCHEDULED EVENT:

CASE NO. YA080509
DEF NO. 01

DATE PRINTED 07/29/16

PROCEEDINGS TERMINATED

ON 07/27/16 AT 900 AM :

NOTICE OF PROP 47 MOTION GRANTED, COPY MAIL TO PETITION/PUBLIC DEFENDER.

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YF

ON 07/27/16 AT 930 AM :

CERTIFIED COPY OF MINUTE ORDER ON PROP 47 MAILED TO:
********UNITED STATES PENITENTIARY
********P. O. BOX 019001

********ATWATER, CA 93501
****
********ATTN: CORVAIN COOPER - 64301112

ON 07/27/16 AT 1000 AM IN INGLEWOOD COURTHOUSE DEPT CLK

CASE CALLED FOR SUBSEQUENT ADR SUBMITTED
PARTIES: NONE (JUDGE) NONE (CLERK)
NONE (REP) NONE (DDA)
DEFENDANT IS NOT PRESENT IN COURT, AND NOT REPRESENTED BY COUNSEL
ADULT SUBSEQUENT ACTION DISPOSITION INFORMATION ISSUED, COPY MAIL TO DEPT. OF JUSTICE, COPY FILED.

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YF
NEXT SCHEDULED EVENT:
PROCEEDINGS TERMINATED

07/29/16

I HEREBY CERTIFY THIS TO BE A TRUE AND CORRECT COPY OF THE ELECTRONIC DOCKET ON FILE IN THIS OFFICE AS OF THE ABOVE DATE.
SHERRI R. CARTER ,EXECUTIVE OFFICER/CLERK OF SUPERIOR COURT, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

BY _____, DEPUTY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES