

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

STEFONE DWAYNE PALOMO,
a.k.a. Wayne,

Petitioner,

v.

UNITED STATES OF AMERICA.

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

APPENDICES

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APPENDIX A

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 17-40946



UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

STEFONE DWAYNE PALOMO, Also Known as Wayne,

Defendant-Appellant.

A True Copy
Certified order issued Aug 07, 2018

Tyler W. Cayce
Clerk, U.S. Court of Appeals, Fifth Circuit

Appeal from the United States District Court
for the Eastern District of Texas

Before SMITH, GRAVES, and DUNCAN, Circuit Judges.

PER CURIAM:*

IT IS ORDERED that appellee's opposed motion to dismiss the appeal is GRANTED.

IT IS FURTHER ORDERED that appellee's alternative opposed motion to extend the time to file appellee's brief is DENIED as unnecessary.

* Judge Graves would deny the motion to dismiss and would grant the motion for extension of time.

APPENDIX B

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 17-40946

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

STEFONE DWAYNE PALOMO, Also Known as Wayne,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Texas

Before SMITH, GRAVES, and DUNCAN, Circuit Judges.

PER CURIAM:

This panel granting appellee's motion for summary dismissal and denied, as unnecessary, appellee's alternative motion to extend the time to file its brief. Appellant's opposed motion for reconsideration is DENIED.

APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS BEAUMONT DIVISION

UNITED STATES OF AMERICA

v.

STEFONE DWAYNE PALOMO**JUDGMENT IN A CRIMINAL CASE**

§

§

§

Case Number: **1:15-CR-00092-004**USM Number: **23508-078****Albert John Charanza**

Defendant's Attorney

THE DEFENDANT:

<input type="checkbox"/>	pleaded guilty to count(s)	
<input checked="" type="checkbox"/>	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	1 of the Third Superseding Indictment
<input type="checkbox"/>	pleaded nolo contendere to count(s) which was accepted by the court	
<input type="checkbox"/>	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 Conspiracy To Distribute and Possess With Intent To Distribute 50 Grams or More of "Actual" Methamphetamine	07/31/2015	1ss

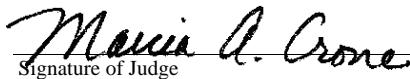
The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s)
 Count(s) 1, 1s, 2, 2s, 2ss, 3, 3s, and 3ss 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.

May 2, 2017

Date of Imposition of Judgment



MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE

Name and Title of Judge

5/4/17

Date

DEFENDANT: STEFONE DWAYNE PALOMO
CASE NUMBER: 1:15-CR-00092-MAC-ZJH(4)

IMPRISONMENT

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

180 months. The term of imprisonment imposed by this judgment shall run consecutively with any term of imprisonment that may be imposed for Evading Arrest with a Vehicle under Docket No. ND-6901, pending in the Newton County, Texas, District Court.

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

The Court recommends that defendant be incarcerated in FCI, Beaumont, TX, if available and defendant is eligible.

The Court recommends to the Bureau of Prisons that the defendant receive appropriate drug treatment while imprisoned.

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: STEFONE DWAYNE PALOMO
CASE NUMBER: 1:15-CR-00092-MAC-ZJH(4)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of : **five (5) 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 must 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, or 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: STEFONE DWAYNE PALOMO
CASE NUMBER: 1:15-CR-00092-MAC-ZJH(4)

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. I understand additional information regarding these conditions is available at the www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: STEFONE DWAYNE PALOMO
CASE NUMBER: 1:15-CR-00092-MAC-ZJH(4)

SPECIAL CONDITIONS OF SUPERVISION

You must provide the probation officer with access to any requested financial information for purposes of monitoring your efforts to obtain and maintain lawful employment and income.

You must refrain from consuming alcohol in any form.

You must participate in a program of testing and treatment for alcohol abuse, and follow the rules and regulations of that program until discharged. The probation officer, in consultation with the treatment provider, will supervise your participation in the program. You must pay any cost associated with treatment and testing.

You must participate in a program of testing and treatment for drug abuse, and follow the rules and regulations of that program until discharged. The probation officer, in consultation with the treatment provider, will supervise your participation in the program. You must pay any cost associated with treatment and testing.

DEFENDANT: STEFONE DWAYNE PALOMO
 CASE NUMBER: 1:15-CR-00092-MAC-ZJH(4)

CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$100.00		\$0.00	\$0.00

The determination of restitution is deferred until *An Amended Judgment in a Criminal Case (AO245C)* 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. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

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:

<input type="checkbox"/> the interest requirement is waived for the	<input type="checkbox"/> fine	<input type="checkbox"/> restitution
<input type="checkbox"/> the interest requirement for the	<input type="checkbox"/> fine	<input type="checkbox"/> 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: STEFONE DWAYNE PALOMO
 CASE NUMBER: 1:15-CR-00092-MAC-ZJH(4)

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 payments of \$ 100.00 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 20 (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:

It is ordered that the Defendant shall pay to the United States a special assessment of \$100.00 for Count 1ss which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court.

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, U.S. District Court. Fine & Restitution, 1910 E SE Loop 323 No. 287, Tyler, TX 75701.

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

- Joint and Several

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

 - Defendant shall receive credit on his restitution obligation for recovery from other defendants who contributed to the same loss that gave rise to defendant's restitution obligation.
 - 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 sum of two hundred and fifty thousand dollars (\$250,000.00) pursuant to 21 U.S.C. § 853 and § 881.

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.

DEFENDANT: STEFONE DWAYNE PALOMO
CASE NUMBER: 1:15-CR-00092-MAC-ZJH(4)

DENIAL OF FEDERAL BENEFITS
(For Offenses Committed On or After November 18, 1988)

FOR DRUG TRAFFICKERS PURSUANT TO 21 U.S.C. § 862

IT IS ORDERED that the defendant shall be:

- ineligible for all federal benefits from the date of this order.
- ineligible for the following federal benefits for a period of
(specify benefit(s))

OR

- Having determined that this is the defendant's third or subsequent conviction for distribution of controlled substances, IT IS ORDERED that the defendant shall be permanently ineligible for all federal benefits.

FOR DRUG POSSESSORS PURSUANT TO 21 U.S.C. § 862(b)

IT IS ORDERED that the defendant shall:

- be ineligible for all federal benefits for a period of
- be ineligible for the following federal benefits for a period of
(specify benefit(s))
- successfully complete a drug testing and treatment program.
- perform community service, as specified in the probation and supervised release portion of this judgment.

IS FURTHER ORDERED that the defendant shall complete any drug treatment program and community service specified in this judgment as a requirement for the reinstatement of eligibility for federal benefits.

Pursuant to 21 U.S.C. § 862(d), this denial of federal benefits does not include any retirement, welfare, Social Security, health, disability, veterans benefit, public housing, or other similar benefit, or any other benefit for which payments or services are required for eligibility. The clerk is responsible for sending a copy of this page and the first page of this judgment to:

U.S. Department of Justice, Office of Justice Programs, Washington, DC 20531

APPENDIX D

No. 17-40946

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

**UNITED STATES OF AMERICA,
Plaintiff-Appellee**

v.

**STEFONE DWAYNE PALOMO, also known as Wayne,
Defendant-Appellant**

**On Appeal from the United States District Court
for the Eastern District of Texas
Beaumont Division
No. 1:15-CR-00092-4**

**UNITED STATES OF AMERICA'S MOTION
FOR SUMMARY DISMISSAL OR, ALTERNATIVELY,
FOR AN EXTENSION OF TIME TO FILE APPELLEE BRIEF**

Stefone Dwayne Palomo raises three issues in his brief, but they all stem from his contention that his trial counsel erroneously advised him that he qualified as a career offender under the guidelines and that, based on this advice, he agreed to serve a specific sentence that

was higher than he otherwise would have agreed to.¹ The government moves the Court to summarily dismiss Palomo's appeal because Palomo did not raise an ineffective-assistance-of-counsel claim in the trial court and the trial record is too undeveloped for this Court to address the claim on direct review.

Background

A grand jury charged Palomo and others with conspiring to possess with the intent to distribute 50 or more grams of actual methamphetamine (count one); five kilograms or more of cocaine HCL (count two); and 28 grams or more of crack (count three), all in violation of 21 U.S.C. §§ 841(a)(1) and 846. ROA.129-132. On October 17, 2016, Palomo entered into a plea agreement with the government under Fed. R. Crim. P. 11(c)(1)(C); he agreed to plead guilty to count one of the indictment and to serve a 180-month prison sentence. ROA.254-55. On November 15, 2016, the district court accepted Palomo's guilty plea but deferred acceptance of the plea agreement until it could review the presentence report. ROA.205. According to the presentence report,

¹ To the extent Palomo contends that any of his appellate grounds are not based on a claim of ineffective assistance of counsel, such grounds would be barred by the appellate waiver in the plea agreement. ROA.258.

Palomo's statutory range of imprisonment was 10 years to life and his guidelines range was 168-210 months, but the probation office recommended a 180-month sentence based on the binding plea agreement. ROA.314.

Sentencing took place on May 2, 2017. ROA.450. The district judge accepted the plea agreement at the beginning of the hearing and then allowed Palomo to allocute. ROA.454-56. After apologizing to the court and his family for the choices he made, Palomo asked the judge to "look over my conspiracy because I would have never signed for this plea agreement if I was told I was going to be a career offender and that the amount of drugs I was being charged for wasn't going to affect me and come to find out that I wasn't qualified to be a career offender and that the amount of drugs I was charged for, it does make a difference on my case. But I do accept my responsibility for the wrongings [sic] I done [sic] . . ." ROA.456.

The judge recognized that "this is a problem." ROA.456. Palomo's attorney at the time, Albert Charanza, Jr., told the court:

I explained to Mr. Palomo that at the time we negotiated the agreement, the existing law at the time, he would have been a career offender. There was a change — I've explained this to him — in the

Fifth Circuit case law which still put him in the guideline range, this plea agreement, as it's reflected, and that we have an agreement with the U.S. Attorney's office along those lines. I know he's had some complaints about the attorneys prior to me, but I don't think he has any complaints as to my conduct.

ROA.457. Charanza then asked Palomo whether Palomo had any complaints about his performance, and Palomo affirmed that he did not. ROA.457. But the district judge said that "I can't proceed with sentencing if [Palomo] is taking that position." ROA.457. The judge offered Palomo the opportunity to file a motion to withdraw his plea agreement and allowed Palomo time to consult with his attorney. ROA.457-58.

After a recess, the judge made clear that "we can only proceed if Mr. Palomo is on board with the plea agreement and acceptance of responsibility and things of that nature." ROA.458. Charanza told the court that Palomo wanted to accept responsibility and go forward with "the plea agreement which we had negotiated." ROA.460. After some more back and forth, the judge said that "at this point I just don't think I can go forward if Mr. Palomo is going to continue to say that his plea wasn't voluntary. I can't proceed." ROA.460-61. Then the following exchanges occurred:

Mr. Charanza: Is that what you're telling the court or not?

The Defendant: No, I'm going to accept the plea. I agree.

The Court: What?

Mr. Charanza: He said — say it again.

The Defendant: I accept my responsibility and this plea.

The Court: Well, do you accept the plea agreement?

The Defendant: Yes, ma'am.

The Court: And was it knowingly and voluntarily made and signed?

The Defendant: Yes, ma'am.

The Court: And you plead guilty on — with this agreement.

The Defendant: Yes, ma'am.

The Court: And you want to go forward with that agreement?

The Defendant: Yes, ma'am.

The Court: Which is for the 180 months.

The Defendant: Yes, ma'am.

ROA.461. Palomo later clarified that he withdrew his earlier statement made at sentencing that his guilty plea was involuntary, affirmed that his guilty plea was voluntarily made, and that he wanted to proceed with sentencing. ROA.463. The judge sentenced Palomo to the agreed upon 180-month sentence. ROA.464. Palomo appealed.

Palomo's claims

Palomo argues that his trial counsel had told him before he signed his plea agreement and pleaded guilty that he qualified as a career offender under U.S.S.G. § 4B1.1 because he had two prior felony convictions for state drug offenses: one for the manufacture/delivery of a controlled substance (cocaine) in Newton County, Texas, and another for unlawful possession with intent to deliver a controlled substance (cocaine) in Chambers County, Texas. Palomo Br. 14-15; ROA.303. Palomo contends that if these prior offenses each counted as a “controlled substance offense” under U.S.S.G. § 4B1.1(a), he would have received a base offense level of 37 under U.S.S.G. § 4B1.1(b) because the statutory maximum for the offense of conviction — conspiracy to possess with the intent to distribute 50 grams or more of actual methamphetamine — is life. Palomo Br. 14-15 (citing ROA.291). According to Palomo, assuming that he would have received the same deductions and enhancements as determined by the presentence report,² his guideline range would have been 360 months to life. *Id.* at

² Palomo's PSR had of course not been prepared at the time Palomo entered into his plea agreement, so neither Palomo nor his attorney could have known at that time which enhancements or deductions the probation office would eventually

15. And Palomo contends that, faced with that prospect, agreeing to a binding 180-month sentence with the government was “a well-advised alternative choice.” *Id.*

But Palomo contends that the choice was not well advised because, by the time he signed his plea agreement on October 17, 2016, ROA.260, he did not qualify as a career offender because this Court had earlier, on August 11, 2016, decided *United States v. Hinkle*, 832 F.3d 569 (5th Cir. 2016), which held that a conviction under Texas Health & Safety Code § 481.112(a) for delivery of a controlled substance does not qualify as a “controlled substance offense” under the career-offender enhancement of the guidelines. *Id.* at 576-77. And even though the presentence report does not cite the specific statutory provisions underlying Palomo’s prior Texas convictions for the manufacture/delivery of a controlled substance and unlawful possession with intent to deliver a controlled substance, ROA.303, Palomo assumes that those offenses would not qualify as a “controlled substance offense” under *Hinkle*.

apply, but for the sake of argument the government will accept that Palomo’s guideline range would have been higher if he qualified as a career offender under the guidelines.

Grounds for Motion

This Court has repeatedly said that an ineffective-assistance-of-counsel claim “cannot be resolved on direct appeal when the claim has not been raised before the district court since no opportunity existed to develop the record on the merits of the allegation.” *United States v. London*, 568 F.3d 553, 562 (5th Cir. 2009) (quotation marks and citations omitted). Palomo never raised an ineffective-assistance claim in the district court. To the contrary, while Palomo’s attorney at sentencing, Charanza, acknowledged that Palomo had made “some complaints about the attorneys prior to me,” Palomo had never complained about Charanza’s conduct. ROA.456-57. In fact, Palomo affirmed at sentencing that he had no complaint with Charanza. ROA.457.

Moreover, the record is murky on various points. Palomo, for example, told the district judge at sentencing that he “would have never signed for this plea agreement if I was told I was going to be a career offender[.]” ROA.456, which contradicts his claim on appeal that the only reason he signed the plea agreement was because his attorney told him he would be a career offender. Palomo Br. 16. True, Palomo went

on to say at sentencing that he later found out that “I wasn’t qualified to be a career offender[,]” ROA.456, but that just creates a conflict in the record, making an ineffective-assistance claim all the more unsuitable for resolution on direct appeal.

Charanza’s statements at sentencing further muddy things. He told the judge that he had “explained to Mr. Palomo that at the time we negotiated the agreement, the existing law at the time, he would have been a career offender. There was a change — I’ve explained this to him — in the Fifth Circuit case law which still put him in the guideline range, this plea agreement, as it’s reflected, and that we have an agreement with the U.S. Attorney’s office along those lines.” ROA.456. Thus, while Charanza evidently thought at some point during the *negotiation* of the plea agreement that Palomo would qualify a career offender, he later told Palomo about the “change” in Fifth Circuit law — presumably referring to *Hinkle*. But it is not clear *when* he advised Palomo about the change. Was it before or after Palomo *signed* his plea agreement and entered his guilty plea on October 17, 2016? And what were the discussions between the two after Palomo pleaded guilty but before sentencing? The record does not give answers.

In short, there is too much to flesh out in the record for this Court to be able to decide any ineffective-assistance claim at this point. The district court never had an occasion to address the issue, especially when Palomo told the district judge that he had no complaints with Charanza's performance. ROA.456-57. There are hardly "substantial details about the attorney's conduct" on this record. *United States v. Bounds*, 943 F.2d 541, 544 (5th Cir. 1991). Dismissal is proper under these circumstances. See *United States v. Gualdron-Lamus*, 697 F. App'x 324, 324 (5th Cir. 2017) (granting government's motion to dismiss appeal because the record was too undeveloped to permit direct review of ineffective-assistance claims); *United States v. Millender*, 417 F. App'x 284, 284-85 (5th Cir. 2013) (determining that appellant's claim that his trial attorney's ineffective assistance rendered his guilty plea unknowing and involuntary could not be determined on direct appeal).

The preferred way to raise an ineffective-assistance claim is in a collateral proceeding under 28 U.S.C. § 2255, and that route remains open to Palomo. See *Massaro v. United States*, 538 U.S. 500, 504-06 (2003). Indeed, "[i]t is hard to understand why a defendant would" ever want to raise an ineffective-assistance claim on direct appeal given that

the claim would have a “trifling prospect of success,” where, as here, the record is scant and review would be for plain error. *United States v. Flores*, 739 F.3d 337, 340-42 (7th Cir. 2014) (listing all the reasons it is “imprudent” and “foolish” for a defendant to raise an ineffective-assistance claim on direct appeal).

Conclusion

For these reasons, the Court should summarily dismiss this appeal. If the Court denies this motion, however, the government respectfully asks the Court to extend the government’s deadline to file its appellee’s brief until 30 days from the date the Court enters the denial order.

Respectfully submitted,

Joseph D. Brown
United States Attorney
Eastern District of Texas

/s/ Bradley Visosky
Bradley Visosky
Assistant U.S. Attorney
101 E. Park Blvd., Suite 500
Plano, Texas 75074
Telephone: (972) 509-1201

Certificate of Conference

On July 17, 2018, I conferred with appellant's counsel about the relief requested in this motion. Counsel is opposed to the government's motion for summary dismissal but is not opposed to the alternative request for an extension of time for the government to file its brief if the motion is denied.

/s/ Bradley Visosky
Bradley Visosky

Certificate of Service

On July 17, 2018, I electronically filed this motion with the clerk through the Fifth Circuit's electronic-filing system, which will serve appellant's counsel with an electronic copy. I will also send two paper copies of the motion to J. Jeffrey Springer by U.S. mail at the following address: 1807 Westminster, Denton, Texas 76205.

/s/ Bradley Visosky
Bradley Visosky

Certificate of Compliance

1. This motion complies with the length limits of Fed. R. App. P. 27(d)(2)(A). It contains 1,967 words, excluding the parts exempted.
2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6). It was prepared using Microsoft Word in a proportionally spaced typeface in 14-point size.

/s/ Bradley Visosky
Bradley Visosky

Certificate Related to Fifth Circuit Rule 25.2

I certify under Fifth Circuit Rule 25.2 that (1) all required privacy redactions have been made from this document; (2) this electronically submitted document is an exact copy of the paper document; and (3) this document has been scanned for viruses with the most recent version of commercially available virus-scanning software and is free of viruses.

/s/ Bradley Visosky
Bradley Visosky

APPENDIX E

Oral Argument Requested

No. 17-40946

In The United States Court of Appeals
For the Fifth Circuit

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

STEFONE DWAYNE PALOMO,
a.k.a. Wayne

Defendant-Appellant.

On Appeal from the United States District Court for the Eastern District of
Texas, Sherman Division; Docket No. 1:15-CR-92-4

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CERTIFICATE OF INTERESTED PERSONS

United States v. Stefone Dwayne Palomo,
No. 1:15-CR-92-4

I certify that the following listed persons and entities described in Rule 28.2.1 have an interest in the outcome of this case.

1. United States District Judge Marcia Crone, and United States Magistrate Judge Zack Hawthorn.
2. Defendant-Appellant: Stefone Dwayne Palomo (“Palomo” or “Defendant”).
3. Plaintiff-Appellee: United States of America (“the Government”).
4. Counsel for the Government: Acting United States Attorney Brit Featherstone and Assistant U.S. Attorney John B. Ross (district court).
5. Counsel for Defendant-Appellant: CJA attorney Albert J. Charanza, Jr. (district court); and CJA attorney Jeff Springer (appeal).

These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

/s/ J. Jeffrey Springer
J. Jeffrey Springer

**STATEMENT RESPECTING
ORAL ARGUMENT**

This appeal involves mutual mistake and incorrect advice of counsel that formed the basis of Appellant's Plea Agreement, which resulted in unknowing and involuntary acceptance of a binding plea agreement implicating Appellant's 6th and 14th Amendment rights. Because the issue is important and has not yet been decided by this Court, Appellant requests oral argument.

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STATEMENT OF JURISDICTION

This is an appeal from a final judgment of the United States District Court for the Eastern District of Texas. This Court has jurisdiction of the appeal from a district court. 28 U.S.C. § 1291; 18 U.S.C. § 3742.

STATEMENT OF THE ISSUES

Issue 1: Did Appellant knowingly and voluntarily accept a binding plea agreement based on erroneous advice of his counsel that he was a career offender?

Issue 2: Did Appellant knowingly and voluntarily accept a binding plea agreement when the plea agreement was based on a mutual mistake of material fact that he would be classified as a career offender?

Issue 3: Did Appellant's trial attorney render ineffective assistance by failing to correctly advise Appellant of the change in law that affected his sentencing guideline range?

STATEMENT OF THE CASE

A. Proceedings Below.

The grand jury indicted Palomo on September 7, 2017, for Conspiracy to Possess with the intent to Distribute 50 grams or more of "actual" methamphetamine in violation of U.S.C. §§ 846 and 841(a)(1) ("Count 1"); Conspiracy to Possess with the intent to Distribute 5 kilograms or more of a

mixture or substance containing a detectable amount of cocaine HCL, in violation of U.S.C. §§ 846 and 841(a)(1) (“Count 2”); and Conspiracy to Possess with the intent to Distribute 28 grams or more of a mixture or substance containing a detectable amount of cocaine base in violation of U.S.C. §§ 846 and 841(a)(1) (“Count 3”) (Third Superseding Indictment). ROA.129-32. After multiple continuances and several substitutions of counsel, Palomo agreed to plead guilty to Count 1 in a binding plea agreement. *See* ROA.44-47, 52-56; 63-66, 69-72, 91-94, 104-107, 111-13, 114-18, 122-25, 137-38, and 139-143.

Appellant changed his plea to guilty on October 17, 2016. ROA.199-04. The district court accepted the plea on November 15, 2016, and sentenced Palomo to 180 months according to the binding plea agreement. ROA. 205, 227-34, 461.¹

On August 30, 2017, Palomo mailed a *pro se* notice of appeal and motion requesting appointment of counsel to the district court. ROA.244-45.² The district court denied the motion as moot because Palomo had not timely pursued his appeal. ROA.247-49; Fed. R. App. P. 4(b). On February 16, 2018, this Court granted the appeal because Palomo’s trial attorney had withdrawn during a critical stage of the proceedings and appointed him an attorney on appeal. ROA.373; 18 U.S.C. § 3006A.

¹ The judgment was amended to remedy a clerical error on June 12, 2017. ROA.235-243.

² Those were filed September 7, 2017. *Id.*

B. Statement of the Facts.

According to the PSR, Palomo and others operated a drug trafficking organization (“DTO”) that acquired, transported, and distributed methamphetamine and cocaine. ROA.267-273. Wiretaps conducted between August and October of 2014 intercepted conversations between DTO members discussing the sale of methamphetamine and cocaine. ROA.268. The Government subsequently seized money, drugs, and firearms during controlled purchases from the DTO and its members. ROA.269. Palomo participated in some of the intercepted phone conversations and delivered drugs to the Government’s agents during the operation. *Id.*

On August 2, 2015, the Government indicted Palomo for participating in the conspiracy to possess with the intent to manufacture and distribute methamphetamine, cocaine HCl and cocaine base in violation of 21 U.S.C. § 846. ROA.13-18. After several months of extensive discovery and two substitutions of counsel Palomo agreed to plead guilty to Count 1. ROA.59-66; 104-13. On October 17, 2016, Palomo changed his plea to guilty and agreed to a mandatory plea agreement recommending 180 months confinement. ROA.199, 415.

The district court convened a sentencing hearing May 2, 2017. ROA.450. During the hearing, Palomo expressed frustration about the plea agreement after receiving the PSR. ROA.460 *et. seq.* He told the district judge that he would not

have agreed to the 180 month sentence if he had known he was not a career offender at the time he changed his plea. *Id.*

The record indicates that Palomo's trial counsel told him that he was a career offender during plea negotiations and that the amount of drugs he admitted to would not affect his sentence. ROA.455. Palomo, however, was not a career offender. A few months prior to the plea the Supreme Court and Fifth Circuit published opinions that prevented some state offenses from being used to enhance federal sentences under the career offender statute. ROA.456. As a result of the change Appellant was no longer classified as a career offender. *Id.*

The Government did not dispute that the agreement had been reached on the false premise that Palomo was a career offender. ROA.456-59. The district court examined Palomo to make sure that he fully understood his situation but neither the court nor the Government offered to reform the plea agreement. ROA.456-61. As a result, Palomo was left with what amounted to a Hobson's choice: Plead guilty to a quantity of drugs he disagreed to in order to provide the factual basis for a 180-month sentence, or move to withdraw his plea and lose credit for accepting responsibility.³ ROA.459.

Palomo declared an understanding of the situation and decided to accept the plea. *Id.* The district court sentenced him to 180 months and signed the judgment

³ Resulting in an increase in his guideline range to 210-262 months.

May 2, 2017. ROA.236. This Court accepted his appeal and appointed counsel on February 16, 2018. ROA.373.

SUMMARY OF THE ARGUMENT

Palomo's Constitutional rights were violated when the advice of counsel resulted in Appellant's acceptance of a binding plea agreement to a significantly higher sentence than the likely sentencing range had he known the true state of the law. ROA.456-63. Appellant's plea was not knowing and voluntary because he relied on incorrect information from his attorney about the law. ROA.456-57. Although the law changed just prior to Appellant's plea, Appellant has a constitutional right to effective assistance of counsel. ROA.456.

Palomo's plea was not voluntary because it was based on affirmative misrepresentations based on the mutual mistake in belief that Palomo was a statutory career offender. ROA 456. Palomo accepted the plea agreement contract on the basis that the agreement provided the benefit of a sentence much lower than the minimum under the career offender statute. ROA.456. The mistake became apparent only after Palomo received the PSR. ROA.457.

Trial counsel's assistance fell below reasonable standards when he failed to correctly advise Appellant. Trial counsel should have been aware of the change in law. Had counsel been aware of the change, he would not have counseled

Appellant to plead to facts that would increase the range of punishment under the sentencing guidelines.

ARGUMENT

Issue 1: Did Appellant knowingly and voluntarily accept a binding plea agreement based on erroneous advice of his counsel that he was a career offender?

(A) Standard of Review

The validity of a guilty plea is based on whether the plea is a “voluntary and intelligent choice among the alternative courses of action open to the defendant.” *Hill v. Lockhart*, 474 U.S. 52, 56, 106 S. Ct. 366, 88 L.Ed.2d 203 (1985). Because a guilty plea involves the waiver of constitutional rights it must be made knowingly and voluntarily. *United States v. Reyes*, 300 F.3d 555, 558 (5th Cir.2002). “[A] guilty plea lacks the required voluntariness and understanding if entered on advice of counsel that fails to meet the minimum standards of effectiveness derived from the sixth and fourteenth amendments.” *Trahan v. Estelle*, 544 F.2d 1305, 1309 (5th Cir. 1977); *Tollett v. Henderson*, 411 U.S. 258, 267, 93 S. Ct. 1602, 1608, 36 L. Ed. 2d 235 (1973).

Pleas should be reviewed under a plain error analysis when no objections are made concerning the plea. *United States v. Brown*, 328 F.3d 787, 789 (5th Cir. 2003). Appellant must show that an error affected his “substantial rights” and

“seriously affected the fairness, integrity, or public reputation of the judicial proceedings. *Id.*

(B) Appellant and his attorney mistakenly believed he was a career offender.

Several months before Appellant’s plea agreement the Supreme Court ruled that a prior crime under state law will only qualify to enhance a federal sentence if the elements are the same or narrower than the generic offense. *Mathis v. United States*, 136 S. Ct. 2243, 2248, 195 L. Ed. 2d 604 (2016). When a statute lists multiple alternative means to satisfy a single element, the broad swath of conduct beyond the corresponding generic offense will not qualify as a predicate for an increased sentence. *Id.* at 2251.

Soon after *Mathis* this Court determined that state controlled substance statutes are indivisible and not subject to a modified categorical approach, and therefore, are outside the sentencing guidelines for career-offender enhancement. *United States v. Hinkle*, 832 F.3d 569, 576 (5th Cir. 2016); *United States v. Tanksley*, 848 F.3d 347, 351 (5th Cir. 2017), supplemented, 854 F.3d 284 (5th Cir. 2017).⁴

Palomo’s criminal history shows two prior convictions. ROA.303. Both of these convictions must qualify as a “controlled substance offense” to reach career

⁴ This Court explained the change in law and its implications on career offender status, abrogating prior precedent of Texas’ controlled substance statutes. *United States v. Tanksley*, 848 F.3d at 350-51.

offender status under the sentencing guidelines. U.S.S.G. § 4B1.1. Under this Court's *Hinkle* opinion they do not qualify and did not qualify at the time Palomo changed his plea to guilty. *See United States v. Hinkle*, 832 F.3d at 576; *United States v. Tanksley*, 848 F.3d at 350-51.

Palomo's trial counsel explained during the sentencing hearing, "at the time we negotiated the agreement, the existing law at the time, he would have been a career offender." ROA.456. The record shows that Palomo relied on his trial attorney's advice that he was a career offender in deciding to plead guilty to the quantity of substances in the plea agreement.

(C) Appellant's sentence was affected by the advice.

Under the career offender statute if his prior offenses were included, Palomo would have received a base level of 37. ROA.291. U.S.S.G. § 4B1.1. He would have had to plead guilty to an equivalent of 90,000 kg or more of marihuana for the amount of substance to affect his sentence. U.S.S.G. §§ 2D1.1(c)(1); 4B1.1. Assuming he would have received the same deductions and enhancements as in his PSR, his guideline range would have been 360 months to life. U.S.S.G. § 5, Pt. A. Therefore, under the law prior to *Mathis* and *Hinkle*, the binding plea agreement with a sentence of 180 months was a well-advised alternative choice.

However, Palomo was not a career offender under *Mathis* and *Hinkle*. *See Mathis v. United States*, 136 S. Ct. at 2248; *United States v. Hinkle*, 832 F.3d at

576; *United States v. Tanksley*, 848 F.3d at 350-51. He only agreed to plead to the quantity of substances stipulated to in the facts because of the belief that he would be classified as a career offender and the facts would be irrelevant to his sentence. ROA.456-57.

(a) Palomo's base level sentencing guidelines were premised on the stipulated facts.

Palomo's base offense level was calculated using the stipulated facts. ROA.301. The facts and table used in the PSR are nearly identical to those used in the stipulated factual basis, including the same errors.⁵ *C.f.* ROA.297-301 with ROA.189-97. Those facts were used to calculate the total amount of drugs for which Palomo was held responsible. ROA.301. Those amounts were then converted to marihuana equivalent to calculate the base level. ROA.302.

(b) The stipulated facts supported a base level of 30.

The Plea Agreement includes a stipulation of facts fraught with errors. ROA.186-98. *Supra*, note 2. In addition to basic errors in calculation, the Government held Palomo responsible for possessing amounts of narcotics where the facts lack sufficient proof of actual possession. First, the description for the

⁵ The charts both show 44.4 g of cocaine HCl on March 17, 2015 (ROA.191; ROA.298), but the factual descriptions from the same date show .50 ounce of cocaine HCl was purchased, which is equivalent to roughly 14 g. ROA.197; ROA.300. Additionally, the chart totals show 239.0 grams of Methamphetamine (actual) but the total of the numbers from the chart only total 194.6 grams (27.2+78.2+54.1+6.7+28.4) which would make the marihuana equivalency 3892 kg rather than the calculated 4780 kg.

incident on November 22, 2013, only shows that Palomo was present during an exchange but does not indicate that Palomo negotiated the transaction, communicated regarding the transaction, received money, or at any point was aware of or handled narcotics. ROA.192; ROA.299. There is no evidence in the description of the events on September 26, 2014, that any narcotics were seized; the facts consist of text messages and phone conversations about a transaction. ROA.195; ROA.300.

Appellant should not have been held responsible for these actual amounts. Even assuming the factual stipulation was voluntary, Appellant should have been held responsible for only 116.4 grams of methamphetamine “ice”, 158.7 grams of cocaine HCl, and 194.69 grams of cocaine base (rather than 239, 165.6, and 228.69, respectively). *See* ROA.297-301; ROA.189-97.

The resulting marihuana equivalency using federal conversion standards should have been 3054.98 kilograms rather than 5629.77 kilograms. *See* U.S.S.G. § 2D1.1 Application Note 8(B). This calculation would be within the margin of error on the line of a base level of 30 and 32, so Appellant should have been given a base level of 30 under the stipulated facts. *United States v. Rivera*, 821 F. Supp. 868, 870 (E.D.N.Y. 1993) (“Where the weight of narcotics as calculated by the government is within a reasonable “margin of error” at the cutoff point between two base offense levels, the defendant may be sentenced pursuant to the lower of

the two base offense levels.”). As a result, had Palomo been correctly advised, his guideline range would have been no more than 135-168 months. *See* U.S.S.G. Sentencing Table. With a two point reduction for acceptance of responsibility, his guideline range would have been 110-137 months. *See id.* Both would have resulted in a range below the 180 months to which he was advised to plead.

The trial court relied on the stipulated facts in the plea agreement and PSR while knowing that Palomo stipulated to the facts despite his disagreement because he believed they were irrelevant to the agreed sentence. ROA.456-57, 466.

Clearly, the plea agreement did not provide Palomo with the bargained for advantage he expected. Because he agreed to a greater sentence on the advice of counsel, Appellant’s substantial rights were affected as well as the fairness and integrity of the proceedings. *See United States v. Brown*, 328 F.3d at 789.

(D) The threat of losing credits for acceptance of responsibility rendered Appellant’s plea involuntary.

“Where there is coercion there cannot be consent.” *Bumper v. North Carolina*, 1968, 391 U. S. 543, 550, 88 S.Ct. 1788, 1792, 20 L. Ed.2d 797, 803; *Comeaux v. Henderson*, 462 F.2d 1345, 1346 (5th Cir. 1972). Even lawful coercion can impermissibly affect a plea decision. *Id.*

The district court was aware that the advice Palomo received about his status as a career offender jeopardized the validity of his plea. ROA.456; 457; 460; 461.

For that reason the district judge took pains to ensure that Palomo understood the situation well before enforcing the plea agreement and rendering his sentence.

Despite those precautions the sentencing transcript shows that Palomo only agreed to move forward after he was threatened with a higher sentence due to the loss of his credit for accepting responsibility:

THE COURT: I will say, you know, once you file a motion and -- it depends on how that goes but that could jeopardize the agreement that you have and if you went to trial, it might be a lot more. **You can lose acceptance points, the points you got. You got the two points. Well, those two points could disappear. I mean, they would because you're not accepting responsibility anymore.**

ROA.457-58 (emphasis added). The Government's attorney added, "If he wishes to try and file a motion to withdraw his plea, we'd be glad, of course, to respond to that. If he was successful, as the court alluded to, his guidelines would bump up. He would be looking at 210 months to 262 months." ROA.459. After this colloquy Palomo quickly decided to withdraw his objection and proceed with the plea agreement.⁶

⁶ THE COURT: Obviously the punishment at trial would be a lot greater if he was convicted. So, this is still a really good deal considering those guidelines.

MR. CHARANZA: Right. And I believe it is in his best interest.

THE COURT: All right. So, do you want to proceed with sentencing at this time, Mr. Palomo?

Palomo was faced with what amounted to a Hobson's choice: (1) keep his agreement to 180 months; or (2) lose credit for accepting responsibility and be faced with a guideline range of 210-262 months. ROA.459. He should instead have been offered the same choices that would have been available to him at the time of the original plea agreement had he been properly advised. At that point he could still take advantage of accepting responsibility. Because he was not offered the chance to return to his pre-plea status, he was really left with no choice at all.

THE DEFENDANT: Yes, ma'am.

THE COURT: Are you going to withdraw your claim that your plea was involuntary?

THE DEFENDANT: No, ma'am.

THE COURT: Okay.

THE DEFENDANT: No, I want to continue. I don't want to withdraw it.

* * *

THE COURT: Okay. I'm asking if you want to withdraw your contention today that your plea was involuntary.

THE DEFENDANT: That I -- what's she saying? I don't understand. Yes, I want to withdraw it.

THE COURT: Okay. So, are you now saying your plea was voluntary?

THE DEFENDANT: Yes, ma'am.

THE COURT: And you're not contending that it was not voluntary?

THE DEFENDANT: No, ma'am.

THE COURT: And you want to go forward with sentencing pursuant to the plea agreement for 180 months; is that right?

THE DEFENDANT: Yes, ma'am.

ROA.462-63.

(E) This Court should restore Palomo to his pre-plea status.

Palomo's plea was neither knowing nor voluntary. The misguided advice he received during plea negotiations and the district court's failure to restore him to his status prior to the plea negotiations substantially harmed the fairness and integrity of the proceedings. *See United States v. McGilberry*, 480 F.3d at 328-29. This Court should reverse the conviction and restore Palomo to his pre-agreement status, with the possibility to negotiate a new plea agreement with credit for acceptance of responsibility.

Issue 2: Did Appellant knowingly and voluntarily accept a binding plea agreement when the plea agreement was based on a mutual mistake of material fact that he would be classified as a career offender?

Plea agreements are essentially contracts. *Puckett v. United States*, 556 U.S. 129, 137-38, 129 S. Ct. 1423, 1430, 173 L. Ed. 2d 266 (2009) *citing Mabry v. Johnson*, 467 U.S. 504, 508, 104 S.Ct. 2543, 81 L.Ed.2d 437 (1984); *United States v. Fulbright*, 804 F.2d 847, 852 (5th Cir.1986). They are interpreted in accordance with general contract principles. *United States v. Story*, 439 F.3d 226, 231 (5th Cir.2006). "Mutual mistakes by contracting parties can warrant contract reformation." *Richard v. Anadarko Petroleum Corp.*, 850 F.3d 701, 708 (5th Cir. 2017).

(A) Standard of Review.

A mutual mistake can invalidate a plea agreement. *United States v. Bradley*, 381 F.3d 641, 647-48 (7th Cir. 2004). This Court considered in dicta the Tenth Circuit's three part test to determine whether mutual mistake invalidated a plea agreement. *United States v. Sherman*, 817 F.3d 224, 225 (5th Cir. 2016); *United States v. Frownfelter*, 626 F.3d 549, 555 (10th Cir. 2010). The relevant test is as follows:

First, the mistake must relate to a basic assumption on which the contract was made. Second, the party seeking avoidance must show that the mistake has a material effect on the agreed exchange of performances. Third, the mistake must not be one as to which the party seeking relief bears the risk.

United States v. Frownfelter, 626 F.3d at 555.

(B) Palomo's Agreement Was Based on Mistake Of A Basic Assumption Rendering the Plea Involuntary.

Unlike *Sherman*, application of the test here shows Appellant's plea was not knowing and voluntary. *United States v. Sherman*, 817 F.3d at 225. Palomo relied on the mistaken belief that he was a career offender in deciding whether to accept the plea agreement. ROA.456. See *United States v. Frownfelter*, 626 F.3d at 555. He only became aware of the mistake in the basic assumption when he read the presentencing report. ROA.456-57. See *id.* During sentencing the trial judge repeatedly recognized the "problem" and "concern" of going forward if the plea

was not voluntary. ROA.456; 457; 460; 461. The problem, of course, is that the sentencing judge could not make the agreement voluntary after the fact.

The mistake also had a material effect on the agreed exchange of performance. As a part of the agreement Appellant stipulated to facts in exchange for a sentence that was lower than both parties believed would be recommended by the sentencing guidelines. ROA.257-260. The stipulated facts actually resulted in the exact opposite. Because Palomo was not in fact a career offender, his guideline sentencing range should have been up to 70 months less than the time required by the plea. ROA.302.

Both Palomo and the Government bore the risk of their mistaken assumption about Palomo's status as a career offender. This was made clear when the Government objected to the sentencing judge's offer to allow Palomo to withdraw his plea and refused a reformation of the plea to account for the assumption of the career offender enhancement. ROA.458-59. Because both parties bore the risk posed by the mistake, Palomo meets the third and final prong. *See United States v. Frownfelter*, 626 F.3d at 555. The case should be remanded so that the plea agreement can be reformed accordingly or Defendant can withdraw the plea. *Richard v. Anadarko Petroleum Corp.*, 850 F.3d 701, 708 (5th Cir. 2017).

Issue 3: Did Appellant's trial attorney render ineffective assistance by failing to correctly advise Appellant of the change in law that affected his sentencing guideline range?

(A) Palomo Received Ineffective Assistance of Counsel.

(1) Standard of Review.

“[C]laims of ineffective assistance of counsel in the plea bargain context are governed by the two-part test set forth in *Strickland*. *Missouri v. Frye*, 566 U.S. 134, 140, 132 S. Ct. 1399, 1405, 182 L. Ed. 2d 379 (2012); *See Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). To prove that counsel was ineffective, the record must establish that the performance was deficient, and that the deficiency caused prejudice. *United States v. Kayode*, 777 F.3d 719, 722 (5th Cir. 2014).

(2) Counsel incorrectly advised Palomo that the quantity of substance stipulated in the plea agreement was irrelevant to his sentence because he was a career offender.

The Sixth Amendment of the U.S. Constitution provides, in part, that “[i]n all criminal prosecutions, the accused shall enjoy the right ... to have the Assistance of Counsel for his defense.” U.S. CONST. amend. VI. Trial counsel is ineffective if his actions render a plea unknowing or involuntary. *See United States v. White*, 307 F.3d 336, 343-44 (5th Cir. 2002). “Plea bargains have become so central to the administration of the criminal justice system that defense counsel have responsibilities . . . that must be met to render the adequate assistance of counsel

that the Sixth Amendment requires.” *Missouri v. Frye*, 566 U.S. at 143, 132 S. Ct. at 1407. Thus, a defendant is entitled to effective assistance of competent counsel before deciding to plead guilty. *Padilla v. Kentucky*, 559 U.S. 356 (2010).

Palomo did not receive effective assistance of counsel before his plea. His trial counsel incorrectly advised him that his status as a career offender rendered the quantity of substances irrelevant to the plea agreement. In fact, Palomo was not a career offender and the quantity made a significant difference in his sentencing range. *See supra* Issue 1, Parts B-C. The PSR shows that the factual basis for some of the quantity used to calculate Palomo’s sentence was questionable. As a result of the erroneous advice Palomo pled guilty to 180 month imprisonment, which was likely much higher than he would have received if his attorney had known he was not a career offender and scrutinized the factual basis for the plea. See ROA.460.

(3) Counsel’s Deficient Performance Prejudiced Palomo.

Counsel’s inadequate investigation of the law and failure to object to discrepancies in the factual basis prejudiced Palomo. Prejudice is concerned with “the fairness and regularity of the processes that preceded [trial], which caused the defendant to lose benefits he would have received in the ordinary course but for counsel’s ineffective assistance.” *Lafler*, 132 S. Ct. at 1388. The Supreme Court has suggested that any increased amount of jail time due to counsel’s errors has Sixth Amendment significance. *Glover v. United States*, 531 U.S. 198, 199 (2001).

Had he been correctly advised, Palomo would not have stipulated to the factual basis as written and counsel would have scrutinized the facts more closely resulting in a lower base level of sentencing guidelines. *See Lafler*, 132 S. Ct. at 1388. Had counsel been aware that Appellant was not a career offender, he would have also recognized that a 180 month sentence was above Appellant's correct guideline range. *Id.* The lack of effective counsel resulted in a sentence at least one year and up to almost six years more than the sentence Appellant likely would have received with effective counsel. *See id.*; ROA.460. Trial counsel's performance prejudiced Palomo because, if not for the deficient performance, Palomo would have received a significantly lower sentence. *See Glover v. United States*, 531 U.S. at 199. Because Palomo's counsel failed to meet the minimum standards of effectiveness in advising Palomo about the correct status under the law, his guilty plea lacks the required voluntariness and understanding. *See Trahan v. Estelle*, 544 F.2d at 1309.

CONCLUSION

Stefone Dwayne Palomo did not enter a knowing and voluntary guilty plea because he was improperly advised and all parties believed that he would be a career offender. Without career offender status, Appellant did not receive the benefit he bargained for. Although the trial court became aware of the mutual mistake and Appellant's claim that his plea was involuntary, Appellant was faced

with the coercive choice of claiming the plea was voluntary or facing an increased sentence. Appellant's plea, therefore, was not knowing and voluntary.

Palomo also received ineffective assistance of counsel. Counsel failed to properly advise Appellant of the change in law that significantly changed the impact of the stipulated facts in his plea agreement. Had he been correctly advised, Appellant would not have stipulated to the facts in the record. Appellant's counsel should have appropriately investigated the current law, the Factual Basis, and the PSR according to professional norms. Counsel also provided ineffective assistance that prejudiced Palomo when he advised Palomo to accept a plea agreement based on a mistake in his knowledge of the law.

For these reasons, Palomo requests that his plea be found involuntary. Palomo should have the opportunity to plead with the same opportunity for benefits such as the acceptance of responsibility he had prior to the mutual mistake and ineffective assistance of counsel. Palomo respectfully prays that his conviction be reversed and the matter remanded to the district court with instructions that Palomo be allowed to enter a new plea agreement accordingly.

Respectfully submitted,

/s/ J. Jeffrey Springer
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CERTIFICATE OF SERVICE

I certify that on May 23, 2018, a copy of this Brief of Appellant was served upon counsel for appellee by notice of electronic filing with the Fifth Circuit CM/ECF system. I further certify that I reasonably attempted to communicate, in a manner and language understood by the defendant: (i) that I fully examined the record and reviewed relevant law, and there are no meritorious issues for appeal; (ii) that I therefore am moving to withdraw; (iii) that if granted, the motion will result in the dismissal of the appeal; but (iv) the defendant has the right to file a response in English, opposing my motion, within thirty days.

Upon notification that the electronically filed brief has been accepted as sufficient, a hard copy of this document will be served by first-class United States mail, postage prepaid, to Appellant, Stefone Dwayne Palomo, Register #23508-078, FCI Beaumont Low, Federal Correctional Institution, P.O. Box 26020, Beaumont, TX 77720.

/s/ J. Jeffrey Springer
J. Jeffrey Springer

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of FED. R. APP. P. 32(a)(5) because it contains 4,569 words, excluding the parts of the brief exempted by FED. R. APP. P. 32(a)(7)(B)(iii).
2. This brief complies with the typeface requirements of FED. R. APP. P. 32(a)(5) and the type style requirements of FED. R. APP. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2010 software in Times New Roman 14-point font in text and Times New Roman 12-point font in footnotes.
3. This brief was filed electronically, in native Portable Document File (PDF) format, via the Fifth Circuit's CM/ECF system.

/s/ J. Jeffrey Springer
J. Jeffrey Springer

APPENDIX F

No. 17-40946

In The United States Court of Appeals
For the Fifth Circuit

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

STEFONE DWAYNE PALOMO,
a.k.a. Wayne

Defendant-Appellant.

On Appeal from the United States District Court for the Eastern District of
Texas, Sherman Division; Docket No. 1:15-CR-92-4

RECORD EXCERPTS

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Third Superseding Indictment (Document 332) [ROA.17-40946.129-134]	Tab 3
Judgment (Document 439) [ROA.17-40946.235-243]	Tab 4
Finding of Fact and Recommendation on Guilty Plea Before the United States Magistrate Judge (Document 400) [ROA.17-40946.200-204]	Tab 5
Memorandum Order Adopting Report and Recommendation (Document 404) [ROA.17-40946.205]	Tab 6
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TAB 1

APPEAL,CLOSED

**U.S. District Court [LIVE]
Eastern District of TEXAS (Beaumont)
CRIMINAL DOCKET FOR CASE #: 1:15-cr-00092-MAC-ZJH-4**

Case title: USA v. Falcon et al

Date Filed: 08/05/2015

Date Terminated: 05/04/2017

Assigned to: Judge Marcia A. Crone
Referred to: Magistrate Judge Zack
Hawthorn

Appeals court case number:
17-40946 5CA

Defendant (4)

Stefone Dwayne Palomo

23508-078
FCI
PO Box 4050
Pollock, LA 71467
TERMINATED: 05/04/2017
also known as
Wayne
TERMINATED: 05/04/2017

represented by **Albert John Charanza , Jr**

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Designation: CJA Appointment

Pending Counts

CONSPIRACY TO POSSESS WITH
INTENT TO DISTRIBUTE
METHAMPHETAMINE
(CRIMINAL FORFEITURE)
(1ss)

Disposition

180 months imprisonment cs w/imprisonment in
Docket No. ND-6901 Newton Co Tx District Court, 5
yrs sup/rel, \$100 special assessment/AMENDED
JUDGEMENT DUE TO CLERICAL ERROR

Highest Offense Level (Opening)

Felony

Terminated Counts

CONSPIRACY TO POSSESS WITH
INTENT TO DISTRIBUTE
ACTUAL METHAMPHETAMINE -
CRIMINAL FORFEITURE
(1)

Disposition

Dismissed on motion of the government

CONSPIRACY TO POSSESS WITH
INTENT TO DISTRIBUTE
METHAMPHETAMINE
(CRIMINAL FORFEITURE)
(1s)

Dismissed on motion of the government

CONSPIRACY TO POSSESS WITH
INTENT TO DISTRIBUTE
COCAINE HCL - CRIMINAL
FORFEITURE
(2)

Dismissed on motion of the government

CONSPIRACY TO POSSESS WITH
INTENT TO DISTRIBUTE
COCAINE (CRIMINAL
FORFETURE)
(2s)

Dismissed on motion of the government

CONSPIRACY TO POSSESS WITH
INTENT TO DISTRIBUTE
COCAINE HCL (CRIMINAL
FORFEITURE)
(2ss)

Dismissed on motion of the government

CONSPIRACY TO POSSESS WITH
INTENT TO DISTRIBUTE

Dismissed on motion of the government

COCAINE BASE - CRIMINAL

FORFEITURE

(3)

CONSPIRACY TO POSSESS WITH
INTENT TO DISTRIBUTE

COCAINE BASE (CRIMINAL
FORFEITURE)

(3s)

Dismissed on motion of the government

CONSPIRACY TO POSSESS WITH
INTENT TO DISTRIBUTE

COCAINE BASE (CRIMINAL
FORFEITURE)

(3ss)

Dismissed on motion of the government

Highest Offense Level
(Terminated)

Felony

Complaints

Disposition

None

Plaintiff

USA

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Date Filed	#	Docket Text
09/02/2015	<u>29</u>	SEALED SUPERSEDING INDICTMENT as to McGee Lamar Falcon (1) count(s) 1s, 2s, 3s, Sealed2 (2) count(s) 2, Sealed3 (3) count(s) 1, 2, Sealed4 (4) count(s) 1, 2, 3, Sealed5 (5) count(s) 1, 2, Sealed6 (6) count(s) 1, Sealed7 (7) count(s) 1, Sealed8 (8) count(s) 1, 2, 3, Sealed9 (9) count(s) 3, Sealed10 (10) count(s) 1. (bjc,) (Entered: 09/04/2015)
09/02/2015	<u>33</u>	E-GOV SEALED Form AO 257 filed as to Sealed4 (bjc,) (Entered: 09/04/2015)
10/07/2015		Arrest of Stefone Dwayne Palomo, Demarcus Newman, Jermie LeTroy Myers (saw,) (Entered: 10/07/2015)
10/07/2015		INDICTMENT UNSEALED as to Stefone Dwayne Palomo, Demarcus Newman, Jermie LeTroy Myers (saw,) (Entered: 10/07/2015)
10/07/2015		NOTICE OF HEARING as to Stefone Dwayne Palomo, Demarcus Newman, Jermie LeTroy Myers. Initial Appearance set for 10/8/2015 at 11:00 AM in Ctrm 6 (Beaumont) before Magistrate Judge Keith F. Giblin. (saw,) (Entered: 10/07/2015)
10/07/2015	<u>67</u>	MOTION for Detention by USA as to Stefone Dwayne Palomo. (Wortham, Baylor) (Entered: 10/07/2015)
10/08/2015		NOTICE OF HEARING as to Stefone Dwayne Palomo, Jermie LeTroy Myers. Arraignment and Detention hearing set for 10/13/2015 at 10:45 AM in Ctrm 6 (Beaumont) before Magistrate Judge Keith F. Giblin. (saw,) (Entered: 10/08/2015)
10/08/2015		Attorney update in case as to Stefone Dwayne Palomo. Attorney David Wesley Barlow added for Stefone Dwayne Palomo. (mrp,) (Entered: 10/08/2015)
10/08/2015	<u>75</u>	Minute Entry for proceedings held before Magistrate Judge Keith F. Giblin:Initial Appearance as to Stefone Dwayne Palomo held on 10/8/2015. Deft appeared w/o cnsl and requested apptd cnsl. Court appointed David Barlow for deft. Deft informed of rights and charges. Deft remanded to custody of USM. (Court Reporter ECRO F Laurens.) (mrp,) (Entered: 10/08/2015)
10/08/2015	<u>76</u>	SEALED CJA 23 Financial Affidavit by Stefone Dwayne Palomo. (mrp,) (Entered: 10/08/2015)

10/08/2015	<u>77</u>	ORDER OF TEMPORARY DETENTION as to Stefone Dwayne Palomo. Detention Hearing is set for 10/13/2015 at 10:45 AM in Ctrm 6 (Beaumont) before Magistrate Judge Keith F. Giblin. Signed by Magistrate Judge Keith F. Giblin on 10/8/15. (mrp,) (Entered: 10/08/2015)
10/09/2015	<u>84</u>	E-GOV SEALED Arrest Warrant Returned Executed on 10/7/15 as to Stefone Dwayne Palomo. (mrp,) (Entered: 10/14/2015)
10/13/2015		RESET Hearings as to Stefone Dwayne Palomo. Arraignment and Detention Hrg is RESET for 10/15/2015 02:00 PM in Ctrm 6 (Beaumont) before Magistrate Judge Keith F. Giblin. (ksd) (Entered: 10/13/2015)
10/13/2015	<u>78</u>	Minute Entry for proceedings held before Magistrate Judge Keith F. Giblin: Arraignment called on 10/13/2015. Defense Counsel David Barlow could not be present for this hearing. Hearing is reset to 10/15/15 at 2:00 p.m. Deft remanded to custody of USM. (Court Reporter DCR Kyla Dean.) (mrp,) (Entered: 10/13/2015)
10/14/2015		NOTICE OF HEARING as to Stefone Dwayne Palomo. Arraignment and Detention hearing set for 10/15/2015 at 2:00 PM in Ctrm 6 (Beaumont) before Magistrate Judge Keith F. Giblin. (saw,) (Entered: 10/14/2015)
10/14/2015	<u>87</u>	NOTICE OF ATTORNEY APPEARANCE John Bulkley Ross appearing for USA. (Ross, John) (Entered: 10/14/2015)
10/15/2015	<u>88</u>	Minute Entry for proceedings held before Magistrate Judge Keith F. Giblin: Arraignment as to Stefone Dwayne Palomo (4) Counts 1,2,3 held on 10/15/2015. Deft appeared w/cnsl and informed of rights and charges. Deft entered a plea of not guilty to the indictment. Deft consented to detention and was remanded to the custody of the USM. (Court Reporter DCR Kyla Dean.) (mrp,) (Entered: 10/16/2015)
10/15/2015	<u>89</u>	ORDER OF DETENTION PENDING TRIAL as to Stefone Dwayne Palomo. Signed by Magistrate Judge Keith F. Giblin on 10/15/15. (mrp,) (Entered: 10/16/2015)
10/15/2015	<u>90</u>	PRE-TRIAL ORDER as to Stefone Dwayne Palomo. Pretrial Conference is set for 11/23/2015 at 10:00 AM in Ctrm 3 (Beaumont) before Judge Marcia A. Crone. Signed by Magistrate Judge Keith F. Giblin on 10/15/15. (mrp,) (Entered: 10/16/2015)
10/15/2015	<u>91</u>	ORDER - PRETRIAL DISCOVERY & INSPECTION as to Stefone Dwayne Palomo. Signed by Magistrate Judge Keith F. Giblin on 10/15/15. (mrp,) (Entered: 10/16/2015)
10/26/2015	<u>102</u>	NOTICE <i>Substitution of Counsel</i> by USA as to McGee Lamar Falcon, Christopher Villarreal, III, Stefone Dwayne Palomo, Demarcus Newman, Garrick Cotton, Damien Marques McLendon, Jermie LeTroy Myers (Ross, John) (Entered: 10/26/2015)
11/03/2015	<u>113</u>	ORDER TO CONTINUE - Ends of Justice as to McGee Lamar Falcon, Stefone Dwayne Palomo, Damien Marques McLendon, Jermie LeTroy Myers. Time excluded from 11/2/15 until 12/21/15. Motion terminated as to McGee Lamar Falcon: 112 MOTION to Continue. Pretrial Conference is reset for 12/21/2015 at 10:00 AM in Ctrm 3 (Beaumont) before Judge Marcia A. Crone. Signed by Judge Marcia A. Crone on 11/3/15. (mrp,) (Entered: 11/04/2015)
11/03/2015	<u>114</u>	AMENDED PRE-TRIAL ORDER as to McGee Lamar Falcon, Stefone Dwayne Palomo, Damien Marques McLendon, Jermie LeTroy Myers. Pretrial Conference is reset for 12/21/2015 at 10:00 AM in Ctrm 3 (Beaumont) before Judge Marcia A.

		Crone. Signed by Judge Marcia A. Crone on 11/3/15. (mrp,) (Entered: 11/04/2015)
11/23/2015	<u>121</u>	Unopposed MOTION to Continue <i>Final Pre-Trial Conference and Jury Selection and Trial</i> by Stefone Dwayne Palomo. (Attachments: # <u>1</u> Text of Proposed Order)(Barlow, David) (Entered: 11/23/2015)
11/24/2015	<u>122</u>	ORDER TO CONTINUE - Ends of Justice as to McGee Lamar Falcon, Christopher Villarreal, III, Stefone Dwayne Palomo, Garrick Cotton, Damien Marques McLendon, Jermie LeTroy Myers. Time excluded from 11/23/15 until 2/22/16. Motion terminated as to Stefone Dwayne Palomo: <u>121</u> Unopposed MOTION to Continue. Pretrial Conference is reset for 2/22/2016 at 10:00 AM in Ctrm 3 (Beaumont) before Judge Marcia A. Crone. Signed by Judge Marcia A. Crone on 11/24/15. (mrp,) (Entered: 11/25/2015)
11/24/2015	<u>123</u>	AMENDED PRE-TRIAL ORDER as to McGee Lamar Falcon, Christopher Villarreal, III, Stefone Dwayne Palomo, Garrick Cotton, Damien Marques McLendon, Jermie LeTroy Myers. Pretrial Conference is reset for 2/22/2016 at 10:00 AM in Ctrm 3 (Beaumont) before Judge Marcia A. Crone. Signed by Judge Marcia A. Crone on 11/24/15. (mrp,) (Entered: 11/25/2015)
01/25/2016	<u>137</u>	Unopposed MOTION to Continue <i>Final Pretrial Conference and Jury Selection and Trial</i> by Stefone Dwayne Palomo. (Attachments: # <u>1</u> Text of Proposed Order)(Barlow, David) (Entered: 01/25/2016)
01/26/2016	<u>138</u>	NOTICE <i>Notice of Attorney Appearance</i> by USA as to McGee Lamar Falcon, Christopher Villarreal, III, Stefone Dwayne Palomo, Cassie Jane Carroll, Demarcus Newman, Garrick Cotton, Damien Marques McLendon, Jermie LeTroy Myers (Ross, John) (Entered: 01/26/2016)
01/26/2016	<u>139</u>	ORDER TO CONTINUE - Ends of Justice as to McGee Lamar Falcon, Stefone Dwayne Palomo, Garrick Cotton, Damien Marques McLendon, Jermie LeTroy Myers. Time excluded from 1/25/16 until 3/21/16. Motion terminated as to Stefone Dwayne Palomo: <u>137</u> Unopposed MOTION to Continue. Pretrial Conference is reset for 3/21/2016 at 10:00 AM in Ctrm 3 (Beaumont) before Judge Marcia A. Crone. Signed by Judge Marcia A. Crone on 1/26/16. (mrp,) (Entered: 01/27/2016)
01/26/2016	<u>140</u>	AMENDED PRE-TRIAL ORDER as to McGee Lamar Falcon, Stefone Dwayne Palomo, Garrick Cotton, Damien Marques McLendon, Jermie LeTroy Myers. Pretrial Conference is reset for 3/21/2016 at 10:00 AM in Ctrm 3 (Beaumont) before Judge Marcia A. Crone. Signed by Judge Marcia A. Crone on 1/26/16. (mrp,) (Entered: 01/27/2016)
01/28/2016	<u>143</u>	Unopposed MOTION to Withdraw as Attorney by David W. Barlow. by Stefone Dwayne Palomo. (Attachments: # <u>1</u> Text of Proposed Order)(Barlow, David) (Entered: 01/28/2016)
02/02/2016		NOTICE OF HEARING ON MOTION in case as to Stefone Dwayne Palomo <u>143</u> Unopposed MOTION to Withdraw as Attorney by David W. Barlow. : Motion Hearing set for 2/9/2016 02:15 PM in Ctrm 4 (Beaumont) before Magistrate Judge Zack Hawthorn. (ttp,) (Entered: 02/02/2016)
02/09/2016	<u>164</u>	Minute Entry for proceedings held before Magistrate Judge Zack Hawthorn: Motion Hearing as to Stefone Dwayne Palomo held on 2/9/2016 re <u>143</u> Unopposed MOTION to Withdraw as Attorney by David W. Barlow. Deft presented his argument for new counsel. Gov't had no objections. Court will grant the motion and appoint Russell Wright to represent the defendant. Deft remanded to custody of USM. (Court

		Reporter ECRO T Piper.) (mrp,) (Entered: 02/11/2016)
02/09/2016	<u>165</u>	ORDER granting <u>143</u> Motion for David Barlow to Withdraw as Attorney for Stefone Dwayne Palomo (4). It is ordered that Russell Wright is appointed to represent the defendant in further proceedings. Signed by Magistrate Judge Zack Hawthorn on 2/9/16. (mrp,) (Entered: 02/11/2016)
02/26/2016	<u>198</u>	MOTION to Continue by Stefone Dwayne Palomo. (Attachments: # <u>1</u> Text of Proposed Order)(Wright, Russell) (Entered: 02/26/2016)
02/29/2016	<u>199</u>	ORDER TO CONTINUE - Ends of Justice as to McGee Lamar Falcon, Stefone Dwayne Palomo. Time excluded from 2/26/16 until 4/18/16. Motions terminated as to Stefone Dwayne Palomo: <u>198</u> MOTION to Continue. Pretrial Conference is reset for 4/18/2016 at 10:00 AM in Ctrm 3 (Beaumont) before Judge Marcia A. Crone. Signed by Judge Marcia A. Crone on 2/29/16. (mrp,) (Entered: 02/29/2016)
02/29/2016	<u>200</u>	AMENDED PRE-TRIAL ORDER as to McGee Lamar Falcon, Stefone Dwayne Palomo. Pretrial Conference is reset for 4/18/2016 at 10:00 AM in Ctrm 3 (Beaumont) before Judge Marcia A. Crone. Signed by Judge Marcia A. Crone on 2/29/16. (mrp,) (Entered: 02/29/2016)
03/02/2016	<u>206</u>	SECOND SUPERSEDING INDICTMENT as to McGee Lamar Falcon (1) count(s) 1ss, 2ss, 3ss, Leonard Martinez Ramirez (2) count(s) 2s, Stefone Dwayne Palomo (4) count(s) 1s, 2s, 3s, Ricardo Ruben Villarreal (5) count(s) 1s, 2s. (mrp,) (Entered: 03/03/2016)
03/02/2016	<u>209</u>	E-GOV SEALED Form AO 257 filed as to Stefone Dwayne Palomo. (mrp,) (Entered: 03/03/2016)
03/03/2016		Set Hearing as to Stefone Dwayne Palomo: Arraignment is set for 3/29/2016 at 2:00 PM in Ctrm 5 (Beaumont) before Magistrate Judge Zack Hawthorn. (mrp,) Modified on 3/3/2016 (mrp,). (Entered: 03/03/2016)
03/14/2016	<u>223</u>	AMENDED PRE-TRIAL ORDER. ORDER TO CONTINUE - Ends of Justice as to McGee Lamar Falcon, Leonard Martinez Ramirez, Stefone Dwayne Palomo, Ricardo Ruben Villarreal. Time excluded from 3/14/16 until 4/11/16. Pretrial Conference is reset for 4/11/2016 at 10:00 AM in Ctrm 3 (Beaumont) before Judge Marcia A. Crone. Signed by Judge Marcia A. Crone on 3/14/16. (mrp,) (Entered: 03/15/2016)
03/21/2016	<u>229</u>	ORDER TO CONTINUE - Ends of Justice as to McGee Lamar Falcon, Leonard Martinez Ramirez, Stefone Dwayne Palomo, Ricardo Ruben Villarreal. Time excluded from 3/18/16 until 5/23/16. Motion terminated as to Leonard Martinez Ramirez: <u>227</u> Unopposed MOTION to Continue. Pretrial Conference is reset for 5/23/2016 at 10:00 AM in Ctrm 3 (Beaumont) before Judge Marcia A. Crone. Signed by Judge Marcia A. Crone on 3/21/16. (mrp,) (Entered: 03/22/2016)
03/21/2016	<u>230</u>	AMENDED PRE-TRIAL ORDER as to McGee Lamar Falcon, Leonard Martinez Ramirez, Stefone Dwayne Palomo, Ricardo Ruben Villarreal. Pretrial Conference is reset for 5/23/2016 at 10:00 AM in Ctrm 3 (Beaumont) before Judge Marcia A. Crone. Signed by Judge Marcia A. Crone on 3/21/16. (mrp,) (Entered: 03/22/2016)
03/22/2016	<u>228</u>	WAIVER of Personal Appearance at Arraignment and Entry of Plea of Not Guilty by Stefone Dwayne Palomo. (mrp,) (Entered: 03/22/2016)
04/15/2016	<u>239</u>	MOTION to Continue by Stefone Dwayne Palomo. (Attachments: # <u>1</u> Text of Proposed Order)(Wright, Russell) (Entered: 04/15/2016)

04/18/2016	<u>240</u>	ORDER TO CONTINUE - Ends of Justice as to McGee Lamar Falcon, Leonard Martinez Ramirez, Stefone Dwayne Palomo, Ricardo Ruben Villarreal. Time excluded from 4/15/16 until 6/20/16. Motion terminated as to Stefone Dwayne Palomo: <u>239</u> MOTION to Continue. Pretrial Conference is reset for 6/20/2016 at 10:00 AM in Ctrm 3 (Beaumont) before Judge Marcia A. Crone. Signed by Judge Marcia A. Crone on 4/18/16. (mrp,) (Entered: 04/18/2016)
04/18/2016	<u>241</u>	AMENDED PRE-TRIAL ORDER as to McGee Lamar Falcon, Leonard Martinez Ramirez, Stefone Dwayne Palomo, Ricardo Ruben Villarreal. Pretrial Conference is reset for 6/20/2016 at 10:00 AM in Ctrm 3 (Beaumont) before Judge Marcia A. Crone. Signed by Judge Marcia A. Crone on 4/18/16. (mrp,) (Entered: 04/18/2016)
05/26/2016	<u>257</u>	ORDER TO CONTINUE - Ends of Justice as to McGee Lamar Falcon, Leonard Martinez Ramirez, Stefone Dwayne Palomo. Time excluded from 5/26/16 until 7/18/16. Motion terminated as to Leonard Martinez Ramirez: <u>256</u> Unopposed MOTION to Continue. Pretrial Conference is reset for 7/18/2016 at 10:00 AM in Ctrm 3 (Beaumont) before Judge Marcia A. Crone. Signed by Judge Marcia A. Crone on 5/26/16. (mrp,) (Entered: 05/26/2016)
05/26/2016	<u>258</u>	AMENDED PRE-TRIAL ORDER as to McGee Lamar Falcon, Leonard Martinez Ramirez, Stefone Dwayne Palomo. Pretrial Conference is reset for 7/18/2016 at 10:00 AM in Ctrm 3 (Beaumont) before Judge Marcia A. Crone. Signed by Judge Marcia A. Crone on 5/26/16. (mrp,) (Entered: 05/26/2016)
06/07/2016	<u>274</u>	AMENDED PRE-TRIAL ORDER resetting deadlines only as to McGee Lamar Falcon, Leonard Martinez Ramirez, Stefone Dwayne Palomo. Signed by Judge Marcia A. Crone on 6/7/16. (mrp,) (Entered: 06/07/2016)
06/17/2016	<u>286</u>	MOTION to Continue by Stefone Dwayne Palomo. (Attachments: # <u>1</u> Text of Proposed Order)(Wright, Russell) (Entered: 06/17/2016)
06/20/2016	<u>290</u>	ORDER TO CONTINUE - Ends of Justice as to McGee Lamar Falcon, Leonard Martinez Ramirez, Stefone Dwayne Palomo. Time excluded from 6/17/16 until 8/22/16. Motion terminated as to Stefone Dwayne Palomo: <u>286</u> MOTION to Continue. Pretrial Conference is set for 8/22/2016 at 10:00 AM in Ctrm 3 (Beaumont) before Judge Marcia A. Crone. Signed by Judge Marcia A. Crone on 6/20/16. (mrp,) (Entered: 06/21/2016)
06/20/2016	<u>291</u>	AMENDED PRE-TRIAL ORDER as to McGee Lamar Falcon, Leonard Martinez Ramirez, Stefone Dwayne Palomo. Pretrial Conference is set for 8/22/2016 at 10:00 AM in Ctrm 3 (Beaumont) before Judge Marcia A. Crone. Signed by Judge Marcia A. Crone on 6/20/16. (mrp,) (Entered: 06/21/2016)
06/27/2016	<u>295</u>	***FILED IN ERROR; PLEASE DISREGARD*** NOTICE OF ATTORNEY APPEARANCE: Albert John Charanza, Jr appearing for Stefone Dwayne Palomo (Charanza, Albert) Modified on 6/27/2016 (mrp,). (Entered: 06/27/2016)
06/27/2016		NOTICE of Deficiency regarding the Notice of Attorney Appearance by Albert Charanza submitted by Stefone Dwayne Palomo. Counsel will have to file a Motion to Substitute as counsel. Correction should be made by As soon as possible. (mrp,) (Entered: 06/27/2016)
06/28/2016	<u>296</u>	MOTION to Substitute Attorney by Stefone Dwayne Palomo. (Attachments: # <u>1</u> Text of Proposed Order)(Charanza, Albert) (Entered: 06/28/2016)

06/29/2016		ORAL ORDER granting <u>296</u> Motion to Substitute Attorney. as to Stefone Dwayne Palomo (4). Signed by Magistrate Judge Zack Hawthorn on 6-29-2016. (Hawthorn, Zack) (Entered: 06/29/2016)
07/22/2016	<u>309</u>	Unopposed MOTION to Continue by Stefone Dwayne Palomo. (Attachments: # <u>1</u> Text of Proposed Order Unopposed)(Charanza, Albert) (Entered: 07/22/2016)
07/25/2016	<u>310</u>	ORDER TO CONTINUE - Ends of Justice as to McGee Lamar Falcon, Leonard Martinez Ramirez, Stefone Dwayne Palomo. Time excluded from 7/22/16 until 9/19/16. Motions terminated as to McGee Lamar Falcon, Stefone Dwayne Palomo: <u>309</u> and 308 MOTIONS to Continue. Pretrial Conference is reset for 9/19/2016 at 10:00 AM in Ctrm 3 (Beaumont) before Judge Marcia A. Crone. Signed by Judge Marcia A. Crone on 7/25/16. (mrp,) (Entered: 07/26/2016)
07/25/2016	<u>311</u>	AMENDED PRE-TRIAL ORDER as to McGee Lamar Falcon, Leonard Martinez Ramirez, Stefone Dwayne Palomo. Pretrial Conference is set for 9/19/2016 at 10:00 AM in Ctrm 3 (Beaumont) before Judge Marcia A. Crone. Signed by Judge Marcia A. Crone on 7/25/16. (mrp,) (Entered: 07/26/2016)
08/26/2016	<u>329</u>	MOTION to Continue <i>Pretrial</i> by Stefone Dwayne Palomo. (Attachments: # <u>1</u> Text of Proposed Order)(Charanza, Albert) (Entered: 08/26/2016)
08/29/2016	<u>330</u>	ORDER TO CONTINUE - Ends of Justice as to McGee Lamar Falcon, Leonard Martinez Ramirez, Stefone Dwayne Palomo. Time excluded from 8/26/16 until 10/24/16. Motions terminated: <u>329</u> and 328 MOTIONS to Continue. Pretrial Conference is reset for 10/24/2016 at 10:00 AM in Ctrm 3 (Beaumont) before Judge Marcia A. Crone. Signed by Judge Marcia A. Crone on 8/29/16. (mrp,) (Entered: 08/30/2016)
08/29/2016	<u>331</u>	AMENDED PRE-TRIAL ORDER as to McGee Lamar Falcon, Leonard Martinez Ramirez, Stefone Dwayne Palomo. Pretrial Conference is set for 10/24/2016 at 10:00 AM in Ctrm 3 (Beaumont) before Judge Marcia A. Crone. Signed by Judge Marcia A. Crone on 8/29/16. (mrp,) (Entered: 08/30/2016)
09/07/2016	<u>332</u>	THIRD SUPERSEDING INDICTMENT as to McGee Lamar Falcon (1) count(s) 1sss, 2sss, 3sss, Leonard Martinez Ramirez (2) count(s) 2ss, Stefone Dwayne Palomo (4) count(s) 1ss, 2ss, 3ss. (mrp,) (Entered: 09/08/2016)
09/07/2016	<u>335</u>	E-GOV SEALED Form AO 257 filed as to Stefone Dwayne Palomo. (mrp,) (Entered: 09/08/2016)
09/08/2016		Set Hearing as to Stefone Dwayne Palomo: Arraignment is set for 9/29/2016 at 2:00 PM in Ctrm 4 (Beaumont) before Magistrate Judge Zack Hawthorn. (mrp,) (Entered: 09/08/2016)
09/16/2016	<u>348</u>	AMENDED PRE-TRIAL ORDER as to McGee Lamar Falcon, Leonard Martinez Ramirez, Stefone Dwayne Palomo. Pretrial Conference is set for 10/24/2016 10:00 AM in Ctrm 3 (Beaumont) before Judge Marcia A. Crone. Deadlines have been modified. Signed by Judge Marcia A. Crone on 9/16/16. (mrp,) (Entered: 09/19/2016)
09/21/2016		NOTICE RESETTING HEARING as to McGee Lamar Falcon, Leonard Martinez Ramirez, Stefone Dwayne Palomo Arraignment set for 9/29/2016 02:00 PM has been reset for 9/28/2016 02:30 PM in Ctrm 4 (Beaumont) before Magistrate Judge Zack Hawthorn. (ttp,) (Entered: 09/21/2016)

09/23/2016	<u>356</u>	NOTICE OF ATTORNEY APPEARANCE Michelle Suzanne Englade appearing for USA. (<i>co-counsel</i>) (Englade, Michelle) (Entered: 09/23/2016)
09/27/2016		NOTICE RESETTING HEARING as to Stefone Dwayne Palomo Arraignment set for 9/28/2016 2:30 PM has been reset for 10/3/2016 02:00 PM in Ctrm 4 (Beaumont) before Magistrate Judge Zack Hawthorn at defense counsel's request. (ttp,) (Entered: 09/27/2016)
09/29/2016	<u>360</u>	Unopposed MOTION to Continue <i>Plea Agreement Deadline</i> by Stefone Dwayne Palomo. (Attachments: # <u>1</u> Text of Proposed Order)(Charanza, Albert) (Entered: 09/29/2016)
09/30/2016	<u>369</u>	ORDER granting <u>360</u> Motion to Extend Plea Agreement Deadline as to Stefone Dwayne Palomo (4). Defendant's plea deadline is extended to 10/7/16 by 4:00 p.m. Signed by Judge Marcia A. Crone on 9/30/16. (mrp,) (Entered: 09/30/2016)
10/03/2016	<u>370</u>	Proposed Jury Instructions by USA as to McGee Lamar Falcon, Stefone Dwayne Palomo (Attachments: # <u>1</u> verdict from)(Ross, John) (Entered: 10/03/2016)
10/03/2016	<u>371</u>	WITNESS LIST by USA as to McGee Lamar Falcon, Stefone Dwayne Palomo (Ross, John) (Entered: 10/03/2016)
10/03/2016	<u>372</u>	EXHIBIT LIST by USA as to McGee Lamar Falcon, Stefone Dwayne Palomo (Ross, John) (Entered: 10/03/2016)
10/03/2016	<u>373</u>	MOTION in Limine by USA as to McGee Lamar Falcon, Stefone Dwayne Palomo. (Attachments: # <u>1</u> Text of Proposed Order)(Ross, John) (Entered: 10/03/2016)
10/03/2016	<u>374</u>	Minute Entry for proceedings held before Magistrate Judge Zack Hawthorn:Arraignment as to Stefone Dwayne Palomo (4) on Counts 1ss,2ss,3ss held on 10/3/2016. Deft appeared w/cnsl and informed of rights and charges. Deft entered a plea of not guilty to all counts. Deft remanded to custody of USM. (Court Reporter FTR T Piper.) (mrp,) (Entered: 10/04/2016)
10/04/2016		NOTICE OF HEARING as to Stefone Dwayne Palomo. Change of Plea Hearing set for 10/17/2016 at 4:30 PM in Ctrm 6 (Beaumont) before Magistrate Judge Keith F. Giblin. (saw,) (Entered: 10/04/2016)
10/06/2016	<u>376</u>	E-GOV SEALED Summons Returned Executed on 9/29/16 as to Stefone Dwayne Palomo. (mrp,) (Entered: 10/07/2016)
10/14/2016	<u>380</u>	ELEMENTS of the Offense by USA as to Stefone Dwayne Palomo (Ross, John) (Entered: 10/14/2016)
10/17/2016	<u>393</u>	Minute Entry for proceedings held before Magistrate Judge Keith F. Giblin: Change of Plea Hearing as to Stefone Dwayne Palomo held on 10/17/2016. Deft appeared w/cnsl and informed of rights and charges. Deft filed a sealed plea agreement. Plea entered by Stefone Dwayne Palomo (4) Guilty Count 1ss. Deft remanded to custody of USM. (Court Reporter FTR Kyla Dean.) (mrp,) (Entered: 10/18/2016)
10/17/2016	<u>394</u>	CONSENT to Administration of Guilty Plea and Fed.R.Crim.P.11 Allocution by U.S. Magistrate Judge by Stefone Dwayne Palomo. (mrp,) (Entered: 10/18/2016)
10/17/2016	<u>395</u>	Factual Basis by USA as to Stefone Dwayne Palomo. (mrp,) (Entered: 10/18/2016)

10/17/2016	<u>396</u>	Minute Entry for proceedings held before Magistrate Judge Keith F. Giblin:Arraignment on Third Superseding Indictment held as to Stefone Dwayne Palomo (4) Counts 1ss,2ss,3ss held on 10/17/2016. Deft appeared w/cnsl and informed of rights and charges. Deft entered a plea of not guilty to all counts. Deft remanded to custody of USM. (Court Reporter FTR Kyla Dean.) (mrp,) (Entered: 10/18/2016)
10/17/2016	<u>397</u>	PLEA AGREEMENT filed as to Stefone Dwayne Palomo. (mrp,) Modified on 5/5/2017 (mrp,). (Entered: 10/18/2016)
10/25/2016	<u>400</u>	REPORT AND RECOMMENDATIONS on Plea of Guilty as to Stefone Dwayne Palomo. It is recommended that the District Court accept the guilty plea of Defendant as to Count One of the Third Superseding Indictment. Signed by Magistrate Judge Keith F. Giblin on 10/25/16. (mrp,) (Entered: 10/25/2016)
11/15/2016	<u>404</u>	ORDER ADOPTING REPORT AND RECOMMENDATIONS as to Stefone Dwayne Palomo. It is ordered that defendant is adjudged guilty on Count One of the Third Superseding Indictment. Signed by Judge Marcia A. Crone on 11/15/16. (mrp,) (Entered: 11/16/2016)
02/02/2017	<u>413</u>	MOTION for Extension of Time to File <i>Objections to PSR Report</i> by Stefone Dwayne Palomo. (Attachments: # <u>1</u> Text of Proposed Order)(Charanza, Albert) (Entered: 02/02/2017)
02/03/2017	<u>414</u>	ORDER granting <u>413</u> Motion for Extension of Time to File Objections to the PSR as to Stefone Dwayne Palomo (4). Defendant's Objections shall be filed on or before 2/22/17. Signed by Judge Marcia A. Crone on 2/3/17. (mrp,) (Entered: 02/03/2017)
02/20/2017	<u>419</u>	SEALED OBJECTION TO PRESENTENCE INVESTIGATION REPORT (Charanza, Albert) (Entered: 02/20/2017)
03/13/2017	<u>423</u>	REVISED FINAL PRESENTENCE INVESTIGATION REPORT (SEALED) (including addendum) as to Stefone Dwayne Palomo (Attachments: # <u>1</u> Cover Letter)(jleiferman,) (Entered: 03/13/2017)
03/13/2017	<u>424</u>	SEALED PSI - SENTENCING RECOMMENDATION as to Stefone Dwayne Palomo (Attachments: # <u>1</u> Character Letters, # <u>2</u> Legal Research)(jleiferman,) (Entered: 03/13/2017)
03/27/2017		NOTICE OF HEARING as to Stefone Dwayne Palomo Sentencing set for 5/2/2017 02:00 PM in Ctrm 3 (Beaumont) before Judge Marcia A. Crone. All departure and variance motions, sentencing memoranda and any other motions relating to the sentencing hearing must be filed not less than 5 days before the date sentencing is scheduled.(psl,) (Entered: 03/27/2017)
05/02/2017	<u>430</u>	Final MOTION for Forfeiture of Property by USA as to Stefone Dwayne Palomo. (Attachments: # <u>1</u> Text of Proposed Order)(Ross, John) (Entered: 05/02/2017)
05/02/2017	<u>435</u>	Minute Entry for proceedings held before Judge Marcia A. Crone: Sentencing held on 5/2/2017 for Stefone Dwayne Palomo (4), Counts 1, 1s, 2, 2s, 2ss, 3, 3s, 3ss: Dismissed on motion of the government; Count 1ss: 180 months imprisonment cs w/imprisonment in Docket No. ND-6901 Newton Co Tx District Court, 5 yrs sup/rel, \$100 special assessment. Plea agreement unsealed. Deft remanded to custody of USM. (Court Reporter Tonya Jackson.) (mrp,) (Entered: 05/05/2017)

05/03/2017	<u>431</u>	MOTION to Withdraw as Attorney by Albert J. Charanza, Jr.. by Stefone Dwayne Palomo. (Attachments: # <u>1</u> Text of Proposed Order)(Charanza, Albert) (Entered: 05/03/2017)
05/04/2017		NOTICE of Deficiency regarding the Motion to Withdraw submitted by Albert Charanza. Motion did not have a certificate of conference. Motion has been terminated. Correction should be made as soon as possible. (mrp,) (Entered: 05/04/2017)
05/04/2017	<u>434</u>	FINAL ORDER OF FORFEITURE granting <u>430</u> Motion for Forfeiture of Property as to Stefone Dwayne Palomo (4). Signed by Judge Marcia A. Crone on 5/4/17. (mrp,) (Entered: 05/05/2017)
05/04/2017	<u>436</u>	JUDGMENT as to Stefone Dwayne Palomo (4), Counts 1, 1s, 2, 2s, 2ss, 3, 3s, 3ss: Dismissed on motion of the government; Count 1ss: 180 months imprisonment cs w/imprisonment in Docket No. ND-6901 Newton Co Tx District Court, 5 yrs sup/rel, \$100 special assessment. Terminated Stefone Dwayne Palomo. Signed by Judge Marcia A. Crone on 5/4/17. (mrp,) (Entered: 05/05/2017)
05/04/2017	<u>437</u>	SEALED Statement of Reasons re <u>436</u> Judgment as to Stefone Dwayne Palomo. cc: USA, Charanza, USDOJ 5/5/17 (mrp,) (Entered: 05/05/2017)
05/05/2017	<u>433</u>	MOTION to Withdraw as Attorney by Albert J. Charanza, Jr.. by Stefone Dwayne Palomo. (Attachments: # <u>1</u> Text of Proposed Order)(Charanza, Albert) (Entered: 05/05/2017)
05/12/2017		ORAL ORDER granting <u>433</u> Motion to Withdraw as Attorney as to Stefone Dwayne Palomo (4). ENTERED by Magistrate Judge Zack Hawthorn on 5/12/2017. (ttp,) (Entered: 05/12/2017)
06/12/2017	<u>439</u>	AMENDED JUDGMENT as to Stefone Dwayne Palomo (4), Counts 1, 1s, 2, 2s, 2ss, 3, 3s, 3ss, Dismissed on motion of the government; Count 1ss, 180 months imprisonment cs w/imprisonment in Docket No. ND-6901 Newton Co Tx District Court, 5 yrs sup/rel, \$100 special assessment/AMENDED JUDGEMENT DUE TO CLERICAL ERROR ONLY. Signed by Judge Marcia A. Crone on 6/12/17. (mrp,) (Entered: 06/13/2017)
09/07/2017	<u>441</u>	NOTICE OF APPEAL as to Stefone Palomo re <u>436</u> Judgment. (bjc,) (Entered: 09/08/2017)
09/07/2017	<u>442</u>	PRO SE MOTION to Appoint Counsel by Stefone Dwayne Palomo. (bjc,) (Entered: 09/08/2017)
09/15/2017		NOTICE of Docketing Notice of Appeal from USCA as to Stefone Dwayne Palomo re <u>441</u> Notice of Appeal filed by Stefone Dwayne Palomo. USCA Case Number 17-40946 (dlc,) (Entered: 09/15/2017)
09/27/2017	<u>443</u>	ORDER denying <u>442</u> Motion to Appoint Counsel as to Stefone Dwayne Palomo (4). Signed by Magistrate Judge Zack Hawthorn on 9/27/17. (dlc,) (Entered: 09/27/2017)
11/13/2017	<u>444</u>	PRO SE MOTION to Appoint Counsel by Stefone Dwayne Palomo. (Attachments: # <u>1</u> Financial Affidavit, # <u>2</u> Envelope)(dlc,) (Entered: 11/14/2017)
11/29/2017	<u>447</u>	ORDER denying <u>444</u> Motion to Appoint Counsel as to Stefone Dwayne Palomo (4). Signed by Magistrate Judge Zack Hawthorn on 11/29/17. (dlc,) (Entered: 11/29/2017)

12/15/2017		NOTICE of certification of eROA provided to 5th Circuit Court of Appeals as to Stefone Dwayne Palomo (dlc,) (Entered: 12/15/2017)
12/21/2017		USCA 5th Circuit Notice - Original record on appeal is accepted as to Stefone Dwayne Palomo (dlc,) (Entered: 12/27/2017)
02/16/2018	<u>455</u> (p.373)	USCA Order granting appellant's motion for the appointment of counsel as to Stefone Dwayne Palomo: Appointment of Attorney John Jeffrey Springer for Stefone Dwayne Palomo. Issued: February 16, 2018. (Attachments: # <u>1</u> USCA Memorandum) (dlc,) (Entered: 02/16/2018)
02/20/2018	<u>456</u> (p.375)	PAPER TRANSCRIPT REQUEST by Stefone Dwayne Palomo for proceedings held on 10/13/2015-Arraignment; 10/15/2015-Arraignment; 10/17/2016-Change of Plea; 10/17/2016-Arraignment. before Judge Keith F. Giblin. (Springer, John) (To be transcribed by Toni Hudson, Exceptional Reporting) Modified on 2/20/2018 (dlc,). (Entered: 02/20/2018)
02/20/2018	<u>457</u> (p.377)	PAPER TRANSCRIPT REQUEST by Stefone Dwayne Palomo for proceedings held on 10/08/2015-Initial Appearance. before Judge Keith F. Giblin. (Springer, John) (To be transcribed by Toni Hudson, Exceptional Reporting) Modified on 2/20/2018 (dlc,). (Entered: 02/20/2018)
02/20/2018	<u>458</u> (p.379)	PAPER TRANSCRIPT REQUEST by Stefone Dwayne Palomo for proceedings held on 02/09/2016-Motion Hearing; 10/03/2016-Arraignment before Judge Zack Hawthorn. (Springer, John) (To be transcribed by Toni Hudson, Exceptional Reporting) Modified on 2/20/2018 (dlc,). (Entered: 02/20/2018)
02/20/2018	<u>459</u> (p.381)	PAPER TRANSCRIPT REQUEST by Stefone Dwayne Palomo for proceedings held on 05/02/2017-Sentencing before Judge Marcia A. Crone. (Springer, John) (Entered: 02/20/2018)
03/05/2018	<u>460</u> (p.450)	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Sentencing Hearing as to Stefone Dwayne Palomo held on 5/2/2017 before Judge Marcia A. Crone. Court Reporter: Tonya Jackson, Telephone number: 409.654.2833. NOTICE RE REDACTION OF TRANSCRIPTS: The parties have seven (7) business days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.txed.uscourts.gov Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 3/29/2018. Redacted Transcript Deadline set for 4/9/2018. Release of Transcript Restriction set for 6/7/2018. (tj,) (Entered: 03/05/2018)
03/23/2018	<u>461</u> (p.383)	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Initial Appearance Proceedings as to Stefone Dwayne Palomo held on 10/8/15 before Judge Giblin. Court Reporter/Transcriber: Toni Hudson, Telephone number: 361/949-2988. NOTICE RE REDACTION OF TRANSCRIPTS: The parties have seven (7) business days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days.

		<p>The policy is located on our website at www.txed.uscourts.gov</p> <p>Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 4/16/2018. Redacted Transcript Deadline set for 4/26/2018. Release of Transcript Restriction set for 6/25/2018. (dlc,) (Entered: 03/23/2018)</p>
03/23/2018	<u>462</u> (p.413)	<p>NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Motion Hearing Proceedings as to Stefone Dwayne Palomo held on 2/9/16 before Judge Hawthorn. Court Reporter/Transcriber: Toni Hudson, Telephone number: 361/949-2988.</p> <p>NOTICE RE REDACTION OF TRANSCRIPTS: The parties have seven (7) business days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days.</p> <p>The policy is located on our website at www.txed.uscourts.gov</p> <p>Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 4/16/2018. Redacted Transcript Deadline set for 4/26/2018. Release of Transcript Restriction set for 6/25/2018. (dlc,) (Entered: 03/23/2018)</p>
03/23/2018	<u>463</u> (p.420)	<p>NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Arraignment Proceedings as to Stefone Dwayne Palomo held on 10/3/16 before Judge Hawthorn. Court Reporter/Transcriber: Toni Hudson, Telephone number: 361/949-2988.</p> <p>NOTICE RE REDACTION OF TRANSCRIPTS: The parties have seven (7) business days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days.</p> <p>The policy is located on our website at www.txed.uscourts.gov</p> <p>Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 4/16/2018. Redacted Transcript Deadline set for 4/26/2018. Release of Transcript Restriction set for 6/25/2018. (dlc,) (Entered: 03/23/2018)</p>
03/23/2018	<u>465</u> (p.399)	<p>NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Call for Arraignment Proceedings as to Stefone Dwayne Palomo, Jermie LeTroy Myers held on 10/13/15 before Judge Giblin. Court Reporter/Transcriber: Toni Hudson, Telephone number: 361/949-2988.</p> <p>NOTICE RE REDACTION OF TRANSCRIPTS: The parties have seven (7) business days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days.</p> <p>The policy is located on our website at www.txed.uscourts.gov</p> <p>Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 4/16/2018.</p>

		Redacted Transcript Deadline set for 4/26/2018. Release of Transcript Restriction set for 6/25/2018. (dlc,) (Entered: 03/23/2018)
03/23/2018	<u>466</u> (p.403)	<p>NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Arraignment Proceedings as to Stefone Dwayne Palomo held on 10/15/15 before Judge Giblin. Court Reporter/Transcriber: Toni Hudson, Telephone number: 361/949-2988.</p> <p>NOTICE RE REDACTION OF TRANSCRIPTS: The parties have seven (7) business days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.txed.uscourts.gov</p> <p>Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 4/16/2018. Redacted Transcript Deadline set for 4/26/2018. Release of Transcript Restriction set for 6/25/2018. (dlc,) (Entered: 03/23/2018)</p>
03/23/2018	<u>467</u> (p.429)	<p>NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Initial Appearance/Plea Proceedings as to Stefone Dwayne Palomo held on 10/17/16 before Judge Giblin. Court Reporter/Transcriber: Toni Hudson, Telephone number: 361/949-2988.</p> <p>NOTICE RE REDACTION OF TRANSCRIPTS: The parties have seven (7) business days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.txed.uscourts.gov</p> <p>Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 4/16/2018. Redacted Transcript Deadline set for 4/26/2018. Release of Transcript Restriction set for 6/25/2018. (dlc,) (Entered: 03/23/2018)</p>
04/06/2018		NOTICE of certification of supplemental eROA provided to 5th Circuit Court of Appeals as to Stefone Dwayne Palomo (dlc,) (Entered: 04/06/2018)

TAB 2

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION**

SEP 07 2017

BY
DEPUTY

Stefone Palomo,	§	
Petitioner,	§	
	§	
VS.	§	Criminal No. 1:15-CR-00092-004
	§	
United States of America,	§	
Respondents,	§	

NOTICE OF APPEAL

Notice is hereby given that, Stefone Palomo, the petitioner, pro se, hereby appeals to the United States District Court of Appeals for the 5th Circuit from the judgment, and all pleading related thereto, entered for record in the above action on the 2nd day of May, 2017.

Dated this 30th day of August, 2017.

Respectfully Submitted,



Stefone Palomo
Reg No. 23508-078
FCI Pollock
P.O. Box 4050
Pollock, LA 71467

STEFONE PALOMO #23508-078
FEDERAL CORRECTIONAL INSTITUTION
P.O. BOX 4050
POLLOCK, LA 71467

U.S. POSTAGE
PAID
POLLOCK, LA
71467
AUG 30 17
AMOUNT

\$0.00
R2305H129180-06

77701



UNITED STATES POSTAL SERVICE

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9229 4222 0000 0760 9101



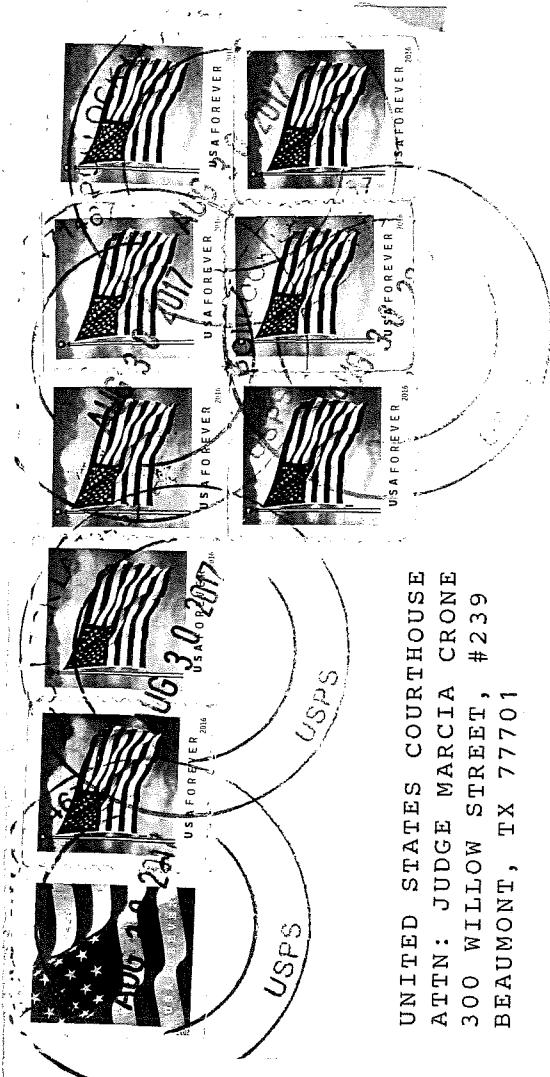
UNITED STATES COURTHOUSE
ATTN: JUDGE MARCIA CRONE
300 WILLOW STREET, #239
BEAUMONT, TX 77701

NET 05 PM

SERIALIZED MAIL ®

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

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TAB 3

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

SEP 07 2016

UNITED STATES OF AMERICA § **BY**
§ **DEPUTY** _____
§ No. 1:15CR92
v. § Judge Marcia Crone
§
§ MCGEE LAMAR FALCON, (1) aka "Gee" §
§ LEONARD MARTINEZ RAMIREZ, (2) §
§ STEFONE DWAYNE PALOMO, (4) §
§ aka "Wayne," §

THIRD SUPERSEDING INDICTMENT

THE UNITED STATES GRAND JURY CHARGES:

Count One

Violation: 21 U.S.C. § 846
(Conspiracy to Possess with the Intent to
Distribute a Controlled Substance
("Actual" Methamphetamine)).

That from in or about sometime in 2009, the exact date being unknown to the Grand Jury, and continuing thereafter until on or about July 31, 2015, in the Eastern District of Texas and elsewhere, **McGee Lamar Falcon**, a/k/a "Gee," and **Stefone Dwayne Palomo**, a/k/a "Wayne," defendants, knowingly and intentionally conspired and agreed with each other, and with persons known and unknown to the Grand Jury, to distribute and to possess with the intent to distribute fifty (50) grams or more of a Schedule II controlled substance, namely, "actual" methamphetamine, in violation of 21 U.S.C. §§ 846 and 841(a)(1).

All in violation of 21 U.S.C. §§ 846 and 841(a)(1).

Count Two

Violation: 21 U.S.C. § 846
(Conspiracy to Possess with the Intent to
Distribute a Controlled Substance
(Cocaine HCL)).

That from in or about sometime in 2007, the exact date being unknown to the Grand Jury, and continuing thereafter until on or about July 31, 2015, in the Eastern District of Texas and elsewhere, **McGee Lamar Falcon**, a/k/a “Gee,” **Leonard Martinez Ramirez**, and **Stefone Dwayne Palomo**, a/k/a “Wayne,” defendants, knowingly and intentionally conspired and agreed with each other, and with persons known and unknown to the Grand Jury, to distribute and to possess with the intent to distribute five (5) kilograms or more of a Schedule II controlled substance, namely, a mixture or substance containing a detectable amount of cocaine HCL, in violation of 21 U.S.C. §§ 846 and 841(a)(1).

All in violation of 21 U.S.C. §§ 846 and 841(a)(1).

Count Three

Violation: 21 U.S.C. § 846
(Conspiracy to Possess with the Intent to
Distribute a Controlled Substance
(Cocaine Base)).

That from in or about sometime in 2009, the exact date being unknown to the Grand Jury, and continuing thereafter until on or about July 31, 2015, in the Eastern District of Texas and elsewhere, **McGee Lamar Falcon**, a/k/a “Gee,” and **Stefone Dwayne Palomo**, a/k/a “Wayne,” defendants, knowingly and intentionally conspired and agreed with each other, and with persons known and unknown to the Grand Jury, to

distribute and to possess with the intent to distribute twenty-eight (28) grams or more of a Schedule II controlled substance, namely, a mixture or substance containing a detectable amount of cocaine base, in violation of 21 U.S.C. §§ 846 and 841(a)(1).

All in violation of 21 U.S.C. §§ 846 and 841(a)(1).

NOTICE OF INTENTION TO SEEK CRIMINAL FORFEITURE

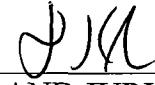
Criminal Forfeiture Pursuant to 21 U.S.C. §§ 853 and 881

Upon conviction of the controlled substance offenses alleged in Counts One, Two and Three of this third superseding indictment, **McGee Lamar Falcon**, a/k/a “Gee,” **Stefone Dwayne Palomo**, a/k/a “Wayne,” and **Leonard Martinez Ramirez**, defendants, shall forfeit to the United States pursuant to 21 U.S.C. § 853, any property constituting, or derived from, proceeds obtained directly, or indirectly, as a result of the said violation, and any property used, or intended to be used in any manner or part, to commit or to facilitate the commission of the said violation, including but not limited to the following:

MONEY JUDGMENT

A sum of money equal to two hundred and fifty thousand dollars (\$250,000) in United States currency, representing the amount of proceeds obtained as a result of the offenses alleged in Counts One, Two, and Three, conspiracy to distribute and to possess with the intent to distribute a controlled substance, for which the defendants are jointly and severally liable.

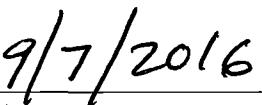
A TRUE BILL



GRAND JURY FOREPERSON

JOHN M. BALES
UNITED STATES ATTORNEY


JOHN B. ROSS


Date

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

UNITED STATES OF AMERICA §
§ No. 1:15CR92
v. § Judge Marcia Crone
§
MCGEE LAMAR FALCON, (1) aka "Gee" §
LEONARD MARTINEZ RAMIREZ, (2) §
STEFONE DWAYNE PALOMO, (4) §
aka "Wayne," §

NOTICE OF PENALTY

Count One

Violation: 21 U.S.C. §§ 841(b) and 846

Penalty: ("Actual" Methamphetamine)
If 50 grams or more of "actual" methamphetamine - imprisonment of not less than 10 years, but not more than life, a fine not to exceed \$10 million, or both - supervised release of at least 5 years, but not more than life;

If 5 grams or more, but less than 50 grams of "actual" methamphetamine - imprisonment of not less than 5 years, but not more than 40 years, a fine not to exceed \$5 million, or both, and supervised release of at least 4 years, but not more than life;

If less than 5 grams of "actual" methamphetamine - not more than 20 years imprisonment, a fine not to exceed \$1 million, or both, and supervised release of at least 3 years, but not more than life.

Special Assessment: \$ 100.00

Count Two

Violation: 21 U.S.C. §§ 841(b) and 846

Penalty: (Cocaine Hydrochloride)
If 5 kilograms or more of cocaine - imprisonment of not less than 10 years, but not more than life, a fine not to exceed \$10

million, or both - supervised release of at least 5 years, but not more than life;

If 500 grams or more, but less than 5 kilograms of cocaine - imprisonment of not less than 5 years, but not more than 40 years, a fine not to exceed \$5 million, or both, and supervised release of at least 4 years, but not more than life;

If less than 500 grams of cocaine - not more than 20 years imprisonment, a fine not to exceed \$1 million, or both, and supervised release of at least 3 years, but not more than life.

Special Assessment: \$ 100.00

Count Three

Violation: 21 U.S.C. §§ 841(b) and 846

Penalty: (Cocaine Base)

If 280 grams or more of cocaine base - imprisonment of not less than 10 years, but not more than life, a fine not to exceed \$10 million, or both - supervised release of at least 5 years, but not more than life;

If 28 grams or more, but less than 280 grams of cocaine base - imprisonment of not less than 5 years, but not more than 40 years, a fine not to exceed \$5 million, or both, and supervised release of at least 4 years, but not more than life;

If less than 28 grams of cocaine base - not more than 20 years imprisonment, a fine not to exceed \$1 million, or both, and supervised release of at least 3 years, but not more than life.

Special Assessment: \$ 100.00

TAB 4

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS BEAUMONT DIVISION

UNITED STATES OF AMERICA

v.

STEFONE DWAYNE PALOMO

Date of Original Judgment: 5/2/2017

§ AMENDED JUDGMENT IN A CRIMINAL
CASE

§

§

§ Case Number: **1:15-CR-00092-004**

§ USM Number: **23508-078**

§ **Albert John Charanza**

§ Defendant's Attorney

Reason for Amendment:

- Correction of sentence on remand (18 U.S.C. 3742(f)(1) and (2))
- Modification of Supervision Conditions (18 U.S.C. §§ 3563(c) or 3583(e))
- Reduction of Sentence for Changed Circumstances (Fed.R.Crim.P.35(b))
- Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. § 3582(c)(1))
- Correction of Sentence by Sentencing Court (Fed.R.Crim.P.36)
- Modification of Imposed Term of Imprisonment for Retroactive Amendment(s) top the Sentencing Guidelines (18 U.S.C. § 3582(c)(2))
- Correction of Denial of Federal Benefits
- Direct Motion to District Court Pursuant 28 U.S.C. § 2255 or 18 U.S.C. § 3559(c)(7)
- Modification of Restitution Order (18 U.S.C. § 3664)

THE DEFENDANT:

THE DEFENDANT:

<input type="checkbox"/>	pleaded guilty to count(s)	
<input checked="" type="checkbox"/>	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	1 of the Third Superseding Indictment
<input type="checkbox"/>	pleaded nolo contendere to count(s) which was accepted by the court	
<input type="checkbox"/>	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

21:846 Conspiracy To Distribute and Possess With Intent To Distribute 50 Grams or More of "Actual" Methamphetamine

Offense Ended

07/31/2015

Count

1ss

The defendant is sentenced as provided in pages 2 through 8 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) 1, 1s, 2, 2s, 2ss, 3, 3s, and 3ss is are dismissed on the motion of the United States

DEFENDANT: STEFONE DWAYNE PALOMO
CASE NUMBER: 1:15-CR-00092-MAC-ZJH(4)

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.

May 2, 2017

Date of Imposition of Judgment



Signature of Judge

**MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE**

Name and Title of Judge

6/12/17

Date

DEFENDANT: STEFONE DWAYNE PALOMO
CASE NUMBER: 1:15-CR-00092-MAC-ZJH(4)

IMPRISONMENT

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

180 months. The term of imprisonment imposed by this judgment shall run consecutively with any term of imprisonment that may be imposed for Evading Arrest with a Vehicle under Docket No. ND-6901, pending in the Newton County, Texas, District Court.

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

The Court recommends that defendant be incarcerated in FCI, Beaumont, TX, if available and defendant is eligible.

The Court recommends to the Bureau of Prisons that the defendant receive appropriate drug treatment while imprisoned.

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

17-40946.237

DEFENDANT: STEFONE DWAYNE PALOMO
CASE NUMBER: 1:15-CR-00092-MAC-ZJH(4)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of : **five (5) 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 must 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, or 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: STEFONE DWAYNE PALOMO
CASE NUMBER: 1:15-CR-00092-MAC-ZJH(4)

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. I understand additional information regarding these conditions is available at the www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: STEFONE DWAYNE PALOMO
CASE NUMBER: 1:15-CR-00092-MAC-ZJH(4)

SPECIAL CONDITIONS OF SUPERVISION

You must provide the probation officer with access to any requested financial information for purposes of monitoring your efforts to obtain and maintain lawful employment and income.

You must refrain from consuming alcohol in any form.

You must participate in a program of testing and treatment for alcohol abuse, and follow the rules and regulations of that program until discharged. The probation officer, in consultation with the treatment provider, will supervise your participation in the program. You must pay any cost associated with treatment and testing.

You must participate in a program of testing and treatment for drug abuse, and follow the rules and regulations of that program until discharged. The probation officer, in consultation with the treatment provider, will supervise your participation in the program. You must pay any cost associated with treatment and testing.

DEFENDANT: STEFONE DWAYNE PALOMO
 CASE NUMBER: 1:15-CR-00092-MAC-ZJH(4)

CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$100.00		\$0.00	\$0.00

The determination of restitution is deferred until *An Amended Judgment in a Criminal Case (AO245C)* 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. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

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:

<input type="checkbox"/> the interest requirement is waived for the	<input type="checkbox"/> fine	<input type="checkbox"/> restitution
<input type="checkbox"/> the interest requirement for the	<input type="checkbox"/> fine	<input type="checkbox"/> 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: STEFONE DWAYNE PALOMO
 CASE NUMBER: 1:15-CR-00092-MAC-ZJH(4)

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 payments of \$ 100.00 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 20 (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:

It is ordered that the Defendant shall pay to the United States a special assessment of \$100.00 for Count 1ss which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court.

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, U.S. District Court. Fine & Restitution, 1910 E SE Loop 323 No. 287, Tyler, TX 75701.

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

- Joint and Several

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

 - Defendant shall receive credit on his restitution obligation for recovery from other defendants who contributed to the same loss that gave rise to defendant's restitution obligation.
 - 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 sum of two hundred and fifty thousand dollars (\$250,000.00) pursuant to 21 U.S.C. § 853 and § 881.

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.

DEFENDANT: STEFONE DWAYNE PALOMO
CASE NUMBER: 1:15-CR-00092-MAC-ZJH(4)

DENIAL OF FEDERAL BENEFITS
(For Offenses Committed On or After November 18, 1988)

FOR DRUG TRAFFICKERS PURSUANT TO 21 U.S.C. § 862

IT IS ORDERED that the defendant shall be:

ineligible for all federal benefits PERMANENTLY.
 ineligible for the following federal benefits for a period of
(specify benefit(s))

OR

Having determined that this is the defendant's third or subsequent conviction for distribution of controlled substances, IT IS ORDERED that the defendant shall be permanently ineligible for all federal benefits.

FOR DRUG POSSESSORS PURSUANT TO 21 U.S.C. § 862(b)

IT IS ORDERED that the defendant shall:

be ineligible for all federal benefits for a period of
 be ineligible for the following federal benefits for a period of
(specify benefit(s))
 successfully complete a drug testing and treatment program.
 perform community service, as specified in the probation and supervised release portion of this judgment.

IS FURTHER ORDERED that the defendant shall complete any drug treatment program and community service specified in this judgment as a requirement for the reinstatement of eligibility for federal benefits.

Pursuant to 21 U.S.C. § 862(d), this denial of federal benefits does not include any retirement, welfare, Social Security, health, disability, veterans benefit, public housing, or other similar benefit, or any other benefit for which payments or services are required for eligibility. The clerk is responsible for sending a copy of this page and the first page of this judgment to:

U.S. Department of Justice, Office of Justice Programs, Washington, DC 20531

TAB 5



**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION**

UNITED STATES OF AMERICA

v.

STEFONE DWAYNE PALOMO

§
§
§
§
§

CASE NO.1:15CR92-4

**FINDINGS OF FACT AND RECOMMENDATION ON GUILTY PLEA
BEFORE THE UNITED STATES MAGISTRATE JUDGE**

By order of the District Court, this matter was referred to the undersigned United States Magistrate Judge for administration of a guilty plea and allocution under Rules 11 and 32 of the Federal Rules of Criminal Procedure. Magistrate judges have the statutory authority to conduct a felony guilty plea proceeding as an “additional duty” pursuant to 28 U.S.C. § 636(b)(3). *United States v. Bolivar-Munoz*, 313 F.3d 253, 255 (5th Cir. 2002), *cert. denied*, 123 S. Ct. 1642 (2003). On October 17, 2016, this cause came before the undersigned United States Magistrate Judge for entry of a guilty plea by the defendant, Stefone Dwayne Palomo, on **Count One** of the charging **Third Superseding Indictment** filed in this cause.

Count One of the Third Superseding Indictment charges that from, on or about sometime in 2009, the exact date being unknown to the Grand Jury, and continuing thereafter until on or about July 31, 2015, in the Eastern District of Texas and elsewhere, Stefone

Dwayne Palomo and co-defendants, knowingly and intentionally conspired and agreed with each other, and with persons known and unknown to the Grand Jury, to distribute and to possess with the intent to distribute fifty (50) grams or more of a Schedule II controlled substance, namely, "actual" methamphetamine, in violation of 21 U.S.C. § 846.

Defendant, Stefone Dwayne Palomo, entered a plea of guilty to Count One of the Third Superseding Indictment into the record at the hearing.

After conducting the proceeding in the form and manner prescribed by Federal Rule of Criminal Procedure 11 the Court finds:

- a. That Defendant, after consultation with counsel of record, has knowingly, freely and voluntarily consented to the administration of the guilty plea in this cause by a United States Magistrate Judge in the Eastern District of Texas subject to a final approval and imposition of sentence by the District Court.
- b. That Defendant and the Government have entered into a plea agreement and a plea agreement addendum which were addressed in open court and entered into the record.
- c. That Defendant is fully competent and capable of entering an informed plea, that Defendant is aware of the nature of the charges and the consequences of the plea, and that the plea of guilty is a knowing, voluntary and freely made plea. Upon addressing the Defendant personally in open court, the Court determines that Defendant's plea is voluntary and did not result from force, threats or promises. *See FED. R. CRIM. P. 11(b)(2).*
- d. That Defendant's knowing, voluntary and freely made plea is supported by an independent factual basis establishing each of the essential elements of the offense and Defendant realizes that his conduct falls within the definition of the crimes charged under 21

U.S.C. § 846.

STATEMENT OF REASONS

As factual support for Defendant's guilty plea, the Government presented a factual basis. *See Factual Basis and Stipulation.* In support, the Government and Defendant stipulated that if this case were to proceed to trial the Government would prove beyond a reasonable doubt, through the sworn testimony of witnesses, including expert witnesses, as well as through admissible exhibits, each and every essential element of the crime charged in Count One of the Third Superseding Indictment. The Government would also prove that the defendant is one and the same person charged in the Third Superseding Indictment and that the events described in Third Superseding Indictment occurred in the Eastern District of Texas and elsewhere. The Court incorporates the proffer of evidence described in detail in the factual basis and stipulation in support of the guilty plea.

Defendant, Stefone Dwayne Palomo, agreed with and stipulated to the evidence presented in the factual basis. Counsel for Defendant and the Government attested to Defendant's competency and capability to enter an informed plea of guilty. The Defendant agreed with the evidence presented by the Government and personally testified that he was entering his guilty plea knowingly, freely and voluntarily.

RECOMMENDED DISPOSITION

IT IS THEREFORE the recommendation of the undersigned United States Magistrate Judge that the District Court accept the guilty plea of Defendant which the undersigned determines to be supported by an independent factual basis establishing each of the essential elements of the offense charged in **Count One** of the charging **Third Superseding Indictment**

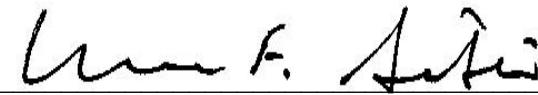
on file in this criminal proceeding. The Court also recommends that the District Court accept the plea agreement and plea agreement addendum pursuant to the Local Rules for the United States District Court for the Eastern District of Texas and Federal Rule of Criminal Procedure 11(c). Accordingly, it is further recommended that, Defendant, **Stefone Dwayne Polomo**, be finally adjudged as guilty of the charged offense under **Title 21, United States Code, Section 846.**

Defendant is ordered to report to the United States Probation Department for the preparation of a presentence report. At the plea hearing, the Court admonished the Defendant that the District Court may reject the plea and that the District Court can decline to sentence Defendant in accordance with the plea agreement and addendum, the federal sentencing guidelines and/or the presentence report because the sentencing guidelines are advisory in nature. The District Court may defer its decision to accept or reject the plea agreement and addendum until there has been an opportunity to consider the presentence report. *See* FED. R. CRIM. P. 11(c)(3). If the Court rejects the plea agreement, the Court will advise Defendant in open court that it is not bound by the plea agreement and Defendant may have the opportunity to withdraw the guilty plea, dependent upon the type of the plea agreement. *See* FED. R. CRIM. P. 11(c)(3)(B). If the plea agreement is rejected and Defendant still persists in the guilty plea, the disposition of the case may be less favorable to Defendant than that contemplated by the plea agreement or addendum. Defendant has the right to allocute before the District Court before imposition of sentence.

OBJECTIONS

Objections must be: (1) specific, (2) in writing, and (3) served and filed within fourteen (14) days after being served with a copy of this report. *See* 28 U.S.C. § 636(b)(1). A party's failure to object bars that party from: (1) entitlement to *de novo* review by a district judge of proposed findings and recommendations, *see Rodriguez v. Bowen*, 857 F.2d 275, 276-77 (5th Cir. 1988), and (2) appellate review, except on grounds of plain error of unobjected-to factual findings and legal conclusions accepted by the district court, *see Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996) (en banc). The constitutional safeguards afforded by Congress and the courts require that, when a party takes advantage of his right to object to a magistrate's findings or recommendation, a district judge must exercise its nondelegable authority by considering the actual evidence and not merely by reviewing and blindly adopting the magistrate's report and recommendation. *See Hernandez v. Estelle*, 711 F.2d 619, 620 (5th Cir. 1983); *United States v. Elsoffer*, 644 F.2d 357, 359 (5th Cir. 1981) (per curiam).

SIGNED this the 25th day of October, 2016.



KEITH F. GIBLIN
UNITED STATES MAGISTRATE JUDGE

TAB 6

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA §
§
versus § CASE NO.1:15CR92(4)
§
STEPHONEY DWAYNE PALOMO §

MEMORANDUM ORDER ADOPTING REPORT AND RECOMMENDATION

The Court referred this matter to the United States Magistrate Judge Keith F. Giblin for the administration of a guilty plea hearing. Judge Giblin conducted a hearing and issued his findings of fact and report and recommendation on the defendant's guilty plea. The magistrate judge recommended that the Court accept defendant's guilty plea. He further recommended that the Court finally adjudge defendant as guilty on Count One of the Third Superseding Indictment. The parties have not objected to the magistrate judge's findings.

The Court accepts the findings in the report and recommendation. The Court ORDERS that Judge Giblin's report (# 400) is adopted. The Court accepts the defendant's guilty plea but defers acceptance of the plea agreement and plea agreement addendum until after review of the presentence report. It is finally ORDERED that defendant, Stephoney Dwayne Palomo, is adjudged guilty on Count One of the Third Superseding Indictment charging a violation of Title 21, United States Code, Section 846.

SIGNED at Beaumont, Texas, this 15th day of November, 2016.

Marcia A. Crone

MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE

TAB 7

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

UNITED STATES OF AMERICA,) CASE NO: 1:15-CR-00092-MAC-ZJH
)
 Plaintiff,) CRIMINAL
)
 vs.) Beaumont, Texas
)
 STEFONE DWAYNE PALOMO,) Monday, October 17, 2016
)
 Defendant.) (5:12 p.m. to 5:29 p.m.)

SUBSEQUENT INITIAL APPEARANCE ON THIRD SUPERSEDING INDICTMENT
ARRAIGNMENT

BEFORE THE HONORABLE KEITH F. GIBLIN,
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For Plaintiff: JOHN ROSS, ESQ.
Assistant United States Attorney
350 Magnolia
Suite 150
Beaumont, TX 77701

For Defendant: ALBERT J. CHARANZA, JR., ESQ.
P.O. Box 1825
Lufkin, TX 75902

Deputy Clerk/ECRO: Kyla Dean

U.S. Pretrial/Probation: Carl Tucker

Transcribed by: Exceptional Reporting Services, Inc.
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Corpus Christi, TX 78480-8668
361 949-2988

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

1 Beaumont, Texas; Monday, October 17, 2016; 5:12 p.m.

Call to Order

3 **THE COURT:** Okay, the next case is the *United States*
4 *of America versus Stefone Dwayne Palomo*, Cause Number
5 1:15-cr-00092.

8 | (Defendant sworn)

10 **THE COURT:** Mr. Palomo, you're here today for three
11 hearings. There's been a Third Superseding Indictment that's
12 been filed so what we've got to do is we've got to step back.
13 We are conducting an initial appearance.

17 And the last hearing we'll take up is your change of
18 plea. If you decide to change those not guilty pleas to guilty
19 pleas we'll go ahead and take care of that issue.

20 Let's go back to the initial appearance. You always
21 have a right to remain silent, don't make any statements that
22 can be used against you. If you give up your right to remain
23 -- yes, sir?

24 **MR. ROSS:** I'm sorry, Judge, I think -- I believe
25 he's already been arraigned on --

1 **THE CLERK:** I don't have it.

2 **MR. CHARANZA:** We did.

3 **MR. ROSS:** We did.

4 **THE COURT:** Let's take a look.

5 **MR. CHARANZA:** It would have been -- it was October
6 3rd.

7 **(Pause, Discussion held off the record 5:13:50 to 5:14:17)**

8 **THE COURT:** All right, that makes it easier,
9 Mr. Palomo. What we'll do is we'll take your change of plea on
10 the Third Superseding Indictment.

11 I've already sworn you in. Always remember your --
12 your constitutional rights. You have a right to remain silent,
13 don't make any statements that can be used against you. If you
14 give up your right to remain silent and make those statements
15 they can and will be used against you in Court.

16 Do you understand about your right to remain silent?

17 **THE DEFENDANT:** Yes, sir.

18 **THE COURT:** And, again, you were here when the last
19 case pled. You understand that I'm U.S. Magistrate Judge Keith
20 Giblin, and it's just like the last case, your case is assigned
21 to Judge Crone as the District Judge, she's the District Judge
22 in your case. She has referred this plea hearing to me, asked
23 for me to hear it and I give her that Report and
24 Recommendation, and if she accepts your Plea Agreement she
25 accepts it, you appear before her to be sentenced, not before

1 me. So I can't do this unless I have your consent because you
2 have a right to plead guilty in front of her.

3 **(Discussion held off the record 5:15:11 to 5:15:25)**

4 **THE COURT:** Okay. So we're going to (indisc.) the
5 initial appearance and arraignment.

6 Okay. Let's go back with the initial appearance.

7 You, again, you understood about your right to remain silent,
8 is that correct?

9 **THE DEFENDANT:** Yes, sir.

10 **THE COURT:** Okay. And, again, you have a right to
11 have an attorney represent you and he's here with you today.
12 If you need to stop and visit with him you let me know and I'll
13 allow you to visit with your attorney, okay?

14 **THE DEFENDANT:** Yes, sir.

15 **THE COURT:** Okay. Have you received a copy of that
16 -- that Third Superseding Indictment that's been filed against
17 you?

18 **THE DEFENDANT:** Yes, sir.

19 **THE COURT:** Let's take a look at it together.

20 In Count One it alleges a conspiracy to possess with
21 intent to distribute actual methamphetamine.

22 It alleged that "From on or about sometime in 2009,
23 the exact date being unknown to the Grand Jury and
24 continuing thereafter until on or about July 31st of
25 2015, in the Eastern District of Texas and elsewhere,

1 that McGee Lamar Falcon, also known as G, and Stefone
2 Dwayne Palomo, also known as Wayne, Defendants,
3 knowingly and intentionally conspired and agreed with
4 each other, and with persons known and unknown to the
5 Grand Jury, to distribute and to possess with intent
6 to distribute 50 grams or more of a Schedule II
7 controlled substance; namely, actual methamphetamine,
8 and that's all in violation of Title 21 United States
9 Code, Section 846."

10 So do you understand what you're charged with there
11 in Count One?

13 **THE COURT:** Let's take -- okay, let's take a look at
14 the statutory punishment, what the statute would -- would set
15 forth as punishment for that offense.

16 Since it alleges 50 grams or more of actual, if
17 you're convicted in this case --

18 First of all, do you understand what supervised
19 release means as a part of your punishment? Did you hear me
20 make that explanation?

22 **THE COURT:** Okay. If you're convicted of Count One
23 you'd be sent to prison for not less than 10 years, but not
24 more than life. There would be a fine of not more than 10
25 million dollars or both. There'd be a term of supervised

1 release of at least five years, but not more than life, and a
2 special assessment of \$100.

3 Do you understand that punishment?

4 **THE DEFENDANT:** Yes, sir.

5 **THE COURT:** Okay. That takes care of the initial
6 appearance, Mr. Palomo.

7 What we'll do is we'll conduct an arraignment like I
8 said. Technically what you'll do is you'll plead not guilty to
9 Count One. I'm going to ask you how do you plead to Count One
10 of the Third Superseding Indictment, guilty or not guilty?

11 **THE DEFENDANT:** Not guilty.

12 **THE COURT:** Okay. Kyla, I'm wondering if I have --
13 if I need to go ahead and conduct an initial appearance on the
14 other Counts?

15 **(Judge/Clerk confer)**

16 **THE COURT:** Okay.

17 **MR. CHARANZA:** I can tell you with certainty, your
18 Honor, that he was arraigned in Judge Hawthorn's Court on
19 October 3rd (indisc.).

20 **THE CLERK:** I do not have any minutes.

21 **THE COURT:** Okay, well, he's been double-arraigned
22 then. Okay. All right.

23 Okay, Mr. Palomo, what we'll do, we've taken a plea
24 of not guilty and so what we're going to do, we'll shift gears.

25 Let's go back to that consent. Do you remember me

1 and you were talking about that consent about I can't do this,
2 I can't do this plea hearing unless I have your consent because
3 it's Judge Crone that's going to sentence you, not me. So
4 unless --

5 I can do that if I have your consent, so can I have
6 your consent to conduct this guilty plea?

7 **THE DEFENDANT:** Yes, sir.

8 **THE COURT:** Okay. Here's a consent form. It says
9 you waive your right to appear before Judge Crone and plead
10 guilty and you're consenting to plead guilty in front of me.

11 **(Pause)**

12 **THE COURT:** Thank you, Mr. Palomo. We'll file that
13 in the record and we'll get it started with your guilty plea.

14 Mr. Palomo, can you tell me your full name for the
15 record, please?

16 **THE DEFENDANT:** Stefone Dwayne Palomo.

17 **THE COURT:** Mr. Palomo, how old are you?

18 **THE DEFENDANT:** Thirty-three.

19 **THE COURT:** Thirty-three. How far did you go in
20 school?

21 **THE DEFENDANT:** I graduated.

22 **THE COURT:** Oh, graduated from Newton, is that right?

23 **THE DEFENDANT:** Yes, sir.

24 **THE COURT:** Okay. It's my understanding that you
25 intend to plead guilty to Count One of a Third Superseding

1 Indictment that's pending in this matter. Now before I hear
2 your plea of guilty I have to inform you of certain rights that
3 you have under the law, and I have to determine that you
4 understand the consequences of your guilty plea.

5 I've placed you under oath so your answers will be
6 under oath, on the record and in the presence of your attorney.
7 The questions I'm going to ask you concern the charges against
8 you and any time if you feel that you need further explanation
9 about any part of these proceedings I want you to stop me and
10 let me know and I'll answer whatever questions you have and
11 I'll allow you to consult privately with your attorney, okay?

12 **THE DEFENDANT:** Yes, sir.

13 **THE COURT:** Okay. I need you to understand that you
14 are now under oath and if you answer any of my questions
15 falsely your answers may be used later on against you in
16 another prosecution for perjury or making a false statement.
17 Do you understand that?

18 **THE DEFENDANT:** Yes, sir.

19 **THE COURT:** Have you discussed with your attorney the
20 facts of this case, the charges pending against you and any
21 possible defenses that you might have?

22 **THE DEFENDANT:** Yes, sir.

23 **THE COURT:** Are you satisfied that he has fully
24 considered all of these factors?

25 **THE DEFENDANT:** Yes, sir.

1 **THE COURT:** Are you satisfied -- fully satisfied with
2 his representation and his advice that he has given to you so
3 far in this case?

4 **THE DEFENDANT:** Yes, sir.

5 **THE COURT:** At any time during this hearing if you
6 change your mind and you decide you want to plead not guilty
7 instead of pleading guilty let me know and I'll allow you to
8 plead not guilty, okay?

9 **THE DEFENDANT:** Yes, sir.

10 **THE COURT:** Have you received a copy of the Third
11 Superseding Indictment, we just went through that, did you have
12 a copy of it?

13 **THE DEFENDANT:** Yes, sir.

14 **THE COURT:** And do you -- do you completely
15 understand what you're charged with there in Count One of the
16 Third Superseding Indictment?

17 **THE DEFENDANT:** Yes, sir.

18 **THE COURT:** So that you fully understand the nature
19 of the charges against you what I'm going to do is explain the
20 elements that the Government would have to prove beyond a
21 reasonable doubt to a jury before you could be convicted in
22 this offense.

23 Number 1, they'd have to prove that you knowingly
24 conspired and agreed with others to possess a controlled
25 substance.

1 Number 2, they'd have to prove that substance was, in
2 fact, methamphetamine.

3 Number 3, they'd have to prove that you conspired and
4 agreed with others to possess the substance with the intent to
5 distribute it.

6 And, 4th, they'd have to prove that the amount of
7 actual methamphetamine possessed in furtherance of the
8 conspiracy was 50 grams or more.

9 Do you understand that the Government would have to
10 prove each and every one of those elements beyond a reasonable
11 doubt to a jury before you could be convicted?

12 **THE DEFENDANT:** Yes, sir.

13 **THE COURT:** Okay. Now I just went through the
14 elements with you and I just went through the charge with you.
15 Do you completely understand the nature of the charges against
16 you?

17 **THE DEFENDANT:** Yes, sir.

18 **THE COURT:** Do you need any further explanation about
19 the charges by me or by your attorney?

20 **THE DEFENDANT:** No, sir.

21 **THE COURT:** Okay. Now let's talk about that
22 punishment again because you remember we talked about you have
23 an 11(c)(1)(C), too, but I want to talk about the statutory
24 punishment, and you remember that includes something called
25 supervised release, you remember that?

1 **THE DEFENDANT:** Yes, sir.

2 **THE COURT:** And do you remember what supervised
3 release is?

4 **THE DEFENDANT:** Yes, sir.

5 **THE COURT:** Okay. If you're -- under the statutory
6 punishment for this offense is imprisonment for not less than
7 10 years, but not more than life; a fine of not more than 10
8 million dollars, a term of supervised release of not less than
9 five years, but not more than life, and a special assessment of
10 \$100.

11 Do you understand that punishment?

12 **THE DEFENDANT:** Yes, sir.

13 **THE COURT:** Do you understand that if it applied the
14 Court could order you to make restitution to any victim of this
15 offense?

16 **THE DEFENDANT:** Yes, sir.

17 **THE COURT:** Do you understand that if applied the
18 Court could require you to forfeit certain properties to the
19 Government?

20 **THE DEFENDANT:** Yes, sir.

21 **THE COURT:** Do you understand that under some
22 circumstances you or the Government have the right to appeal
23 any sentence that's imposed?

24 **THE DEFENDANT:** Yes, sir.

25 **THE COURT:** Do you understand that parole has been

1 abolished and if you're sentenced to prison you will not be
2 released early on parole?

3 **THE DEFENDANT:** Yes, sir.

4 **THE COURT:** Do you understand that the offense that
5 you're pleading guilty to is a felony offense --

6 **THE DEFENDANT:** Yes, sir.

7 **THE COURT:** -- and if your plea is accepted you'll be
8 adjudged guilty of that offense and that adjudication may
9 deprive you of valuable rights, valuable civil rights such as
10 the right to vote, the right to hold public office, the right
11 to serve on a jury, the right to possess any kind of firearm
12 and also the right to receive Federal benefits?

13 **THE DEFENDANT:** Yes, sir.

14 **THE COURT:** Do you completely understand the sentence
15 which could be imposed upon you by the Court if you plead
16 guilty?

17 **THE DEFENDANT:** Yes, sir.

18 **THE COURT:** Are you pleading guilty voluntarily?

19 **THE DEFENDANT:** Yes, sir.

20 **THE COURT:** Has anyone forced you to plead guilty?

21 **THE DEFENDANT:** No, sir.

22 **THE COURT:** Has anyone threatened you or coerced you
23 to try to get you to plead guilty?

24 **THE DEFENDANT:** No, sir.

25 **THE COURT:** Is your decision to plead guilty based on

1 discussions that you had with your attorney and he's had with
2 the Government's attorney?

3 **THE DEFENDANT:** Yes, sir.

4 **THE COURT:** Have you ever been treated for any type
5 of mental illness in the past?

6 **THE DEFENDANT:** No, sir.

7 **THE COURT:** Have you ever been treated for an
8 addiction to narcotic drugs of any kind?

9 **THE DEFENDANT:** No, sir.

10 **THE COURT:** Are you currently under the influence of
11 any drug, medication or alcoholic beverage of any kind?

12 **THE DEFENDANT:** No, sir.

13 **THE COURT:** Does Counsel for the Government or
14 Counsel for Mr. Palomo have any doubt as to his competence to
15 plead guilty at this time?

16 **MR. ROSS:** The Government does not, your Honor.

17 **MR. CHARANZA:** I don't have any doubts that he is
18 competent.

19 **THE COURT:** Mr. Palomo, you have a right to plead not
20 guilty to any offense that's charged against you and to persist
21 in that not guilty plea and if you plead not guilty you have a
22 right to a trial by a jury. You have a right to assistance of
23 counsel for your defense.

24 You have a right to see and hear all of the witnesses
25 and have them cross examined by your attorney in your defense.

1 You have a right on your own part to testify or to
2 decline to testify if you so choose.

3 You have a right to issue subpoenas or a compulsory
4 process to compel the production of evidence and the attendance
5 of witnesses on your own behalf.

6 You also have a right to a speedy and to a public
7 trial.

8 Do you understand if you pled not guilty and you went
9 to trial you would have all of those rights?

10 **THE DEFENDANT:** Yes, sir.

11 **THE COURT:** Do you understand that if Judge Crone
12 accepts your Plea Agreement there will be no trial so by
13 pleading guilty you give up your right to a trial?

14 **THE DEFENDANT:** Yes, sir.

15 **THE COURT:** There's been a Plea Agreement that's been
16 filed in the case. I reviewed the Plea Agreement and let's
17 take a look at the Plea Agreement together. Do you have a copy
18 of that in front of you?

19 **THE DEFENDANT:** Yes, sir.

20 **THE COURT:** Did you read the entire Plea Agreement?

21 **THE DEFENDANT:** Yes, sir.

22 **THE COURT:** Do you understand everything in it?

23 **THE DEFENDANT:** Yes, sir.

24 **THE COURT:** Did you ask your attorney any questions
25 you wanted to about it?

1 **THE DEFENDANT:** Yes, sir.

2 **THE COURT:** Did you sign the Plea Agreement?

3 **THE DEFENDANT:** Yes, sir.

4 **THE COURT:** Do you agree with all of the terms of the
5 Plea Agreement?

6 **THE DEFENDANT:** Yes, sir.

7 **THE COURT:** And did you understand and agree with the
8 Plea Agreement when you signed it?

9 **THE DEFENDANT:** Yes, sir.

10 **THE COURT:** Let's take a look at it together.

11 In Paragraph 1 it says you have those rights there A
12 through E.

13 Paragraph 2 says you agree to plead guilty in this
14 case and waive your constitutional rights and plead guilty to
15 Count One.

16 Paragraph 3 talks about the statutory sentence that
17 we all talked about.

18 Paragraph 4 it says that the parties agree to the
19 following stipulations shall be the appropriate sentence in
20 this case. Now the appropriate sentence is 180 months
21 imprisonment. It says the parties have not stipulated as to
22 what other punishment the Court could impose.

23 Paragraph 5 talks about restitution.

24 Paragraph 6 talks about forfeiture, that you agree to
25 make forfeiture in this matter to the Government.

1 Paragraph 7 says the Government agrees not to
2 prosecute you for any additional nontax-related charges.

3 Paragraph 8 says that if any part of this Plea
4 Agreement is vacated or withdrawn the Government is free from
5 its obligations.

6 Paragraph 9 says this plea of guilty is freely and
7 voluntarily made and is not the result of force, stress or
8 promises other than the promises set forth there in the Plea
9 Agreement.

10 Paragraph 10 says that you waive your -- your
11 appellate rights in this -- in this matter, the right to appeal
12 your conviction and sentence, but you reserve your right to
13 appeal the failure of the Court, after accepting this
14 agreement, to impose a sentence in accordance with the terms of
15 this agreement.

16 You also reserve the right to appeal, seek collateral
17 review of a claim of ineffective assistance of counsel.

18 In Paragraph 11 it says you waive your right to
19 records [sic] in this case.

20 Paragraph 12 says you thoroughly reviewed all legal
21 and factual aspects of this case with your attorney, you're
22 satisfied with his representation. After conferring with him
23 you concede your guilt and you feel it's in your best interests
24 to plead guilty in this case.

25 Paragraph 13 says this Plea Agreement is only binding

1 on the U.S. Attorney's office for the Eastern District of
2 Texas, it doesn't bind any other prosecuting authority.

3 Paragraph 14 says that this is entire Plea Agreement,
4 this and the Addendum. There's no other promises out there,
5 all of the promises between you and the Government are
6 contained in these documents.

7 Now I just summarized the Plea Agreement for you.
8 Did you hear me summarize it?

9 **THE DEFENDANT:** Yes, sir.

10 **THE COURT:** And do you agree with my summary?

11 **THE DEFENDANT:** Yes, sir.

12 **THE COURT:** Do you still understand and accept each
13 and every term of that Plea Agreement?

14 **THE DEFENDANT:** Yes, sir.

15 **THE COURT:** Are there any outside promises that I
16 need to know about that are not in this Plea Agreement?

17 **THE DEFENDANT:** No, sir.

18 **THE COURT:** We'll admit the Plea Agreement on record.

19 And what will happen is that Judge Crone will put off
20 her decision to accept or reject this Plea Agreement till she
21 has looked at your Presentence Report. If she looks at your
22 Presentence Report and she doesn't like this Plea Agreement she
23 can reject it, you'll be allowed to withdraw your guilty plea.

24 But at the time that she does that, if she rejects
25 that and you withdraw your guilty plea and you still will plead

1 guilty do you understand that the disposition of your case
2 might be less favorable to you than that which you've got on
3 this Plea Agreement, do you understand that?

4 **THE DEFENDANT:** Yes, sir.

5 **THE COURT:** We've got a Factual Basis that's been
6 filed. Did you review the entire Factual Basis?

7 **THE DEFENDANT:** Yes, sir.

8 **THE COURT:** And do you understand everything in it?

9 **THE DEFENDANT:** Yes, sir.

10 **THE COURT:** Is everything in there true and correct
11 to the best of your knowledge?

12 **THE DEFENDANT:** Yes, sir.

13 **THE COURT:** Did you sign the Factual Basis?

14 **THE DEFENDANT:** Yes, sir.

15 **THE COURT:** Did you understand and agree with it when
16 you signed it?

17 **THE DEFENDANT:** Yes, sir.

18 **THE COURT:** Do you acknowledge and agree that the
19 facts that are set forth in that Factual Basis constitute proof
20 that you committed the offense set forth in Count One of the
21 Third Superseding Indictment in every respect?

22 **THE DEFENDANT:** Yes, sir.

23 **THE COURT:** I will order that filed into the record
24 also.

25 I don't know if there's any State cases out there,

1 but do you understand that Judge Crone, as a Federal Judge, has
2 the authority to impose a sentence in a Federal case
3 consecutive, that means stacked on top of the sentence in the
4 State case, do you understand that?

5 **THE DEFENDANT:** Yes, sir.

6 **THE COURT:** Counsel, has he been competent --

7 Mr. Palomo been competent and capable to cooperate with you?

8 **MR. CHARANZA:** Yes, he has.

9 **THE COURT:** And do you join in his decision to plead
10 guilty?

11 **MR. CHARANZA:** I do, your Honor.

12 **THE COURT:** Mr. Palomo, are you entering your plea of
13 guilty freely, knowingly, voluntarily and with the advice of
14 your counsel?

15 **THE DEFENDANT:** Yes, sir.

16 **THE COURT:** Are you pleading guilty because you are
17 guilty?

18 **THE DEFENDANT:** Yes, sir.

19 **THE COURT:** How do you now plead to the charge
20 contained in Count One of the Third Superseding Indictment,
21 guilty or not guilty?

22 **THE DEFENDANT:** Guilty.

23 **THE COURT:** What I'll do is I'll do a Report and
24 Recommendation in this case that Mr. Palomo was fully competent
25 and capable of entering an informed plea and his plea of guilty

1 was a knowingly made and a voluntarilly made plea supported by
2 an independent basis of fact which contains each of the
3 essential elements of the offense.

4 What will happen now is a written Presentence Report
5 will be prepared by the Probation Department to assist the
6 Judge in sentencing. You'll be asked to give information for
7 that report and your attorney can be present if you wish.

8 Once that report has been generated you have the
9 opportunity to sit down and make any objections that you want
10 to to the facts and the calculations reported by the Probation
11 Department.

12 If Judge Crone accepts your Plea Agreement she'll set
13 your case for sentencing. You'll be allowed to appear before
14 her to make any statement that you want to in mitigation of
15 your punishment.

16 Mr. Palomo, I'll get that Report and Recommendation
17 done as soon as possible. I'll remand you back to the custody
18 of the Marshals Service and direct that they return you to
19 Judge Crone's courtroom at the date and time that your
20 sentencing is set. I wish you the best of luck, Mr. Palomo.
21 Thank you.

22 **MR. CHARANZA:** Thank you.

23 **THE COURT:** You're welcome.

24 **COURT SECURITY OFFICER:** We're in recess.

25 **(This proceeding was adjourned at 5:29 p.m.)**

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.



March 23, 2018

Signed

Dated

TONI HUDSON, TRANSCRIBER

TAB 8

1 UNI TED STATES DI STRI CT COURT
2 EASTERN DI STRI CT OF TEXAS
3 BEAUMONT DI VI SI ON

4 UNI TED STATES OF AMERI CA | DOCKET NO. 1:15CR92
5 VS. | MAY 2, 2017
6 STEFONE DWAYNE PALOMO | 2:07 P. M.
7 BEAUMONT, TEXAS

8 VOLUME 1 OF 1, PAGES 1 THROUGH 19

9
10 REPORTER' S TRANSCRI PT _OF SENTENCI NG HEARI NG
11 BEFORE THE HONORABLE MARCIA A. CRONE
12 UNI TED STATES DI STRI CT JUDGE

13
14 APPEARANCES:

15 FOR THE GOVERNMENT: JOHN ROSS
16 U. S. ATTORNEY' S OFFI CE
17 350 MAGNOLIA
SUI TE 150
BEAUMONT, TEXAS 7701

18 FOR THE DEFENDANT: ALBERT JOHN CHARANZA, JR.
19 ATTORNEY AT LAW
P. O. BOX 1825
20 LUFKI N, TEXAS 75902

21 COURT REPORTER: TONYA B. JACKSON, RPR-CRR
22 FEDERAL OFFI CI AL REPORTER
300 WI LLOW, SUI TE 239
23 BEAUMONT, TEXAS 77701

24
25 PROCEEDI NGS REPORTED USI NG COMPUTERI ZED STENOTYPE;
TRANSCRI PT PRODUCED VI A COMPUTER-AI DED TRANSCRI PTI ON.

1 [Open court, defendant present.)

2 THE COURT: This is Case No. 1:15CR92,

3 Defendant 4, *United States of America versus Stefone*

4 *Dwayne Palomo.*

02:07PM 5 Are you ready to proceed?

6 MR. ROSS: Good afternoon, your Honor. John
7 Ross for the USA. We are ready to proceed with
8 sentencing.

9 MR. CHARANZA: Al Charanza for the defendant.

02:07PM 10 Ready for sentencing.

11 THE COURT: All right. If you would please
12 come forward.

13 Have counsel and the defendant read and
14 discussed the presentence report, including any
02:08PM 15 revisions?

16 MR. CHARANZA: Yes, your Honor, we have.

17 THE COURT: Has counsel fully explained the
18 report to the defendant?

19 MR. CHARANZA: I have, your Honor.

02:08PM 20 THE COURT: And, Mr. Palomo, do you fully
21 understand the presentence report?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Does counsel or defendant wish to
24 make any comments, additions, or corrections to the
02:08PM 25 report?

1 MR. CHARANZA: No, your Honor.

2 THE COURT: And, Mr. Palomo, does the report
3 adequately cover your background?

4 THE DEFENDANT: Yes, ma'am.

02:08PM 5 THE COURT: Has the government read the
6 report; and does it wish to make any comments, addi ti ons,
7 or correcti ons?

8 MR. ROSS: We have; and we do not, your Honor.

9 THE COURT: Now, there were some objections
02:08PM 10 filed, one of which was resol ved; and there's two more.

11 You've got a bi ndi ng plea agreement in this case. I
12 don't --

13 MR. CHARANZA: That's correct. And I just
14 bel i eve as far as due process, in the event the law were
02:08PM 15 to change as to importati on, then it might -- just for
16 advocating for my client, that he di sagreed as to that
17 poi nt, that we shoul d at least object to it,
18 understandi ng there i s a bi ndi ng plea agreement that the
19 court we're asking to accept.

02:09PM 20 THE COURT: All right. You also compl ain
21 about -- well, as far as the Obj ecti on 2, that has to do
22 wi th importati on of methamphetamine. I think there's
23 Fi fth Ci rcuit authority on that.

24 MR. CHARANZA: That i s correct.

02:09PM 25 THE COURT: That's bi ndi ng on the court at

1 this time. So, that objection is overruled on No. 2.

2 No. 1 seems to do with the third level of
3 reduction that you're -- do you want to address that?

4 MR. CHARANZA: Yes, your Honor. We had
02:09PM 5 worked -- once I got retained -- I was the third attorney
6 on this case. I tried to work through several issues
7 getting up-to-speed in this case, as well as with
8 Mr. Palomo. He did have an opportunity to meet with the
9 U. S. Attorney and others in preparing for this case,
02:09PM 10 agreeing to even testify. We felt that he was -- his
11 cooperation at the end -- I know it was late, but that
12 was only because I came into this case late. We came to
13 the table that he should have that third point in this
14 case, and I know it's in the discretion of the U. S.
02:10PM 15 Government to provide that point.

16 THE COURT: Let me see.

17 All right. What's the government's position?

18 MR. ROSS: Your Honor, the cooperation simply
19 was not timely. It was on the eve of trial. The case
02:10PM 20 was pending for more than a year. I disagree with
21 Mr. Charanza that it was the lawyer's fault that
22 Mr. Palomo did not come to the table sooner but he was
23 very uncooperative and the government prepared for trial
24 and filed exhibits and it was only on the eve of trial
02:10PM 25 that he made that agreement. And it's reflected in the

1 plea agreement, frankl y, j udge.

2 THE COURT: Oh, i t's i n the plea agreement?

3 MR. ROSS: Well , I mean, I 'm saying that the
4 deal that was struck i s reflective of his -- of speci al
02:11PM 5 ci rcumstances i n the case.

6 MR. CHARANZA: I had to ask for an extensi on
7 of the plea deadl i ne because we were still trying to
8 negotiate an agreement.

9 THE COURT: All right. Well , i t seems to me
02:11PM 10 this i s a point that's up to the prosecutor' s di screti on.

11 I think Mr. Ross has expl ai ned why i t wasn' t afforded.

12 I 'm not going to overrule that determi nation. So, the
13 obj ecti on i s overrul ed.

14 All right. So, let's proceed.

02:11PM 15 So, the obj ecti on i s overrul ed.

16 To the extent the court previ ousl y deferred
17 acceptance of the plea agreement, i t i s now accepted,
18 whi ch real l y makes these obj ecti ons moot anyway.

19 The court fi nds that the i nformati on contai ned
02:11PM 20 i n the presentence report has suffi ci ent i ndici a of
21 rel i abi l i ty to support i ts probabl e accuracy. The court
22 adopts the factual fi ndi ngs, undi sputed facts, and
23 gui del i ne appl i cati ons i n the presentence report.

24 Based upon a preponderance of the evi dence
02:12PM 25 presented and the facts i n the report, while vi ewi ng the

1 Sentencing Guidelines as advisory, the court concludes
2 that the total offense level is 32, the criminal history
3 level is IV, which provides for an advisory guideline
4 range of 168 to 210 months; but in this case there's an
02:12PM 5 agreed sentence of 180 months; is that correct?

6 MR. CHARANZA: That's correct, your Honor.

7 MR. ROSS: That's correct, your Honor.

8 THE COURT: All right. Does defendant's
9 counsel wish to make any remarks on behalf of the
02:12PM 10 defendant?

11 MR. CHARANZA: Yes, your Honor. One of the
12 things in Mr. Palomo's case, he is from Newton County --
13 I'm sorry -- around the Newton area -- Kirbyville, more
14 specifically, and therefore is asking that he be allowed
02:12PM 15 or a recommendation to be housed at the Beaumont Federal
16 Correctional Institute here near Beaumont, Texas, to
17 assist in his family visiting him.

18 It's also documented in the presentence report
19 that he does have and has had a substance abuse problem
02:12PM 20 in the past, and we're asking that there be a
21 recommendation as to treatment while incarcerated.

22 THE COURT: Okay. It does -- there is a
23 recommendation here from probation that reflects that,
24 drug treatment while imprisoned. Okay. That will be
02:13PM 25 granted.

1 MR. CHARANZA: Okay. Thank you.

2 THE COURT: Okay. Does the defendant wish to
3 make a statement?

4 THE DEFENDANT: Yes, ma'am. I would like to
02:13PM 5 apologize to the court and to my family for making the
6 choices I made to place myself here, and I also would
7 like to ask that the judge look over my conspiracy
8 because I would have never signed for this plea agreement
9 if I was told I was going to be a career offender and
02:13PM 10 that the amount of drugs I was being charged for wasn't
11 going to affect me and come to find out that I wasn't
12 qualified to be a career offender and that the amount of
13 drugs I was charged for, it does make a difference on my
14 case. But I do accept my responsibility for the
02:14PM 15 wrongings I done and --

16 THE COURT: Well, this is a problem.

17 MR. CHARANZA: I explained to Mr. Palomo that
18 at the time we negotiated the agreement, the existing law
19 at the time, he would have been a career offender. There
02:14PM 20 was a change -- I've explained this to him -- in the
21 Fifth Circuit case law which still put him in the
22 guideline range, this plea agreement, as it's reflected,
23 and that we have an agreement with the U.S. Attorney's
24 office along those lines. I know he's had some
02:14PM 25 complaints about the attorneys prior to me, but I don't

1 think he has any complaints as to my conduct.

2 Is that correct?

3 THE DEFENDANT: Yes, sir.

4 MR. CHARANZA: Okay. I want the court to be
02:14PM 5 clear about that. He had two prior attorneys, and that
6 was most of his issue.

7 THE COURT: Well, but he's complaining about
8 it today; and this is really a concern. So, I mean, are
9 you trying to claim that your plea is involuntary?

02:14PM 10 THE DEFENDANT: Because I was told I was going
11 to be a career offender and that the amount of drugs I
12 was being charged for wasn't going to affect me; but come
13 to find out, that's how that got my base level at 32.

14 THE COURT: Well, I can't proceed with
02:15PM 15 sentencing if he is taking that position.

16 And if you want to file a motion to withdraw
17 your plea agreement --

18 THE DEFENDANT: I was wrong for the things I
19 did, but I --

02:15PM 20 THE COURT: -- you can try to do that but --
21 Do you want to talk with him?

22 MR. CHARANZA: I do, your Honor.

23 THE COURT: Okay. We can go to another case.

24 MR. CHARANZA: Sure.

02:15PM 25 THE COURT: I will say, you know, once you

1 file a motion and -- it depends on how that goes but that
2 could jeopardize the agreement that you have and if you
3 went to trial, it might be a lot more. You can lose
4 acceptance points, the points you got. You got the two
02:15PM 5 points. Well, those two points could disappear. I mean,
6 they would because you're not accepting responsibility
7 anymore.

8 MR. CHARANZA: I understand.

9 THE COURT: Okay. Why don't you talk about it
02:16PM 10 with him.

11 (Recess, 2:16 p.m. to 2:39 p.m.)

12 (Open court, defendant present.)

13 THE COURT: Okay. Let's come back, then, to
14 Mr. Palomo, 1:15CR92, Defendant 4.

02:39PM 15 MR. ROSS: May we approach, your Honor?

16 THE COURT: Yes.

17 All right. So, I'm -- we can only proceed if
18 Mr. Palomo is on board with the plea agreement and
19 acceptance of responsibility and things of that nature.

02:40PM 20 Mr. Ross, do you have any comments?

21 MR. ROSS: Yes, your Honor. Thank you.

22 I would submit to the court, judge -- the
23 court knows -- that his remedy at this time would be to
24 pursue a motion to withdraw his plea, which of course is
02:40PM 25 governed by the *Carr* factors and, you know, with the

1 bottom line being that it would be his burden to show a
2 fair and just reason for withdrawal. There are seven
3 factors and the very first factor is whether or not the
4 defendant is not asserting actual innocence and way down
02:40PM 5 at No. 6 is whether or not the plea is knowing and
6 voluntary. And it's set up this way so -- to prevent
7 defendants from gaming the system.

8 You know, another factor is the delay in
9 filling the motion, judge. In this case it's been more
02:41PM 10 than six months since he entered his plea agreement. So,
11 I would just submit, judge, that we can -- that that
12 would be his remedy at this time. If he wishes to try
13 and file a motion to withdraw his plea, we'd be glad, of
14 course, to respond to that. If he was successful, as the
02:41PM 15 court alluded to, his guidelines would bump up. He would
16 be looking at 210 months to 262 months.

17 THE COURT: If he's convicted.

18 MR. ROSS: If he was convicted. And I would
19 also add, judge, this isn't a felon in possession case.
02:41PM 20 This is a lengthy conspiracy involving videotaps, videos,
21 quite a lot of evidence in this case.

22 THE COURT: I see that.

23 MR. ROSS: Very, very lengthy, very, very
24 substantial evidence; and that's what should also be
02:42PM 25 considered.

1 THE COURT: Mr. Charanza, what does your
2 client wish to do?

02:42PM 3 MR. CHARANZA: He admitted that he was going
4 to accept responsibility; and my understanding, he was
5 going to take the plea agreement which we had negotiated.

6 THE COURT: But now he's trying to say it was
7 involuntary.

02:42PM 8 MR. CHARANZA: I understand. Because he felt
9 that his responsibility was closer to 30 on the
10 sentencing guide versus 32, which the presentence report
11 came out at 32. He felt his responsibility would have
12 been closer to 30, which would have reduced it by 2
13 points; and that essentially would reduce -- put him
14 closer to 121 to --

02:42PM 15 THE COURT: 30 and IV.

16 MR. CHARANZA: Yeah, 30 and IV.

17 THE COURT: Would be 135 to 168.

02:43PM 18 MR. CHARANZA: Correct. And then with 2
19 points responsibility, it might get it down to 121 to
20 151.

21 THE COURT: Well, but --

22 MR. CHARANZA: I understand. The two points,
23 I agree. I keep trying to explain that it's only
24 probably going to get down to 135 to 168.

02:43PM 25 THE COURT: At this point I just don't think I

1 can go forward if Mr. Palomo is going to continue to say
2 that his plea wasn't voluntary. I can't proceed.

3 MR. CHARANZA: Is that what you're telling the
4 court or not?

02:43PM 5 THE DEFENDANT: No, I'm going to accept the
6 plea. I agree.

7 THE COURT: What?

8 MR. CHARANZA: He said -- say it again.

9 THE DEFENDANT: I accept my responsibility and
02:43PM 10 this plea.

11 THE COURT: Well, do you accept the plea
12 agreement?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: And was it knowingly and
02:43PM 15 voluntarily made and signed?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: And you pled guilty on -- with
18 this agreement.

19 THE DEFENDANT: Yes, ma'am.

02:43PM 20 THE COURT: And you want to go forward with
21 that agreement?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Which is for the 180 months.

24 THE DEFENDANT: Yes, ma'am.

02:43PM 25 THE COURT: All right. Mr. Charanza, do you

1 have any concern about that?

2 MR. CHARANZA: I have nothing further, no,
3 because at the time we entered the plea, everything was
4 free and voluntarily. I think because just the way the
02:44PM 5 guidelines looked a little bit different and one Fifth
6 Circuit case out there. It did not take away the fact
7 that it was a free and voluntary plea in this case. He
8 was fully advised of all the ramifications that could
9 happen if he went to trial.

02:44PM 10 THE COURT: Obviously the punishment at trial
11 would be a lot greater if he was convicted. So, this is
12 still a really good deal considering those guidelines.

13 MR. CHARANZA: Right. And I believe it is in
14 his best interest.

02:44PM 15 THE COURT: All right. So, do you want to
16 proceed with sentencing at this time, Mr. Palomo?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Are you going to withdraw your
19 claim that your plea was involuntary?

02:44PM 20 THE DEFENDANT: No, ma'am.

21 THE COURT: Okay.

22 THE DEFENDANT: No, I want to continue. I
23 don't want to withdraw it.

24 MR. CHARANZA: I think he clarified that, your
02:44PM 25 Honor. He said, "I want to continue. I don't want to

1 wi thdraw. "

2 THE COURT: You don' t want to wi thdraw your
3 plea to the court?

4 THE DEFENDANT: No, ma' am.

02:44PM 5 THE COURT: Okay. I 'm asking if you want to
6 wi thdraw your contenti on today that your plea was
7 i nvol untary.

8 THE DEFENDANT: That I -- what's she sayi ng?
9 I don' t understand.

02:45PM 10 Yes, I want to wi thdraw i t.

11 THE COURT: Okay. So, are you now sayi ng your
12 pl ea was vol untary?

13 THE DEFENDANT: Yes, ma' am.

14 THE COURT: And you' re not contendi ng that i t
02:45PM 15 was not vol untary?

16 THE DEFENDANT: No, ma' am.

17 THE COURT: And you want to go forward wi th
18 sentencing pursuant to the pl ea agreement for 180 months;
19 is that ri ght?

02:45PM 20 THE DEFENDANT: Yes, ma' am.

21 THE COURT: Okay. So, we got down to that
22 point where we were aski ng for statements by the
23 defendant; and that' s when he made a di fferent ki nd of
24 statement. Is there anything further you wi sh to say?

02:45PM 25 THE DEFENDANT: No, ma' am.

1 THE COURT: All right. Does the attorney for
2 the government wish to make any remarks?

3 MR. ROSS: Unless you have questions, judge, I
4 do not have any further comments.

02:45PM 5 THE COURT: All right. Does counsel know of
6 any reason why sentence should not be imposed at this
7 time?

8 MR. CHARANZA: No, your Honor.

9 THE COURT: Pursuant to the Sentencing Reform
02:45PM 10 Act of 1984, having considered the factors noted in
11 18 U. S. C., Section 3553(a), and after having consulted
12 the advisory Sentencing Guidelines, it is the judgment of
13 the court that the defendant Stefone Dwayne Palomo is
14 hereby committed to the custody of the Bureau of Prisons
02:46PM 15 to be imprisoned for 180 months on Count 1 of the third
16 superseding indictment.

17 The sentence is within an advisory guideline
18 range that is greater than 24 months; and the specific
19 sentence is imposed after consideration of the factors
02:46PM 20 set forth in 18 U. S. C., Section 3553(a).

21 The term of imprisonment imposed by this
22 judgment shall run consecutively with any term of
23 imprisonment that may be imposed for evading arrest with
24 a vehicle, under Docket No. ND-6901, pending in Newton
02:46PM 25 County, Texas, District Court.

1 Now, probation recommended concurrently. I
2 don't see that. I don't agree with that because that's a
3 totally different offense than what he is pleading guilty
4 to here. So, I think those sentences should run
5 consecutively.

02:46PM

6 The court recommends to the Bureau of Prisons
7 that the defendant receive appropriate drug treatment
8 while imprisoned.

02:46PM

9 The court finds the defendant does not have
10 the ability to pay a fine. The court will waive the fine
11 in this case.

12 It is ordered the defendant shall pay the
13 United States a special assessment of \$100 which is due
14 and payable immediately.

02:47PM

15 Upon release from imprisonment, the defendant
16 shall be on supervised release for a term of 5 years.
17 Within 72 hours of release from the custody of the Bureau
18 of Prisons, the defendant shall report in person to the
19 probation office in the district to which the defendant
20 is released.

02:47PM

21 The defendant shall not commit another
22 federal, state, or local crime and shall comply with the
23 standard conditions that have been adopted by this court.
24 In addition, the defendant must comply with the mandatory
25 and special conditions and instructions that have been

1 set forth in the defendant's presentence report.

2 The court finds this to be a reasonable
3 sentence in view of the nature and circumstances of the
4 offense entailing the defendant's participation in a drug
02:47PM trafficking conspiracy involving the distribution of 50
5 grams or more of actual methamphetamine; his serving as a
6 retail dealer and facilitator of the drug trafficking
7 organization during the entirety of its six-year
8 operation; his selling methamphetamine that was imported
02:47PM 9 from Mexico as well as cocaine hydrochloride and cocaine
10 base with co-conspirators at a game room in Kirbyville,
11 Texas, and at other locations in Southeast Texas; his
12 discussing narcotics transactions in conversations with a
13 co-conspirator that were captured via wire intercept; his
02:48PM 14 selling "ice" methamphetamine and cocaine to a DEA
15 confidential source in 2015; his prior convictions for
16 unlawful possession with intent to deliver a controlled
17 substance (cocaine) and manufacture/delivery of a
18 controlled substance; his being on parole at the time of
19 the instant offense; his apparent gambling problem; and
02:48PM 20 his history of substance abuse. It will serve as just
21 punishment, promote respect for the law, and deter future
22 violations of the law.

24 You have a right to appeal your conviction if
02:48PM 25 you believe that your guilty plea was somehow unlawful or

1 i nvoluntary or if there was some other fundamental defect
2 in the proceedings that was not waived by your guilty
3 plea. You have a statutory right to appeal your sentence
4 under certain circumstances, particularly if you think
02:48PM 5 the sentence is contrary to law. A defendant, however,
6 may waive those rights as part of a plea agreement; and
7 you've entered into a plea agreement which waives certain
8 rights to appeal your conviction and sentence.

9 With the exception of the reservation of the
02:48PM 10 right to appeal on specified grounds set forth in the
11 plea agreement, you've waived any appeal, including
12 collateral appeal, of any error which may have occurred
13 surrounding the substance, procedure, or form of the
14 conviction and sentence in this case. Such waivers are
02:49PM 15 generally enforceable; but if you believe the waiver is
16 unenforceable, you can present that theory to the
17 appellate court.

18 With few exceptions any notice of appeal must
19 be filed within 14 days of judgment being entered in your
02:49PM 20 case. If you're unable to pay the cost of appeal, you
21 may apply for leave to appeal *in forma pauperis*. If you
22 so request, the clerk of the court will prepare and file
23 a notice of appeal on your behalf.

24 The presentence report is made part of the
02:49PM 25 record and is placed under seal except counsel for the

19

1 government and defense may have access to it for purposes
2 of appeal.

3 Were there any other counts?

4 MR. ROSS: Yes, your Honor. The government
5 moves to dismiss the remaining counts against this
6 defendant.

7 THE COURT: That's granted.

111 recommend the Beaumont facility.

13 MR. CHARANZA: Thank you, your Honor.

14 THE COURT: All right. If there's nothing
15 further, then you're excused.

16 (Proceedings adjourned, 2:49 p.m.)

18 COURT REPORTER'S CERTIFICATION

19 I HEREBY CERTIFY THAT ON THIS DATE, MARCH 5,
20 2018, THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE
21 RECORD OF PROCEEDINGS.

22

23

24

25

/s/
TONYA JACKSON, RPR-CRR

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was electronically filed with the Clerk of the Court using the CM/ECF system on May 23, 2018. Pursuant to Fed. R. App. P. 25(c)(2) and Fifth Cir. Loc. R. 25.2.5, filing with the ECF system constitutes service upon the below counsel of record in this case. Upon notification that the electronically filed Record Excerpts have been accepted as sufficient, a courtesy hard copy of this document will be mailed and a hard copy will be served by first-class United States mail, postage prepaid, to the following counsel of record in this case:

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J. Jeffrey Springer