

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

MADY CHAN, PETITIONER

vs.

UNITED STATES OF AMERICA, RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES SUPREME COURT FOR THE NINTH CIRCUIT

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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MADY CHAN*

APPENDIX A

FILED

NOT FOR PUBLICATION

MAY 03 2018

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

No. 16-15503

Plaintiff-Appellee,

D.C. Nos. 2:15-cv-01367-WBS
2:96-cr-00350-WBS-5

v.

MADY CHAN, AKA Maddy,
AKA Mandy, AKA Manny,

MEMORANDUM*

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of California
William B. Shubb, District Judge, Presiding

Argued and Submitted April 9, 2018
San Francisco, California

Before: WARDLAW and CLIFTON, Circuit Judges, and KATZMANN, ** Judge.

Mady Chan appeals the district court's denial of his Motion to Vacate, Set Aside, or Correct a Sentence by a Person in Federal Custody pursuant to 28 U.S.C. § 2255. We affirm.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Gary S. Katzmann, Judge for the United States Court of International Trade, sitting by designation.

A waiver of a defendant's right to appeal or collaterally attack a conviction does not preclude a subsequent claim of ineffective assistance of counsel in which the defendant calls into question his entry into the agreement that contained the waiver. *Washington v. Lampert*, 422 F.3d 864, 869-70 (9th Cir. 2005). Because Chan argues that he involuntarily and unknowingly entered into the plea agreement that contained the waiver as a result of ineffective assistance of counsel, we have jurisdiction to hear Chan's claim.

Chan's argument fails on the merits, however, because he did not prove that his representation "fell below an objective standard of reasonableness." *Strickland v. Washington*, 466 U.S. 668, 688-96 (1984).

From the outset, as the district court found, Chan expressed primary concern for other family members who had also been charged. Specifically, Chan wanted to obtain dismissal of the charges against other family members and also wanted to preserve a home for his father. Because he was already serving a long sentence for a conviction in the Northern District, avoiding this conviction was of much less significance to Chan than it might have been in other circumstances. The plea agreement represented the most definite means of dismissing the charges against Chan's family members and preserving the home. While a motion to dismiss for a Speedy Trial Act violation could have been pursued, the district court concluded that "there was nevertheless a risk that the court would deny the motion and

petitioner would lose the ability to protect his family members.” The district court’s findings were not clearly erroneous.

A defendant’s representation is not “constitutionally defective” because he “lacked a crystal ball” that would “give an accurate prediction of the outcome of [the] case.” *Turner v. Calderon*, 281 F.3d 851, 881 (9th Cir. 2002). That Warriner did not state that the outcome of a potential dismissal motion was absolutely certain did not render his representation of Chan ineffective. Counsel was only under an obligation to provide Chan with the ability to “make a reasonably informed decision whether to accept a plea offer.” *Id.* at 880. Warriner effectively informed Chan of the effect of the plea agreement and, in doing so, provided the necessary information to make an informed decision to accept the plea.

We decline to broaden the scope of the certificate of appealability to include Chan’s uncertified claims. The failure to file a motion to dismiss at an earlier point in time did not present a more serious ineffectiveness claim than the claim discussed above. Chan was incarcerated anyway, and it was not unreasonable to let sleeping dogs lie. As for the district court’s decision not to hold an evidentiary hearing, Chan did not make a showing that there were additional facts that needed to be developed.

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff/Respondent,
v.
MADY CHAN,
Defendant/Petitioner.

CR. NO. 2:96-350-05 WBS
2:15-cv-01367-WBS

MEMORANDUM AND ORDER RE:
DEFENDANT'S MOTION TO VACATE,
SET ASIDE, OR CORRECT SENTENCE
PURSUANT TO 18 U.S.C § 2255

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21 Petitioner Mady Chan moves to vacate, set aside, or
22 correct his sentence pursuant to 28 U.S.C. § 2255 on the grounds
23 that his guilty plea was entered unknowingly and involuntarily as
24 a result of ineffective assistance of counsel. (Docket No. 932.)
25 Petitioner also requests an evidentiary hearing and appointment
26 of counsel to represent him. (*Id.*) The government opposes.
27 (Docket No. 995.)

1 I. Factual & Procedural History

2 On August 2, 1996, petitioner Mady Chan and numerous
3 codefendants were charged with various money-laundering
4 violations in a sixty-seven count Indictment. (Indictment
5 (Docket No. 1).) On July 16, 1998, the government filed a 130
6 count Superseding Indictment against petitioner. (Superseding
7 Indictment (Docket No. 98).) Timothy E. Warriner was initially
8 appointed as petitioner's advisory counsel and later, at
9 petitioner's request, as counsel of record. (Gov't Opp'n Ex. 8,
10 Warriner Decl. at 1 (Docket No. 995-8).)

11 On January 28, 2014, this court issued an Order to Show
12 Cause why the case should not be dismissed as against the
13 remaining defendants for lack of prosecution. (Docket No. 858.)
14 This court observed that it had been seventeen years since the
15 Indictment was filed in the matter and, so far as the court could
16 determine, no effort had been made to bring the matter to trial
17 and there had not been any finding of excludable time under the
18 Speedy Trial Act. (Id.)

19 On February 11, 2014, petitioner mailed to the
20 government a motion to dismiss based on Speedy Trial violations
21 that he planned to file pro se. (Pet'r's Mem. at 3 (Docket No.
22 932); Warriner Decl. at 2.) Petitioner withdrew this motion
23 before it was docketed upon consulting with his attorney and
24 receiving a draft plea agreement from the government. (Warriner
25 Decl. ¶ 7.)

26 On February 24, 2014, petitioner entered pleas of
27 guilty to counts 15, 19, 31, 32, 37, 39, 122, and 123 of the
28 Superseding Indictment pursuant to Federal Rule of Criminal

1 Procedure 11(c)(1)(C). (Gov't Opp'n Ex. 5, Plea Agreement.) The
2 plea was a "package offer" in which the government agreed to
3 dismiss the charges against petitioner's wife, Linda Chan,
4 mother, Lizhen Chen, father, Bao Qin Chen, and relative, Jimmy
5 Leung, with prejudice. (Id. at 3.) Petitioner agreed to forfeit
6 a house and other assets obtained with illicit funds but,
7 according to Warriner, petitioner arranged for "a resolution of
8 the forfeiture that would leave a home for his father." (Id. at
9 3-4; Warriner Decl. ¶ 4.) The government also dismissed the
10 remaining charges against petitioner. (Id. at 4.) On July 21,
11 2014, petitioner was sentenced to 88 months to be served
12 concurrently with his Northern District of California sentence of
13 640 months. (Id. Ex. 7 at 5.)

14 On February 27, 2015, codefendants Paul Minh Chan, Lisa
15 Le Chan, John That Luong, and Ping Sherry Chan filed a motion to
16 dismiss the Superseding Indictment for Speedy Trial violations.
17 (Docket No. 914.) This court granted defendants' motion and
18 dismissed the Superseding Indictment with prejudice. (Docket No.
19 918.)

20 II. Waiver

21 In his plea agreement, petitioner waived his right to
22 file a motion based on statutory due process speedy trial claims
23 and his right to file a motion under 28 U.S.C. § 2255 or § 2241
24 collaterally attacking his conviction or sentence. (Gov't Opp'n
25 Ex. 5, Plea Agreement at 9.) This court conducted a full Rule 11
26 colloquy with defendant during his change of plea hearing on
27 February 24, 2014, and plaintiff acknowledged that he understood
28 he was waiving his right to collaterally attack his conviction or

1 sentence. (Gov't Opp'n Ex. 6, Tr. of Change of Plea at 13
2 (Docket No. 995-6).) All of that colloquy went for naught,
3 however, because this court nevertheless has jurisdiction over a
4 § 2255 petition which raises an ineffective assistance of counsel
5 claim that challenges the validity and voluntariness of the plea
6 agreement itself. See Washington v. Lampert, 422 F.3d 864, 871
7 (9th Cir. 2005) ("[A] plea agreement that waives the right to
8 file a federal habeas petition . . . is unenforceable with
9 respect to an IAC claim that challenges the voluntariness of the
10 waiver.").

11 III. Ineffective Assistance of Counsel

12 To prevail on a claim of ineffective assistance of
13 counsel, a petitioner must show "(1) that counsel's performance
14 was so deficient that it fell below an 'objective standard of
15 reasonableness' and (2) that the deficient performance rendered
16 the results of [the] trial unreliable or fundamentally unfair."
17 Cox v. Ayers, 588 F.3d 1038, 1046 (9th Cir. 2009) (citing
18 Strickland v. Washington, 466 U.S. 668, 688 (1984)). The Supreme
19 Court has recognized that a claim for ineffective assistance of
20 counsel "must satisfy both prongs of [this] test in order to
21 prevail." Smith v. Robbins, 528 U.S. 259, 289 (2000).

22 Counsel's performance is so deficient that it falls
23 below an objective standard of reasonableness when the behavior
24 complained of fails to meet "prevailing professional norms."
25 United States v. McMullen, 98 F.3d 1155, 1158 (9th Cir. 1996).
26 However, judicial scrutiny of counsel's performance is
27 deferential and the "burden is on petitioner to identify the acts
28 or omissions of counsel that are alleged not to have been the

1 result of reasonable professional judgment." Cox, 588 F.3d at
2 1046. "The court should recognize that counsel is strongly
3 presumed to have rendered adequate assistance and made all
4 significant decisions in the exercise of reasonable professional
5 judgment." Id. "[S]trategic choices made after thorough
6 investigation of law and facts relevant to plausible options are
7 virtually unchallengeable." Strickland, 466 U.S. at 691.

8 To demonstrate prejudice, the movant must show that
9 there is a reasonable possibility that, but for counsel's
10 unprofessional errors, the result of the proceeding would have
11 been different. Strickland, 466 U.S. at 694. In the context of
12 a plea agreement, "the defendant must show that there is a
13 reasonable probability that, but for counsel's errors, he would
14 not have pleaded guilty and would have insisted on going to
15 trial." Hill v. Lockhart, 474 U.S. 52, 59 (1985).

16 Petitioner argues that counsel's performance fell below
17 the "objective standard of reasonableness" because counsel knew
18 there was a Speedy Trial violation but failed to file a motion to
19 dismiss the Superseding Indictment on this ground. (Pet'r's Mem.
20 at 10.) Further, counsel allegedly advised petitioner to
21 withdraw the motion to dismiss that petitioner had begun to file
22 pro se and to instead accept the plea agreement. (Id. at 3.)
23 Petitioner argues that his counsel believed the issues raised in
24 the motion to dismiss were without merit and this was proven to
25 be inaccurate given this court's subsequent decision to grant
26 defendants Paul Minh Chan, Lisa Le Chan, John That Luong, and
27 Ping Sherry Chan's motion to dismiss. (Id. at 3 n.2.)
28 Petitioner contends that had he been properly advised about the

1 likelihood of success on a motion to dismiss based on Speedy
2 Trial violations, he would not have pleaded guilty and would have
3 insisted on filing the motion and, if necessary, proceeding to
4 trial. (Id. at 4.) Petitioner pled guilty, he alleges, because
5 of his attorney's failure to properly advise him on the strong
6 merits of a Speedy Trial violation claim.

7 Contrary to petitioner's portrayal, the government and
8 petitioner's former counsel, Warriner, contend that petitioner
9 was properly advised about the merits of the Speedy Trial claim
10 and knowingly and voluntarily chose to plead guilty in order to
11 protect his family. (Gov't Opp'n at 20; Id. Ex. 9, Special Agent
12 Dupre Decl. ¶ 5 (Docket No. 995-9); Warriner Decl. ¶¶ 3-4.)
13 Warriner testified that from the time he was appointed as
14 counsel, petitioner wanted to reach a plea agreement with the
15 government in order to ensure the charges against his family
16 members were dismissed and the forfeiture would leave a home for
17 his father. (Warriner Decl. ¶ 4.) Warriner not only advised
18 petitioner that if he accepted the plea bargain he would not be
19 able to make a Speedy Trial motion but also that, in his opinion,
20 the Speedy Trial motion had merit. (Id. ¶¶ 4, 8.)

21 The lead prosecutor on this case, Assistant United
22 States Attorney William Wong, similarly stated that petitioner's
23 concern for his family was "the motivating factor in his desire
24 to resolve the money-laundering case against him." (Gov't Opp'n
25 Ex. 10, Wong Decl. ¶ 12 (Docket No. 995-10).) Petitioner told
26 Wong he was a "dead man walking" because "he basically received a
27 life sentence for the RICO indictment" in the Northern District.
28 (Id.) Given the futility of his situation, he wanted to resolve

1 the money-laundering case in a manner that would guarantee the
2 protection of his parents and children. (Id.) He was especially
3 concerned about his wife being convicted and his children having
4 to navigate adolescence without either parent at home. (Id. ¶
5 11; see also Dupre Decl. ¶ 5.) Wong explained that “[e]ven after
6 discussing the issue of speedy trial, Chan continued to express
7 his desire to resolve the case in order to provide certainty that
8 the charges would be dismissed against his parents and wife.”
9 (Id. ¶ 14.) The government argues that the fact that petitioner
10 filed a motion to dismiss based on Speedy Trial violations pro se
11 supports the testimony of Warriner and Wong that petitioner
12 clearly understood the merits of the Speedy Trial claim but
13 knowingly chose to plead guilty because this was certain to
14 protect his family. (Gov’t Opp’n at 20.)

15 The court finds that defendant knowingly and
16 voluntarily entered into a plea agreement and was properly
17 advised by his counsel. While petitioner and his family members
18 all had a strong chance of prevailing on a motion to dismiss for
19 Speedy Trial violations, there was nevertheless a risk that the
20 court would deny the motion and petitioner would lose the ability
21 to protect his family members. Defendant knowingly and
22 voluntarily chose not to take that risk. He had already been
23 given a very lengthy sentence in the Northern District and had
24 nothing to lose by pleading guilty to additional money-laundering
25 charges with a concurrent sentence. Without having to spend any
26 additional time incarcerated, defendant was able to guarantee the
27 protection of his wife and elderly parents by pleading guilty.

28 In his § 2255 petition, petitioner fails entirely to

1 mention that the plea agreement was a "package deal" that
2 protected his family members. In his reply, however, he responds
3 that his family did not motivate him to plead guilty because his
4 family members' charges would also have been dismissed for Speedy
5 Trial violations if he had been properly advised by counsel and
6 rejected the plea agreement. (Pet'r's Reply at 6 n.1 (Docket No.
7 1001).) Notwithstanding what petitioner now says, he had no way
8 of knowing this with certainty when he entered into the plea
9 agreement. The court is therefore not persuaded by his argument
10 that it defies "logic and common sense" that he entered into a
11 plea agreement in order to protect his family. (Id.)¹

12 Petitioner has failed to establish that counsel's
13 performance fell below an objective standard of reasonableness.
14 In assisting his client in the negotiation of a plea agreement
15 rather than moving to dismiss, Warriner honored his client's
16 desire to secure a resolution that would protect petitioner's
17 family. Accordingly, the court must deny petitioner's claim of
18 ineffective assistance of counsel.

19 II. Appointment of Counsel & Request for an Evidentiary Hearing

20 Petitioner requests an evidentiary hearing to determine
21 the factual allegations in support of his motion and that the
22 court appoint counsel to represent him in these proceedings.
23 (Pet'r's Mem. at 14.)

24 Under § 2255, the court must grant a hearing "[u]nless

25 ¹ Petitioner also argues that there was a "danger of
26 coercion" from third-party threats and promises because he pled
27 guilty in order to obtain the dismissal of charges against third-
28 party relatives. (Pet'r's Reply at 3.) However, petitioner does
not allege any facts to support the suggestion of coercion or
threats. Accordingly, the court finds this argument meritless.

1 the motion and the files and records of the case conclusively
2 show that the prisoner is entitled to no relief." 28 U.S.C.
3 § 2255(b). The court may therefore deny a hearing if, "viewing
4 the petition against the record, its allegations do not state a
5 claim for relief or are so palpably incredible or so patently
6 frivolous or false as to warrant summary dismissal." Baumann v.
7 United States, 692 F.2d 565, 571 (9th Cir. 1982). There is no
8 need for further discovery or an evidentiary hearing on any of
9 petitioner's claims. None of petitioner's claims suggest counsel
10 failed to meet "prevailing professional norms" during plea
11 negotiations. Strickland, 466 U.S. at 649. Given that the court
12 will not hold an evidentiary hearing, the "the interests of
13 justice" do not require the appointment of counsel. 18 U.S.C.
14 § 3006(A)(2)(B) ("Whenever the United States magistrate judge
15 or the court determines that the interests of justice so require,
16 representation may be provided."); see also United States v.
17 Angelone, 894 F.2d 1129, 1130 (9th Cir. 1990) ("Prisoners do not
18 have a constitutional right to counsel when mounting collateral
19 attacks upon their convictions.").

20 IT IS THEREFORE ORDERED that petitioner's motion to
21 vacate, set aside, or correct his sentence be, and the same
22 hereby is, DENIED;

23 IT IS FURTHER ORDERED that petitioner's motion for an
24 evidentiary hearing and appointment of counsel be, and the same
25 hereby are, DENIED.

26 Dated: February 10, 2016


27 WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE

APPENDIX C

UNITED STATES DISTRICT COURT
Eastern District of California

UNITED STATES OF AMERICA

v.

GARY KWONG

JUDGMENT IN A CRIMINAL CASE

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

Case Number: **2:96CR00350-011**

Defendant's Attorney: Johnny Griffin, III, Appointed

THE DEFENDANT:

pleaded guilty to count(s) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 of the Information.
 pleaded nolo contendere to count(s) ____ which was accepted by the court.
 was found guilty on count(s) ____ after a plea of not guilty.

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offense (s):

See next page.

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

The defendant has been found not guilty on count(s) ____ and is discharged as to such count(s).
 Count (s) ____ dismissed on the motion of the United States.
 The underlying Indictment and Superseding Indictment are dismissed by District Court upon motion of the United States.
 Appeal rights given. Appeal rights waived.

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

2/16/2016

Date of Imposition of Judgment



Signature of Judicial Officer

William B. Shubb, United States District Judge

Name & Title of Judicial Officer

2/16/2016

Date

Title & Section	Nature Of Offense	Date Offense Concluded	Count Number
26 USC § 6050I(f)(1)(A), 7203; 26 CFR § 1.6050I-1	Failure to File IRS Returns, Form 8300 (CLASS D FELONY)	3/16/1995	1
26 USC § 6050I(f)(1)(A), 7203; 26 CFR § 1.6050I-1	Failure to File IRS Returns, Form 8300 (CLASS D FELONY)	3/20/1995	2
26 USC § 6050I(f)(1)(A), 7203; 26 CFR § 1.6050I-1	Failure to File IRS Returns, Form 8300 (CLASS D FELONY)	4/25/1995	3
26 USC § 6050I(f)(1)(A), 7203; 26 CFR § 1.6050I-1	Failure to File IRS Returns, Form 8300 (CLASS D FELONY)	4/25/1995	4
26 USC § 6050I(f)(1)(A), 7203; 26 CFR § 1.6050I-1	Failure to File IRS Returns, Form 8300 (CLASS D FELONY)	5/15/1995	5
26 USC § 6050I(f)(1)(A), 7203; 26 CFR § 1.6050I-1	Failure to File IRS Returns, Form 8300 (CLASS D FELONY)	5/20/1995	6
26 USC § 6050I(f)(1)(A), 7203; 26 CFR § 1.6050I-1	Failure to File IRS Returns, Form 8300 (CLASS D FELONY)	6/24/1995	7
26 USC § 6050I(f)(1)(A), 7203; 26 CFR § 1.6050I-1	Failure to File IRS Returns, Form 8300 (CLASS D FELONY)	7/20/1995	8
26 USC § 6050I(f)(1)(A), 7203; 26 CFR § 1.6050I-1	Failure to File IRS Returns, Form 8300 (CLASS D FELONY)	8/10/1995	9
26 USC § 6050I(f)(1)(A), 7203; 26 CFR § 1.6050I-1	Failure to File IRS Returns, Form 8300 (CLASS D FELONY)	8/30/1995	10
26 USC § 6050I(f)(1)(A), 7203; 26 CFR § 1.6050I-1	Failure to File IRS Returns, Form 8300 (CLASS D FELONY)	9/5/1995	11
26 USC § 6050I(f)(1)(A), 7203; 26 CFR § 1.6050I-1	Failure to File IRS Returns, Form 8300 (CLASS D FELONY)	9/16/1995	12

DEFENDANT: **GARY KWONG**
CASE NUMBER: **2:96CR00350-011**

PROBATION

The defendant is hereby sentenced to probation for a term of:
24 months.

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

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of controlled substance. The defendant shall submit to one drug test within 15 days of release on probation and at least two (2) periodic drug tests thereafter, not to exceed four (4) drug tests per month.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse.
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.
- The defendant shall cooperate in the collection of DNA as directed by the probation officer.
- The defendant shall 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 he or she resides, works, is a student, or was convicted of qualifying offense.
- The defendant shall participate in an approved program for domestic violence.

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

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

STANDARD CONDITIONS OF SUPERVISION

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

SPECIAL CONDITIONS OF PROBATION

1. The defendant shall submit to the search of his person, property, home, and vehicle by a United States probation officer, or any other authorized person under the immediate and personal supervision of the probation officer, based upon reasonable suspicion, without a search warrant. Failure to submit to a search may be grounds for revocation. The defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.
2. The defendant shall provide the probation officer with access to any requested financial information.
3. The defendant shall complete 300 hours of unpaid community service as directed by the probation officer. The defendant shall pay fees attendant to participation and placement in this program on a sliding scale as determined by the program. Community service shall be completed within the first year of probation, unless extended by the probation officer.

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$600	\$2400	

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
Totals	\$ _____	\$ _____	

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:

If incarcerated, payment of the fine is due during imprisonment at the rate of not less than \$25 per quarter and payment shall be through the Bureau of Prisons Inmate Financial Responsibility Program.

If incarcerated, payment of the restitution is due during imprisonment at the rate of not less than \$25 per quarter and payment shall be through the Bureau of Prisons Inmate Financial Responsibility Program.

*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: GARY KWONG

CASE NUMBER: 2:96CR00350-011

SCHEUDLE OF PAYMENTS

Payment of the total fine and other criminal monetary penalties shall be due as follows:

- A. Lump sum payment of \$ ____ due immediately, balance due
 - Not later than ___, or
 - in accordance C, D, E, or F below; or
- B. Payment to begin immediately (may be combined with C, D, or F below); or
- C. Payment in equal ____ (e.g. weekly, monthly, quarterly) installments of \$ ____ over a period of ____ (e.g. months or years), to commence ____ (e.g. 30 or 60 days) after the date of this judgment; or
- D. Payment in equal ____ (e.g. weekly, monthly, quarterly) installments of \$ ____ over a period of ____ (e.g. months or years), to commence ____ (e.g. 30 or 60 days) after release from imprisonment to a term of supervision; or
- E. Payment during the term of supervised release/probation 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 defendants ability to pay at that time; or
- F. Special instructions regarding the payment of criminal monetary penalties:

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

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

- Joint and Several

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

- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

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

APPENDIX D

UNITED STATES DISTRICT COURT

Eastern District of California

UNITED STATES OF AMERICA

v.

MADY CHAN
AKA: **Manny, Maddy, Mandy**

JUDGMENT IN A CRIMINAL CASE

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

Case Number: **2:96CR00350-05**

Defendant's Attorney: Timothy Warriner, Appointed

THE DEFENDANT:

pleaded guilty to count(s) 15, 19, 31, 32, 37 and 39 of the First Superseding Indictment.
 pleaded nolo contendere to count(s) ____ which was accepted by the court.
 was found guilty on count(s) ____ after a plea of not guilty.

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offense (s):

See next page.

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) ____ and is discharged as to such count(s).
 Counts 33, 34, 35, 36, 87, 104, 106, 115, 116, 126, 127, 128 and 130 are dismissed by District Court upon motion of the United States.
 The Underlying Indictment is dismissed by District Court upon motion of the United States.
 Appeal rights given. Appeal rights waived.

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

7/21/2014

Date of Imposition of Judgment



Signature of Judicial Officer

William B. Shubb, United States District Judge

Name & Title of Judicial Officer

7/24/2014

Date

Title & Section	Nature Of Offense	Date Offense Concluded	Count Number
18 USC 1956(h)	Conspiracy to Launder Monetary Instruments (CLASS C FELONY)	August 1996	15
18 USC 1956(a)(1)(B)(i)	Laundering of Monetary Instruments (CLASS C FELONY)	Jan. 30, 1996	19
18 USC 1956(h)	Conspiracy to Launder Monetary Instruments (CLASS C FELONY)	April 1996	31
18 USC 1956(a)(1)(B)(i) and (ii)	Laundering of Monetary Instruments (CLASS C FELONY)	Mar 16, 1995	32
18 USC 1957(a)	Engage in Monetary Transactions in Property Derived From Specified Unlawful Activity (CLASS C FELONY)	Jun. 24, 1995	37
18 USC 1956(h)	Conspiracy to Launder Monetary Instruments (CLASS C FELONY)	April 12, 1996	39
18 USC 982	Criminal Forfeiture		122
18 USC 982	Criminal Forfeiture		123

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: 88 months as to each of Counts 15, 19, 31, 32, 37, 39 of the Superseding Indictment, with each Count to be served concurrently to each other, for a total term of 88 months. Said term to be served concurrently with the sentence in the Northern District of California in case 3:96-CR-0094-03.

- No TSR: Defendant shall cooperate in the collection of DNA.
- The court makes the following recommendations to the Bureau of Prisons:
- 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 ____ 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 ____ on ____.
 - as notified by the United States Marshal.
 - as notified by the Probation or Pretrial Services Officer.

If no such institution has been designated, to the United States Marshal for this district.

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

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of : 36 months as to each of Counts 15, 19, 31, 32, 37, 39 of the Superseding Indictment, with each Count to be served concurrently to each other, for a total term of 36 months, unsupervised if deported. Said term to be served concurrently with the term set in the Northern District of California in case 3:96-CR-0094-03 .

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

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

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two (2) periodic drug tests thereafter, not to exceed four (4) drug tests per month.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse.
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.
- The defendant shall cooperate in the collection of DNA as directed by the probation officer.
- The defendant shall 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 he or she resides, works, is a student, or was convicted of qualifying offense.
- The defendant shall participate in an approved program for domestic violence.

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

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

STANDARD CONDITIONS OF SUPERVISION

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

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall cooperate with the ICE agency in the determination of his immigration status and shall consent to deportation if found appropriate by that agency.
2. The defendant shall submit to the search of his person, property, home, and vehicle by a United States probation officer, or any other authorized person under the immediate and personal supervision of the probation officer, based upon reasonable suspicion, without a search warrant. Failure to submit to a search may be grounds for revocation. The defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.
3. The defendant shall provide the probation officer with access to any requested financial information.
4. The defendant shall not associate with any members of a criminal gang or organized criminal group.

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$300	\$Waived	

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
Totals	\$ _____	\$ _____	

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:

If incarcerated, payment of the fine is due during imprisonment at the rate of not less than \$25 per quarter and payment shall be through the Bureau of Prisons Inmate Financial Responsibility Program.

If incarcerated, payment of the restitution is due during imprisonment at the rate of not less than \$25 per quarter and payment shall be through the Bureau of Prisons Inmate Financial Responsibility Program.

*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.

SCHEDULE OF PAYMENTS

Payment of the total fine and other criminal monetary penalties shall be due as follows:

- A. Lump sum payment of \$ ____ due immediately, balance due
 - Not later than ___, or
 - in accordance C, D, E, or F below; or
- B. Payment to begin immediately (may be combined with C, D, or F below); or
- C. Payment in equal ____ (e.g. weekly, monthly, quarterly) installments of \$ ____ over a period of ____ (e.g. months or years), to commence ____ (e.g. 30 or 60 days) after the date of this judgment; or
- D. Payment in equal ____ (e.g. weekly, monthly, quarterly) installments of \$ ____ over a period of ____ (e.g. months or years), to commence ____ (e.g. 30 or 60 days) after release from imprisonment to a term of supervision; or
- E. Payment during the term of supervised release will commence within ____ (e.g. 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F. Special instructions regarding the payment of criminal monetary penalties:

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

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

- Joint and Several

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

- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:
The Preliminary Order of Forfeiture filed March 25, 2014 is made final and incorporated herein into the Judgment and Commitment Order (Docket No. 879).

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

APPENDIX E

FILED

JUL 17 2018

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

MADY CHAN, AKA Maddy,
AKA Mandy, AKA Manny,

Defendant-Appellant.

No. 16-15503

D.C. Nos. 2:15-cv-01367-WBS
2:96-cr-00350-WBS-5
Eastern District of California,
Sacramento

ORDER

Before: WARDLAW and CLIFTON, Circuit Judges, and KATZMANN,* Judge.

Appellant's Petition for Rehearing (Docket Entry No. 49) is DENIED.

* The Honorable Gary S. Katzmann, United States Judge for the Court of International Trade, sitting by designation.