Petitioner's Appendix A

United States of America

v.

Dion Terry Taylor, et al

Decision of the United States

Court of Appeals for the Sixth Circuit

(unpublished)

Docket Number 17-5220

Issued May 1, 2018

NOT RECOMMENDED FOR PUBLICATION
File Name: 18a0225n.06

Nos. 16-6560, 17-5033, and 17-5220

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. BENJAMIN FREDRICK CHARLES ROBINSON, NAVARIUS SAVELL WESTBERRY, and DION TERRY TAYLOR, Defendants-Appellants.	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF KENTUCKY

BEFORE: GILMAN, COOK, and GRIFFIN, Circuit Judges.

GRIFFIN, Circuit Judge.

Defendants trafficked heroin and fentanyl, resulting in at least two overdoses and one death. They pleaded guilty to various conspiracy-to-distribute counts under 21 U.S.C. §§ 841(a)(1), 846, and the district court imposed significant terms of imprisonment. Robinson and Taylor appeal their sentences, mainly claiming the district court erred in upwardly departing from their respective Guidelines ranges under § 5K2.1 because "death resulted" from their conduct. Westberry appeals the district court's denial of his motion to withdraw his guilty plea, and claims ineffective assistance of counsel during the plea stage. For the following reasons, we affirm.

I.

Defendants Benjamin Robinson, Navarius Westberry, and Dion Taylor distributed heroin and fentanyl (marketed as, or mixed with, heroin) in Madison County, Kentucky. They promoted their narcotics as a "'new batch' from Detroit," which generally flowed from Westberry to Taylor to Robinson to individual buyers. One of the purchasers, Alyssa Silvia, overdosed on fentanyl (which she believed to be heroin) purchased from Robinson. But for receiving emergency medical treatment, Silvia would have died from her overdose. Corey Brewer was not so fortunate. After his friend purchased what was supposedly heroin from one of Robinson's associates for their collective use, Brewer overdosed, and died of acute fentanyl toxicity.

A grand jury indicted defendants for conspiracy to distribute heroin and fentanyl, in violation of 21 U.S.C. §§ 841(a)(1), 846 (count 1); conspiracy to distribute fentanyl resulting in Brewer's death, in violation of 21 U.S.C. §§ 841(a)(1), 846 (count 2); and conspiracy to distribute fentanyl resulting in serious bodily injury to Silvia, in violation of 21 U.S.C. §§ 841(a)(1), 846 (count 3). Pursuant to plea deals, defendants pleaded guilty to some counts in exchange for the government dismissing the remainder: Westberry pleaded guilty to counts 1 and 2; Taylor pleaded guilty to count 1; and Robinson pleaded guilty to count 3.

Westberry moved to withdraw his guilty plea four months later, which the district court denied in a written order. It then sentenced Westberry to life in prison. Westberry does not appeal his sentence. Instead, he claims the district court erred in denying his motion to withdraw his guilty plea, and that he received ineffective assistance of counsel during plea proceedings.

Robinson and Taylor appeal only their sentences. The district court sentenced them to 220 and 262 months of imprisonment, respectively. In crafting their sentences, the district court

heard testimony regarding the circumstances surrounding Sylvia's near death and Brewer's death; on this basis, it departed upward under Guidelines §§ 5K2.1 and 5K2.21 (four levels for Robinson and five for Taylor) because Brewer's "death resulted" from their charged, but dismissed, conduct. Robinson and Taylor specifically take issue with this departure, but they also raise other challenges to their sentences—Taylor contends his sentence is substantively unreasonable, and Robinson objects to the district court's restitution order relating to the funeral costs associated with Brewer's death.

II.

We begin with the main issue in this consolidated appeal, the district court's § 5K2 upward departures for Robinson and Taylor. U.S.S.G. § 5K2.1 provides that "[i]f death resulted, the court may increase the sentence above the authorized guideline range." The Guidelines also contemplate upward departures "to reflect the actual seriousness of the offense based on conduct (1) underlying a charge dismissed as part of a plea agreement in the case, . . . ; and (2) that did not enter into the determination of the applicable guideline range." § 5K2.21. Following an evidentiary hearing, the district court concluded upward departures were appropriate for both Robinson and Taylor because (1) it found Brewer's death "resulted" from their conduct (§ 5K2.1) and, (2) the Guidelines permitted consideration of Brewer's death because the plea agreements dismissed the count relating to his death and the death did not play a role in determining the defendants' Guidelines ranges (§ 5K2.21).

We review a district court's decision to upwardly depart in the same way we "judge the procedural and substantive reasonableness of a variance from any guidelines range." *United States v. Erpenbeck*, 532 F.3d 423, 440 (6th Cir. 2008) (alterations and citation omitted). That is, we apply the familiar abuse-of-discretion standard. *Gall v. United States*, 552 U.S. 38, 46

(2007). We review the district court's factual findings for clear error and its legal conclusions de novo. *United States v. Bolds*, 511 F.3d 568, 579 (6th Cir. 2007).

A.

First, Robinson and Taylor both contend the district court erred in upwardly departing by utilizing judicial factfinding under the more relaxed preponderance-of-the-evidence standard instead of the most demanding beyond-a-reasonable-doubt standard. Their contentions run headlong into existing adverse precedent.

District courts may "consider dismissed and acquitted conduct when imposing sentences below the statutory maximum." *United States v. Churn*, 800 F.3d 768, 780 (6th Cir. 2015). It has long been settled that the government must establish such enhancing conduct by a preponderance of the evidence. *See, e.g.*, *United States v. Watts*, 519 U.S. 148, 157 (1997) (per curiam) ("[A] jury's verdict of acquittal does not prevent the sentencing court from considering conduct underlying the acquitted charge, so long as that conduct has been proved by a preponderance of the evidence."). *Watts* remains good law, *see, e.g.*, *United States v. White*, 551 F.3d 381, 383–84 (6th Cir. 2008) (en banc), and applies equally to charged, but dismissed, conduct. *See United States v. Conway*, 513 F.3d 640, 645–46 (6th Cir. 2008). "[S]o long as the ultimate sentence falls with the statutory range," as defendants' sentences do under 21 U.S.C. § 841(b), "a defendant who enters a plea agreement . . . waives any constitutional right to a jury determination of guilt or sentencing facts." *Conway*, 513 F.3d at 646.

This precedent notwithstanding, defendants claim *Burrage v. United States*, 134 S. Ct. 881 (2014), and *United States v. Rebmann*, 321 F.3d 540 (6th Cir. 2003), require "death results" findings to be made by a jury beyond a reasonable doubt. However, those cases involved "death results" enhancements that were part and parcel of the elements of the convicted offense. *See*

Burrage, 134 S. Ct. at 887 (21 U.S.C. § 841(b)'s statutory enhancement); *Rebmann*, 321 F.3d at 543 (U.S.S.G. § 2D1.1(a)'s base offense levels).[1] That is not what we have here; rather, the district court enhanced defendants' Guidelines ranges on the basis of relevant and not offense conduct. Accordingly, we decline defendants' invitations to do what we cannot do—disagree with the Supreme Court in *Watts*, the en banc court in *White*, and the panel in *Conway*.

B.

Taylor raises a separate challenge to the district court's upward departure. Following the lead of several (but not all) of our sister circuits, Taylor argues § 5K2.1's "death resulted" enhancement required the district court to find Brewer's death was either "intended" or "knowingly risked." *See, e.g.*, *United States v. White*, 979 F.2d 539, 544–45 (7th Cir. 1992). Because Taylor failed to raise this argument below, we review for plain error.[2] *United States v. Yancy*, 725 F.3d 596, 600 (6th Cir. 2013). This demanding standard requires Taylor to establish (1) error, (2) that is plain, (3) that affects his substantial rights, and (4) that seriously affects the fairness, integrity, or public reputation of the judicial proceedings. *Id.* at 601. He cannot.

For one, a "court of appeals cannot correct an error . . . unless the error is clear under current law." *United States v. Olano*, 507 U.S. 725, 734 (1993). A lack of precedent "preclude[s a] finding of plain error." *United States v. Al-Maliki*, 787 F.3d 784, 794 (6th Cir. 2015). As does a circuit split. *Id.* Here, there was (and still is) no binding Sixth Circuit or Supreme Court

[1]This point also distinguishes Robinson's reliance upon a Seventh Circuit case involving drug-quantity enhancements for a convicted offense under the Guidelines post-*Booker*. *See United States v. Macedo*, 406 F.3d 778, 788 (7th Cir. 2005).

[2]Taylor concedes he failed to raise this issue below, but nonetheless argues we should exercise our discretion under the general rule that we do not review issues raised for the first time on appeal, and consider his argument de novo. However, this request conflates the plain-error review standard with our general forfeiture principles. *See, e.g.*, *Thomas M. Cooley Law Sch. v. Kurzon Strauss, LLP*, 759 F.3d 522, 528–29 (6th Cir. 2014).

precedent requiring a district court to make an "intended" or "knowingly risked" factual finding, and our sister circuits appear to be in discord. *Compare White*, 979 F.2d at 544–45, *with United States v. Bayles*, 1993 WL 46892, at *3 n.1 (4th Cir. 1993) (per curiam) (disagreeing with *White*). These two independent considerations dictate a no-plain-error finding.

And even were we to adopt Taylor's standard, we cannot agree the purported error would affect Taylor's substantial rights. After all, the district court expressly found Taylor knew "that injuries and death were resulting from the product that was being distributed" and yet continued to distribute drugs "notwithstanding that risk that was known." The record reflects this: The district court heard testimony from the DEA agent who interrogated Taylor following his arrest, in which the agent recounted Taylor "mention[ed] that he knew [the drugs were] killing people," that Taylor "knew this was wrong," that he "knew people were dying," and that Brewer's fatal fentanyl came downstream from Taylor's supply. Put differently, the district court's factual findings were not clearly erroneous, with or without considering Taylor's requested "intentional or knowingly risked" standard. *See United States v. Salyers*, 661 F. App'x 862, 866 (6th Cir. 2016).

C.

Robinson's initial brief also hinted at challenging the upward departure because "[t]he statute as well as the guidelines had already taken death and serious bodily injury into account in determining the appropriate sentence." Because Robinson failed to develop this point in his brief, we deem it abandoned, *see Vander Boegh v. EnergySolutions, Inc.*, 772 F.3d 1056, 1063

(6th Cir. 2014), and decline to revive it upon receipt of his slightly more developed, but still underdeveloped, reply brief. *See Sanborn v. Parker*, 629 F.3d 554, 579 (6th Cir. 2010).[3]

III.

Taylor's final claim on appeal is that the district court imposed a substantively unreasonable sentence, a claim which we review for abuse of discretion. *See United States v. Kamper*, 748 F.3d 728, 739 (6th Cir. 2014). A district court imposes a substantively unreasonable sentence by "selecting the sentence arbitrarily, basing the sentence on impermissible factors, failing to consider pertinent § 3553(a) factors, or giving an unreasonable amount of weight to any pertinent factor." *United States v. Webb*, 403 F.3d 373, 385 (6th Cir. 2005) (footnotes omitted). Mindful of our institutional limitations as a reviewing court, we exercise "a great deal of deference" when reviewing a defendant's sentence for substantive reasonableness. *United States v. Mayberry*, 540 F.3d 506, 519 (6th Cir. 2008). Although we apply a rebuttable presumption of reasonableness to within-Guidelines sentences, *Gall*, 552 U.S. at 51, a sentence falling outside the Guidelines is not entitled to a presumption of unreasonableness. *Id.* We may consider the extent of the district court's deviation from the advisory range, but still "must give due deference to the district court's decision that the § 3553(a) factors, on a whole, justify the extent of the [departure]." *Id.*

[3]Moreover, Robinson's argument is meritless. He pleaded guilty to conspiracy to distribute fentanyl resulting in *Silvia's serious bodily injury* under 21 U.S.C. §§ 841(a)(1), 846. This carried a twenty-year minimum sentence term under § 841(b)(1)(C), which became his Guidelines range. However, the district court based its upward departure on the dismissed count of conspiracy to distribute fentanyl resulting in *Brewer's death*, in violation of 21 U.S.C. §§ 841(a)(1), 846, under §§ 5K1.1 and 5K1.21. Because this conduct "did not enter into the determination of the applicable guideline range," § 5K1.21(2), Robinson's position is without merit. We therefore deny the government's Motion to Strike Argument I in Robinson's Reply Brief as moot.

Among other things, Taylor points to his youth, his relative lack of criminal history, and his immediate acceptance of responsibility for why he should have received a sentence of less than 220 months. But what he does not do is tell us why the district court abused its discretion in imposing the sentence that it did, thus abandoning any such argument on appeal. *Vander Boegh*, 772 F.3d at 1063.

Moreover, a review of Judge Reeves's thorough sentencing hearing reveals these factors were considered, and that one—Taylor's cooperation—played a role in him receiving a sentence on the lower end of the adjusted Guidelines range (210 to 240 months). This last point makes it clear Taylor's real concern here is not how the district court weighed the § 3553(a) factors, but rather the district court's upward departure in the first instance. Upon a deferential review of Taylor's sentencing, we take no issue with the district court's 220-month sentence in light of the district court's reason for upwardly departing—Taylor's dealing of heroin and fentanyl resulted in the death of one person and the injury of others. *See, e.g.*, *United States v. Adkins*, 729 F.3d 559, 571 (6th Cir. 2013) ("A district court may place great weight on one factor if such weight is warranted under the facts of the case."). The district court appropriately considered the advisory nature of the Guidelines and the 240-month statutory maximum, credited Taylor for mitigating factors, and imposed a reasonable sentence.

IV.

The last sentencing aspect of this appeal is Robinson's terse challenge to the district court's imposition of $4,190 in restitution, which represents Brewer's funeral expenses. Because Robinson challenges the propriety of this award, our review is de novo. *United States v. Sizemore*, 850 F.3d 821, 824 (6th Cir. 2017).

> Robinson's argument, in total, is as follows:
>
> > The District Court erred in finding the Defendant responsible for restitution in relation to a dismissed charge, Count 2 of the Indictment in the amount of four thousand one hundred ninety dollars ($4,190.00). The initial Presentence Investigation Report did not include the monetary penalty; but was included after the time for objections had passed. The monetary penalty is related to Count 2 of the Indictment that was dismissed against the Defendant/Appellant and is representative of expenses related to the death of C.B. The Defendant/Appellant did not enter a plea to Count 2 of the Indictment and therefore should not be held responsible for a monetary penalty related to Count 2.

(And in response to the government's well-reasoned response, Robinson's counsel submitted identical language in reply).[4] Such a curt and unexplained position, which fails to advance "any sort of argument for the reversal of the district court[]," *Geboy v. Brigano*, 489 F.3d 752, 767 (6th Cir. 2007), or "cogent" the-district-court-got-it-wrong analysis, "constitutes abandonment." *Burley v. Gagacki*, 834 F.3d 606, 618 (6th Cir. 2016); *see also White Oak Prop. Dev., LLC v. Washington Twp.*, 606 F.3d 842, 850 (6th Cir. 2010) (noting a "perfunctory" and "nebulous" argument renders an issue forfeited).

Abandonment notwithstanding, Robinson's argument borders on frivolity. Under the Mandatory Victims Restitution Act, "if someone is convicted of a conspiracy, the court can order restitution for damage resulting from any conduct that was part of the conspiracy and not just from specific conduct that met the overt act requirement of the conspiracy conviction." *United States v. Elson*, 577 F.3d 713, 723 (6th Cir. 2009) (citation omitted). It may not, however, include "injuries caused by offenses that are not part of the conspiracy of which the defendant has been convicted." *Id.* (brackets and citation omitted). Here, the district court permissibly concluded Brewer's death resulted from the conspirators' conduct, and Robinson agreed that he

[4]We acknowledge Robinson *did* object to the imposition of restitution on these grounds, which the district court overruled.

conspired to distribute fentanyl in Kentucky during the time period encompassing Brewer's death. Therefore, the district court properly imposed restitution under 18 U.S.C. § 3663A. *Id.* at 723–24.

V.

Finally, defendant Westberry raises two related non-sentencing claims on appeal. Westberry contends the district court abused its discretion when it denied his motion to withdraw his guilty plea, and that his attorney provided him constitutionally deficient performance during the plea stages.[5] We affirm the district court's denial of Westberry's motion to withdraw, and decline to address his ineffective-assistance claim.

A.

We review a district court's decision denying a motion to withdraw a guilty plea for an abuse of discretion. *United States v. Benton*, 639 F.3d 723, 726–27 (6th Cir. 2011). A district court abuses its discretion when it "relies on erroneous findings of fact, applies the wrong legal standard, misapplies the correct legal standard when reaching a conclusion, or makes a clear error of judgment." *Reeb v. Ohio Dep't of Rehab. & Corr.*, 435 F.3d 639, 644 (6th Cir. 2006).

It is well-established that "[a] defendant has no right to withdraw his guilty plea." *United States v. Martin*, 668 F.3d 787, 794 (6th Cir. 2012). Instead, Federal Rule of Criminal Procedure 11 permits the withdrawal of an accepted guilty plea upon a showing of a "fair and just reason for requesting the withdrawal." Fed. R. Crim. P. 11(d)(2)(B). "[T]he aim of the rule is to allow a hastily entered plea made with unsure heart and confused mind to be undone, not to allow a

[5]Under the terms of his plea agreement, Westberry waived his "right to appeal the guilty plea and conviction." However, the government does not seek to enforce this appeal bar because Westberry's challenge amounts to a claim that his plea was neither knowing nor voluntary on account of ineffective assistance of counsel.

defendant to make a tactical decision to enter a plea, wait several weeks, and then obtain a withdrawal if he believes that he made a bad choice in pleading guilty." *United States v. Alexander*, 948 F.2d 1002, 1004 (6th Cir. 1991) (citation and internal quotation marks omitted). In examining this "fair and just reason" standard, we consider the totality of the circumstances, including the following seven factors set forth in *United States v. Bashara*:

> (1) the amount of time that elapsed between the plea and the motion to withdraw it; (2) the presence (or absence) of a valid reason for the failure to move for withdrawal earlier in the proceedings; (3) whether the defendant has asserted or maintained his innocence; (4) the circumstances underlying the entry of the guilty plea; (5) the defendant's nature and background; (6) the degree to which the defendant has had prior experience with the criminal justice system; and (7) potential prejudice to the government if the motion to withdraw is granted.

27 F.3d 1174, 1181 (6th Cir. 1994). "The factors are a general, non-exclusive list and no one factor is controlling." *United States v. Bazzi*, 94 F.3d 1025, 1027 (6th Cir. 1996) (per curiam). "The relevance of each factor will vary according to the circumstances surrounding the original entrance of the plea as well as the motion to withdraw." *United States v. Haygood*, 549 F.3d 1049, 1052 (6th Cir. 2008) (citation and internal quotation marks omitted).

Following his December 2015 indictment, Westberry and the government began plea negotiations. The parties eventually came to an agreement, and brought it before the district court on June 24, 2016, for a rearraignment and change-of-plea hearing. However, the district court adjourned the hearing after Westberry indicated he did not "understand the process," was "anxious," and had a hard time comprehending the proceeding.

On August 15, 2016, Westberry reappeared before the district court and entered a guilty plea to conspiracy to distribute heroin and fentanyl, in violation of 21 U.S.C. §§ 841(a)(1), 846, (count 1) and conspiracy to distribute fentanyl resulting in Brewer's death, in violation of 21 U.S.C. §§ 841(a)(1), 846 (count 2). Before taking the plea, the district court confirmed,

among other things, Westberry's educational background, his mental-health history, and his history of drug and alcohol use. Westberry agreed he understood the charges against him, indicated he was satisfied with his attorney's advice and performance, and acknowledged he had read and understood the terms of his plea agreement. As pertinent for his claim on appeal, Westberry admitted that he distributed fentanyl that resulted in Brewer's death (but contended he believed it was heroin). The district court then accepted his guilty plea.

A week later, Westberry's attorney moved to withdraw as counsel. Among other reasons, she claimed that, "after Mr. Westberry's entry of a plea, he called challenging the actions of counsel and the validity of the plea." The district court conducted a hearing on August 29, 2016, and allowed Westberry's attorney to withdraw. During the hearing, Westberry indicated his dissatisfaction with his counsel for not pursuing a medical expert to test the validity of the link between the fentanyl taken by Brewer and his death. He essentially requested an evidentiary hearing on Brewer's cause of death. Yet, when asked whether he anticipated requesting to withdraw his guilty plea, Westberry responded that "I never wanted to withdraw my guilty plea."

More than three months after indicating to the contrary, Westberry then moved to withdraw his plea on December 6, 2016. In support, Westberry blamed his former attorney's lack of attention to his case, faulted her for not pursuing a medical expert, claimed he agreed to plead guilty because he "was overwhelmed with fear and confusion," and contended his counsel's failures left him with no choice but to plead guilty. For the first time, he also espoused his innocence. At a hearing on his motion, Westberry tried to justify the delay in filing his motion to withdraw on the basis that he was trying to secure money to hire a medical expert, claimed he was under the influence of Xanax during his plea hearing, and argued he had expected to have an evidentiary hearing regarding Brewer's cause of death.

The district court denied Westberry's motion in a comprehensive and well-reasoned written order. It concluded Westberry "wholly failed to establish any legitimate reason which would justify setting aside his prior guilty plea," finding none of the *Bashara* factors weighed in his favor. First, 112 days had elapsed between his guilty plea and his motion. Second, the district court rejected Westberry's reasons for his failure to timely move for withdrawal, noting his attorney's performance and the medical-expert issue were known to Westberry before he pleaded guilty and that he expressly disavowed a plea-withdrawal motion two weeks after. Third, Westberry did not maintain his innocence over the course of the proceedings. Fourth, the district court concluded the circumstances of Westberry's plea entry did not justify relief, again noting Westberry could have raised his concerns earlier and accepting Westberry's new position would require the court to discard his earlier statements under oath that he understood what he was pleading to (and after the court gave Westberry an additional month to consider the plea offer). Fifth, it found Westberry's background did not support a claim that he was unable to understand the proceedings, and sixth, concluded his prior, relevant experience with the criminal justice system suggested he understood the nature of the process and was aware of the consequences of his plea.

These conclusions are well-supported in the record and in our case law. Take, for example, the district court's conclusion regarding the length and explanation for the delay. Westberry waited over one hundred days to file his motion, and "[w]e have consistently found shorter periods to be excessive." *Martin*, 668 F.3d at 795 (collecting cases, and noting a delay of ninety-five days "weigh[ed] against withdrawal"). Nor do we take issue with the district court's finding that Westberry knew about the issues supporting his motion before he pleaded guilty, or fault the district court for relying upon Westberry's post-plea assertion that he did not want to

change his plea in light of the same issues. And more to the point, "[w]hen a defendant has entered a knowing and voluntary plea of guilty at a hearing at which he acknowledged committing the crime, the occasion of setting aside a guilty plea should seldom arise." *United States v. Ellis*, 470 F.3d 275, 280 (6th Cir. 2006) (citation omitted). As the district court ably considered Westberry's motion, we agree this case does not present such a rare circumstance. For these reasons, and for those articulated by the district court, the district court did not abuse its discretion in concluding the *Bashara* factors did not support the withdrawal of a guilty plea.

B.

Westberry also faults the district court for "fail[ing] to address the apparent violation of Appellant's right to the effective assistance of counsel." In his view, his attorney failed to provide an adequate defense during plea negotiations because she did not adequately investigate the circumstances surrounding Brewer's death (Westberry argues there is a possibility something other than fentanyl killed Brewer) and that but for his attorney's failures, he "would have never entered the plea agreement."

Our typical approach to ineffective-assistance claims on direct appeal is to decline to address such claims unless "trial counsel's ineffectiveness is apparent from the record." *Martin*, 668 F.3d at 797. We see no reason to deviate from that approach here, because the record is woefully deficient and counsel's ineffectiveness is not apparent. The district court held no evidentiary hearing regarding a claim of ineffective assistance of counsel; indeed, there is little in the record regarding the medical-testing issue, and more importantly, his prior attorney did not testify. *See, e.g.*, *United States v. Sypher*, 684 F.3d 622, 626 (6th Cir. 2012). And there is good reason why the record is undeveloped for an ineffective-assistance claim—Westberry never

expressly raised one below. *See United States v. Levenderis*, 806 F.3d 390, 401–02 (6th Cir. 2015). We therefore decline to address his ineffective-assistance claim in this direct appeal.

VI.

For these reasons, we affirm the district court's judgments.

Petitioner's Appendix B

United States of America

v.

Dion Terry Taylor, et al

Judgment of the United States

District Court for the Eastern District

of Kentucky, Central Division

at Lexington

(unpublished)

Docket Number 5:15-CR-114-DCR-3

Filed February 14, 2017

UNITED STATES DISTRICT COURT

Eastern District of Kentucky – Central Division at Lexington

UNITED STATES OF AMERICA

v.

Dion Terry Taylor, a/k/a "D"

JUDGMENT IN A CRIMINAL CASE

Case Number: 5:15-CR-114-DCR-3

USM Number: 19900-032

Robert Michael Murphy
Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) One

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

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

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21:846 & 21:841(b)(1)(B)	Conspiracy to Distribute 100 Grams or More of Heroin and a Quantity of Fentanyl	August 2015	1

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

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

☒ Count(s) Two and Three ☐ is ☒ are dismissed on the motion of the United States.

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

February 10, 2017
Date of Imposition of Judgment

Signature of Judge

Honorable Danny C. Reeves, U.S. District Judge
Name and Title of Judge

February 14, 2017
Date

DEFENDANT: Dion Terry Taylor, a/k/a "D"
CASE NUMBER: 5:15-CR-114-DCR-3

IMPRISONMENT

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

Two Hundred Twenty (220) Months

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

It is recommended to the Bureau of Prisons that the defendant participate in a substance abuse program if he qualifies.
It is recommended to the Bureau of Prisons that the defendant participate in a job skills and/or vocational training program.
It is recommended that the defendant not serve his term of imprisonment at the same facility as the co-defendants in this case.
It is recommended the defendant be housed at a facility closest to his home.

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

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

☐ at ☐ a.m. ☐ p.m. on .

☐ as notified by the United States Marshal.

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

☐ before 2 p.m. on .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on to

at , with a certified copy of this judgment.

UNITED STATES MARSHAL

By DEPUTY UNITED STATES MARSHAL

DEFENDANT: Dion Terry Taylor, a/k/a "D"
CASE NUMBER: 5:15-CR-114-DCR-3

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of :

Six (6) Years

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
   - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(Check, if applicable.)*
4. ☒ You shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
5. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(Check, if applicable.)*
6. ☐ You must participate in an approved program for domestic violence. *(Check, if applicable.)*

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

DEFENDANT: Dion Terry Taylor, a/k/a "D"
CASE NUMBER: 5:15-CR-114-DCR-3

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____ Date _____

DEFENDANT: Dion Terry Taylor, a/k/a "D"
CASE NUMBER: 5:15-CR-114-DCR-3

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall refrain from the excessive use of alcohol.

2. The defendant shall participate in a substance abuse treatment program and shall submit to periodic drug and alcohol testing at the direction and discretion of the probation officer during the term of supervision. Said program may include one or more cognitive behavioral approaches to address criminal thinking patterns and antisocial behaviors. The defendant shall pay for the cost of treatment services to the extent he is able as determined by the probation officer.

3. The defendant shall refrain from obstructing or attempting to obstruct or tamper, in any fashion, with the efficiency and accuracy of any prohibited substance testing required as a condition of release.

4. The defendant shall submit his person, residence and curtilage, office or vehicle to a search, upon direction and discretion of the United States Probation Office.

DEFENDANT: Dion Terry Taylor, a/k/a "D"
CASE NUMBER: 5:15-CR-114-DCR-3

CRIMINAL MONETARY PENALTIES

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

	Assessment	JVTA Assessment*	Fine	Restitution
TOTALS	$ 100.00	$ 0.00	$ Waived	$ 4,190.00

☐ The determination of restitution is deferred until . An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☒ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

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

Name of Payee	Total Loss**	Restitution Ordered	Priority or Percentage
Julie K. Robinson Waco, KY 40385	$4,190.00	$4,190.00	100%

TOTALS	$ 4,190.00	$ 4,190.00	100%

☐ Restitution amount ordered pursuant to plea agreement $

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

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Dion Terry Taylor, a/k/a "D"
CASE NUMBER: 5:15-CR-114-DCR-3

SCHEDULE OF PAYMENTS

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

A ☒ Lump sum payment of $ 4,290.00 due immediately, balance due

☐ not later than , or
☒ in accordance with ☐ C, ☐ D ☐ E, or ☒ F below; or

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

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

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

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

F ☒ Special instructions regarding the payment of criminal monetary penalties:

Criminal monetary penalties are payable to:
Clerk, U. S. District Court, Eastern District of Kentucky
101 Barr Street, Room 206, Lexington KY 40507

INCLUDE CASE NUMBER WITH ALL CORRESPONDENCE

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

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

☒ Joint and Several

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

Dion Terry Taylor, 5:15-CR-114-DCR-3, $4,190 (total amount and joint and several amount); Navarius Savell Westberry, 5:15-CR-114-DCR-1, $3,620 (total amount and joint and several amount); Benjamin Fredrick Charles Robinson, 5:15-CR-114-DCR-2, $4,190 (total amount and joint and several amount); Kathy Lashell Brown Miller, 5:15-CR-114-DCR-6, $4,190 (total amount and joint and several amount).

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

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

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVTA assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

Petitioner's Appendix C

Text of

18 U.S.C. §3553

18 USCS § 3553

Current through PL 115-230, approved 8/2/18

United States Code Service - Titles 1 through 54 > TITLE 18. CRIMES AND CRIMINAL PROCEDURE > PART II. CRIMINAL PROCEDURE > CHAPTER 227. SENTENCES > SUBCHAPTER A. GENERAL PROVISIONS

Notice

Part 1 of 3. You are viewing a very large document that has been divided into parts.

§ 3553. Imposition of a sentence

(a) Factors to be considered in imposing a sentence. The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider--

(1)the nature and circumstances of the offense and the history and characteristics of the defendant;

(2)the need for the sentence imposed--

(A)to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B)to afford adequate deterrence to criminal conduct;

(C)to protect the public from further crimes of the defendant; and

(D)to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

(3)the kinds of sentences available;

(4)the kinds of sentence and the sentencing range established for--

(A)the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines--

(i)issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments

have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(ii)that, except as provided in section 3742(g) [18 USCS § 3742(g)], are in effect on the date the defendant is sentenced; or

(B)in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to section 994(a)(3) of title 28, United States Code, taking into account any amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28);

(5)any pertinent policy statement--

(A)issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28, United States Code, subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(B)that, except as provided in section 3742(g) [18 USCS § 3742(g)], is in effect on the date the defendant is sentenced.[;]

(6)the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

(7)the need to provide restitution to any victims of the offense.

(b) Application of guidelines in imposing a sentence.

(1) In general **[Caution: In United States v. Booker (2005) 543 US 220, 160 L Ed 2d 621, 125 S Ct 738, the Supreme Court held that 18 USCS § 3553(b)(1), which makes the Federal Sentencing Guidelines mandatory, is incompatible with the requirements of the Sixth Amendment and therefore must be severed and excised from the Sentencing Reform Act of 1984.]**. Except as provided in paragraph (2), the court shall impose a sentence of the kind, and within the range, referred to in subsection (a)(4) unless the court finds that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described. In determining whether a circumstance was adequately taken into consideration, the court shall consider only the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission. In the absence of an applicable sentencing guideline, the court shall impose an

appropriate sentence, having due regard for the purposes set forth in subsection (a)(2). In the absence of an applicable sentencing guideline in the case of an offense other than a petty offense, the court shall also have due regard for the relationship of the sentence imposed to sentences prescribed by guidelines applicable to similar offenses and offenders, and to the applicable policy statements of the Sentencing Commission.

(2) Child crimes and sexual offenses.

[(A)] Sentencing. In sentencing a defendant convicted of an offense under section 1201 [18 USCS § 1201] involving a minor victim, an offense under section 1591 [18 USCS § 1591], or an offense under chapter 71, 109A, 110, or 117 [18 USCS §§ 1460 et seq., 2241 et seq., 2251 et seq., or 2421 et seq.], the court shall impose a sentence of the kind, and within the range, referred to in subsection (a)(4) unless--

(i)the court finds that there exists an aggravating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence greater than that described;

(ii)the court finds that there exists a mitigating circumstance of a kind or to a degree, that--

(I)has been affirmatively and specifically identified as a permissible ground of downward departure in the sentencing guidelines or policy statements issued under section 994(a) of title 28, taking account of any amendments to such sentencing guidelines or policy statements by Congress;

(II)has not been taken into consideration by the Sentencing Commission in formulating the guidelines; and

(III)should result in a sentence different from that described; or

(iii)the court finds, on motion of the Government, that the defendant has provided substantial assistance in the investigation or prosecution of another person who has committed an offense and that this assistance established a mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence lower than that described.

In determining whether a circumstance was adequately taken into consideration, the court shall consider only the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission, together with any amendments thereto by act of Congress. In the absence of an

applicable sentencing guideline, the court shall impose an appropriate sentence, having due regard for the purposes set forth in subsection (a)(2). In the absence of an applicable sentencing guideline in the case of an offense other than a petty offense, the court shall also have due regard for the relationship of the sentence imposed to sentences prescribed by guidelines applicable to similar offenses and offenders, and to the applicable policy statements of the Sentencing Commission, together with any amendments to such guidelines or policy statements by act of Congress.

(c) Statement of reasons for imposing a sentence. The court, at the time of sentencing, shall state in open court the reasons for its imposition of the particular sentence, and, if the sentence--

(1)is of the kind, and within the range, described in subsection (a)(4), and that range exceeds 24 months, the reason for imposing a sentence at a particular point within the range; or

(2)is not of the kind, or is outside the range, described in subsection (a)(4), the specific reason for the imposition of a sentence different from that described, which reasons must also be stated with specificity in a statement of reasons form issued under section 994(w)(1)(B) of title 28 [28 USCS § 994(w)(1)(B)], except to the extent that the court relies upon statements received in camera in accordance with Federal Rule of Criminal Procedure 32. In the event that the court relies upon statements received in camera in accordance with Federal Rule of Criminal Procedure 32 the court shall state that such statements were so received and that it relied upon the content of such statements.

If the court does not order restitution, or orders only partial restitution, the court shall include in the statement the reason therefor. The court shall provide a transcription or other appropriate public record of the court's statement of reasons, together with the order of judgment and commitment, to the Probation System and to the Sentencing Commission,[,] and, if the sentence includes a term of imprisonment, to the Bureau of Prisons.

(d) Presentence procedure for an order of notice. Prior to imposing an order of notice pursuant to section 3555 [18 USCS § 3555], the court shall give notice to the defendant and the Government that it is considering imposing such an order. Upon motion of the defendant or the Government, or on its own motion, the court shall--

(1)permit the defendant and the Government to submit affidavits and written memoranda addressing matters relevant to the imposition of such an order;

(2)afford counsel an opportunity in open court to address orally the appropriateness of the imposition of such an order; and

(3)include in its statement of reasons pursuant to subsection (c) specific reasons underlying its determinations regarding the nature of such an order.

Upon motion of the defendant or the Government, or on its own motion, the court may in its discretion employ any additional procedures that it concludes will not unduly complicate or prolong the sentencing process.

(e) Limited authority to impose a sentence below a statutory minimum. Upon motion of the Government, the court shall have the authority to impose a sentence below a level established by statute as a minimum sentence so as to reflect a defendant's substantial assistance in the investigation or prosecution of another person who has committed an offense. Such sentence shall be imposed in accordance with the guidelines and policy statements issued by the Sentencing Commission pursuant to section 994 of title 28, United States Code.

(f) Limitation on applicability of statutory minimums in certain cases. Notwithstanding any other provision of law, in the case of an offense under section 401, 404, or 406 of the Controlled Substances Act (21 U.S.C. 841, 844, 846) or section 1010 or 1013 of the Controlled Substances Import and Export Act (21 U.S.C. 960, 963), the court shall impose a sentence pursuant to guidelines promulgated by the United States Sentencing Commission under section 994 of title 28 without regard to any statutory minimum sentence, if the court finds at sentencing, after the Government has been afforded the opportunity to make a recommendation, that--

(1)the defendant does not have more than 1 criminal history point, as determined under the sentencing guidelines;

(2)the defendant did not use violence or credible threats of violence or possess a firearm or other dangerous weapon (or induce another participant to do so) in connection with the offense;

(3)the offense did not result in death or serious bodily injury to any person;

(4)the defendant was not an organizer, leader, manager, or supervisor of others in the offense, as determined under the sentencing guidelines and was not engaged in a continuing criminal enterprise, as defined in section 408 of the Controlled Substances Act [21 USCS § 848]; and

(5)not later than the time of the sentencing hearing, the defendant has truthfully provided to the Government all information and evidence the defendant has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan, but the fact that the defendant has no relevant or useful other information to provide or that the Government is already aware of the information shall not preclude a determination by the court that the defendant has complied with this requirement.

History

(Added Oct. 12, 1984,P.L. 98-473, Title II, Ch II, § 212(a)(2), 98 Stat. 1989; Oct. 27, 1986, P.L. 99-570, Title I, Subtitle A, § 1007(a), 100 Stat. 3207-7; Nov. 10, 1986, P.L. 99-646, §§ 8(a), 9(a), 80(a), 81(a), 100 Stat. 3593, 3619; Dec. 7, 1987, P.L. 100-182, §§ 3, 16(a), 17, 101 Stat. 1266, 1269, 1270; Nov. 18, 1988, P.L. 100-690, Title VII, Subtitle C, § 7102, 102 Stat. 4416; Sept. 13, 1994, P.L. 103-322, Title VIII, § 80001(a), Title XXVIII, § 280001, 108 Stat. 1985, 2095; Oct. 11, 1996, P.L. 104-294, Title VI, § 601(b)(5), (6), (h), 110 Stat. 3499, 3500; Nov. 2, 2002, P.L. 107-273, Div B, Title IV, § 4002(a)(8), 116 Stat. 1807; April 30, 2003, P.L. 108-21, Title IV, § 401(a), (c), (j)(5), 117 Stat. 667, 669, 673.)

(As amended May 27, 2010,P.L. 111-174, § 4, 124 Stat. 1216.)

End of Document

Petitioner's Appendix D

Text of

U.S.S.G. §5K2.1

18 USCS Appx § 5K2.1

Current through PL 115-230, approved 8/2/18

United States Code Service - Titles 1 through 54 > TITLE 18. CRIMES AND CRIMINAL PROCEDURE > SENTENCING GUIDELINES FOR THE UNITED STATES COURTS. 18 USCS APPENDIX > CHAPTER FIVE. DETERMINING THE SENTENCE > PART K. DEPARTURES > 2. OTHER GROUNDS FOR DEPARTURE

§ 5K2.1. Death (Policy Statement)

If death resulted, the court may increase the sentence above the authorized guideline range.

Loss of life does not automatically suggest a sentence at or near the statutory maximum. The sentencing judge must give consideration to matters that would normally distinguish among levels of homicide, such as the defendant's state of mind and the degree of planning or preparation. Other appropriate factors are whether multiple deaths resulted, and the means by which life was taken. The extent of the increase should depend on the dangerousness of the defendant's conduct, the extent to which death or serious injury was intended or knowingly risked, and the extent to which the offense level for the offense of conviction, as determined by the other Chapter Two guidelines, already reflects the risk of personal injury. For example, a substantial increase may be appropriate if the death was intended or knowingly risked or if the underlying offense was one for which base offense levels do not reflect an allowance for the risk of personal injury, such as fraud.

History

Historical Note: Effective November 1, 1987

End of Document