

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JERRY WALKER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari To The United
States Court Of Appeals For The Seventh Circuit
USCA7 Case No. 17-3287

APPENDIX

JERRY WALKER
REG. NO. 04582-089
FEDERAL CORRECTIONAL INSTITUTION
POST OFFICE BOX 5000
PEKIN, ILLINOIS 61555-5000

PETITIONER / PRO SE

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted May 16, 2018
Decided June 15, 2018

Before¹

WILLIAM . BAUER, *Circuit Judge*
JOEL M. FLAUM, *Circuit Judge*

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

No. 17-3287 v.

JERRY WALKER, also known as JERRY RICHMOND,
Defendant-Appellant.

] Appeal from the United
] States District Court for
] the Eastern District of
] Wisconsin.
]
]
] No. 2:96-cr-00004-JPS-1
]
]
] J. P. Stadtmueller,
] Judge.

ORDER

Twenty years ago, the court vacated the conviction and sentence of defendant Jerry Walker for conspiracy to possess with intent to distribute cocaine – one of the eleven counts he was convicted of – because it amounted to an impermissible second punishment for the same conduct as Walker’s conviction and sentence on a continuing criminal enterprise count. *See United States v. Walker*, Appeal No. 97-2016 (7th Cir. Sept. 21, 1998). On October 13, 1998, the court issued the mandate, returning jurisdiction to district court. *See Kusay v. United States*, 62 F.3d 192, 194 (7th Cir. 1995) (the case is “in”

¹Circuit Judge Terence Evans was part of the original panel in Walker's direct appeal. He died on August 10, 2011, and therefore this case is being resolved by a quorum of the panel under 28 U.S.C. § 46(d).

-over-

the court of appeals until the mandate issues). The district court, however, did not correct the judgment to reflect our order, which should have been a purely ministerial act.

This omission was not brought to anyone's attention until nineteen years later when, on August 28, 2017, Walker filed a petition for writ of mandamus in this court. In his petition, Walker requested that "the District Court be compelled to amend the Petitioner's Judgment and Commitment Order . . . in compliance with this Court's mandate . . . to reflect that the conviction and sentence imposed on Count One (conspiracy to possess with intent to distribute in violation of 21 U.S.C. §§ 841 and 846) have been vacated." The court denied the mandamus petition when it found out Walker brought this omission to the district court's attention.

Acting on a separately filed motion in the district court, that court corrected the judgment in Walker's case "*nunc pro tunc* to October 19, 1998 to reflect the dismissal of the conspiracy count." The district court used that date because that was the date the district court received this court's mandate. In that same order, entered on October 18, 2017, the district court also directed the clerk to refund Walker any monies that had been paid toward the financial obligations attributable to the vacated conspiracy count. This did not satisfy Walker, and he appealed.

On October 27, 2017, nine days after the district court issued its order and the corrected judgment, Walker also filed a motion to be resentenced, seeking a full resentencing to take advantage of the changes in the sentencing laws that occurred over the past nineteen years. The district court denied the motion on February 2, 2018. Walker's notice of appeal of that order – actually, his opening brief in this appeal which we treat as a notice of appeal, *see Smith v. Barry*, 502 U.S. 244 (1992) – was mailed on February 21, 2018, five days late. Despite Walker's tardiness, we can review the February 2, 2018 order – in addition to the district court's October 18, 2017 order – because earlier this month the government explicitly waived its right to enforce the 14-day time limit of Fed. R. App. P. 4(b)(1)(A). *See United States v. Rollins*, 607 F.3d 500, 501 (7th Cir. 2010).

The district court acted appropriately when it vacated Walker's conviction and sentence on the drug conspiracy count, leaving undisturbed the remainder of Walker's sentence. That is precisely what the district court should have done twenty years ago – our decision of September 21, 1998, vacated the conviction and sentence on the drug conspiracy count, nothing more.

Additionally, as noted above, the corrected judgment issued *nunc pro tunc* to October 19, 1998. This was a proper use of the court's *nunc pro tunc* power to change an incorrect record. This court vacated the conviction and sentence on the drug conspiracy

count, without a remand for resentencing, pursuant to the latitude afforded the court of appeals under 28 U.S.C. § 2106, and the district court's *nunc pro tunc* judgment merely cleaned up an oversight in its records. *Cf. Justice v. Town of Cicero*, 682 F.3d 662, (7th Cir. 2015) (a *nunc pro tunc* order is used to "correct inaccurate records"); *In re IFC Credit Corp.*, 663 F.3d 315, 317-18 (7th Cir. 2011) (same); *Central Laborers' Pension, Welfare and Annuity Funds v. Griffee*, 198 F.3d 642, 644 (7th Cir. 1999) (the "proper office of a *nunc pro tunc* order is to correct a mistake in the records"). Walker's insistence on a full resentencing should have been brought up much earlier – back in 1998 when jurisdiction returned to the district court. In short, it is far too late in the day, decades in fact, to talk about resentencing.

AFFIRMED.

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

August 8, 2018

Before

WILLIAM J. BAUER, *Circuit Judge*

JOEL M. FLAUM, *Circuit Judge*

No. 17-3287

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

Appeal from the United States
District Court for the Eastern
District of Wisconsin.

v.

JERRY WALKER, also known as
JERRY RICHMOND,
Defendant-Appellant.

No. 2:96-cr-00004-JPS-1

J. P. Stadtmauer,
Judge.

ORDER

On consideration of defendant-appellant's petition for rehearing and rehearing *en banc*, filed on July 25, 2018, in connection with the above-referenced case, no judge in active service has requested a vote on the petition for rehearing *en banc*, and both of the judges on the original panel have voted to DENY the petition for rehearing. It is, therefore, ORDERED that the petition for rehearing and petition for rehearing *en banc* are DENIED.

UNITED STATES DISTRICT COURT

APR - 4 1997

EASTERN District of WISCONSIN

0 CLOCK
SOFRON B. NEDILSKY

UNITED STATES OF AMERICA

V.

JERRY WALKER
a/k/a Jerry Richmond
(Name of Defendant)

APR

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

Case Number: 96-CR-4

Martin E. Kohler
Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) _____
 was found guilty on count(s) One (1), Two (2), Three - Ten (3-10), and Eleven (11) after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count, which involve the following offenses:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
-----------------	-------------------	------------------------	-----------------

SEE PAGE 2

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

The defendant has been found not guilty on count(s) _____ and is discharged as to such count(s).

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

It is ordered that the defendant shall pay a special assessment of \$ 550.00 for count(s) One (1), Two (2), Three-Ten (3-10) and Eleven (11), which shall be due immediately

as follows: to U.S. Clerk of Court, 517 E. Wisconsin Ave., Room 362, Milwaukee, WI.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's Soc. Sec. No.: 397-78-0893

Defendant's Date of Birth: December 19, 1965

April 4, 1997
Date of Imposition of Sentence

Defendant's Mailing Address:

Signature of Judicial Officer

Rudolph T. Randa

United States District Judge

Name & Title of Judicial Officer

Defendant's Residence Address: U.S. District Court
Eastern Div. of Wis.I hereby certify that this is
a true and correct copy of the original now
remaining of record in my office.4/4/97
Date

2412 West Cypress Street

U.S. DISTRICT COURT CLERK

Milwaukee, Wisconsin 53206

4/7/97
Randal Takemoto

Defendant: Jerry Walker
 Case Number: 96-Cr-4

Judgment--Page 2 of 6

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
21 U.S.C. § 846 & 18 U.S.C. § 2	Conspiracy to possess with Intent Distribute Cocaine	December 5, 1995	1
21 U.S.C. § 848	Continuing Criminal Enterprise	December 5, 1995	2
21 U.S.C. § 841(a)(1) & 18 U.S.C. § 2	Possession with Intent to Distribute Cocaine	October 21, 1992 February 23, 1993 October 8, 1993 April 19, 1994 July 7, 1994 November 2, 1994 November 2, 1995 November 14, 1995	3 4 5 6 7 8 9 10
18 U.S.C. § 1956(a)(1)(B)(i) & 2	Money Laundering	June 13, 1994	11

Defendant: Jerry Walker
Case Number: 96-Cr-4Judgment--Page 3 of 6**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of Life Imprisonment as to Counts One (1) and Two (2), 240 month imprisonment as to each of counts Three - Eleven (3-11). All terms to run concurrently for a total term of Life Imprisonment.

Credit shall be given for time served.

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

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

The defendant shall surrender to the United States Marshal for this district.
a.m.

at _____ 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 3 p.m. on _____
 as notified by the United States Marshal.
 as notified by the probation office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____ at _____, with a certified copy of this judgment.

United States MarshalBy _____
Deputy Marshal

Defendant: Jerry Walker
Case Number: 96-Cr-4

Judgment--Page 4 of 6**SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of five (5) years as to each of Counts One (1) and Two (2). Three (3 years as to each of Counts Three - Eleven (3-11). All terms to run concurrent for a total term of five (5) years Supervised Release.

While on supervised release, the defendant shall not commit another federal state, or local crime and shall not illegally possess a controlled substance. The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). If this judgment imposes a restitution obligation, it shall be a condition of supervised release that the defendant pay any such restitution that remains unpaid at the commencement of the term of supervised release. The defendant shall comply with the following additional conditions:

- [X] The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.
- [X] The defendant shall pay any fines that remain unpaid at the commencement of the term of supervised release at a rate of no less than \$50.00 per month.
- [X] The defendant shall not possess a firearm or other dangerous weapon.
- [X] Pursuant to the Violent Crime Control and Law Enforcement Act of 1994, the defendant shall not illegally possess any controlled substance. Such possession will result in revocation of the supervised release term and the defendant will serve a term in prison.
- [X] The defendant is to cooperate with the IRS and submit all delinquent tax returns and pay all back taxes and interest at the direction of the probation officer.
- [X] The defendant is to provide access to all financial information to the probation officer.
- [X] The defendant shall not associate with any member, prospect, or associate member of the 2-Gang or any gang. The defendant shall have no communication whatsoever with the 2-Gang or any gang.
- [X] The defendant shall submit to random urinalysis testing as directed by the probation officer

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state or local crime. In addition:

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

Defendant: Jerry Walker
Case No: 96-Cr-4

Judgment--Page 5 of 6

FINE

The defendant shall pay a fine of \$ 5,000.00.

This amount is the total of the fines imposed on individual counts, as follows: Count One (1).

The defendant shall participate in the Federal Bureau of Prisons Inmate Financial Responsibility Program not to exceed 50% of his earnings. Payments shall apply first to the Special Assessment and thereafter to the Fine until paid in full.

The Court determines the defendant does not have the financial ability to pay interest on the fine, the cost of incarceration, community confinement and supervision and waives the interest on the fine, the cost of incarceration, community confinement and supervision in this case.

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

The interest requirement is waived.

The interest requirement is modified as follows:

This fine required shall be paid:

in full immediately.

in full not later than _____.

in equal monthly installments over a period of _____ months. The first payment is due on the date of this judgment. Subsequent payments are due monthly thereafter.

in installments according to the following schedule of payments:
as directed by the Probation Officer.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted July 16, 1998

Decided September 21, 1998*

Before

Hon. WILLIAM J. BAUER, Circuit Judge

Hon. JOEL M. FLAUM, Circuit Judge

Hon. TERENCE T. EVANS, Circuit Judge

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

No. 97-2016

v.

JERRY WALKER,
Defendant-Appellant.

] Appeal from the United
] States District Court for
] the Eastern District of
] Wisconsin.
]
]
] No. 96 CR 4
]
] Rudolph T. Randa,
] Judge.
]

ORDER

The following are before the court:

1. Appellant's suggestion of confession of error by the government, filed on June 24, 1998, by counsel for appellant.
2. Appellant's statement of position, filed on July 14, 1998, by counsel for appellant.
3. Appellee's statement of position, filed on July 16, 1998, by the United States Attorney's Office, Eastern District of Wisconsin.
3. Appellant's opening brief on appeal, filed on May 4, 1998, by counsel for appellant.
4. Appellee's response brief, filed on June 9, 1998, by the United States

After an examination of the briefs and the record, we have concluded that oral argument is unnecessary, and the appeal is submitted on the briefs and record. See Fed. R. App. P. 34(a); Cir. R. 34(f).

Attorney's Office, Eastern District of Wisconsin.

On March 6, 1996, a federal grand jury indicted Jerry Walker in a thirteen-count superseding indictment. The indictment charged, in relevant part, that Walker conspired to possess with intent to distribute cocaine (Count One), and that he participated in a continuing criminal enterprise (Count Two). *See 21 U.S.C. §§ 846, 848.* At trial, Walker was found guilty on eleven of the thirteen counts. On April 4, 1997, the district court sentenced the defendant to terms of life imprisonment on Counts One and Two, and to 240-month terms of imprisonment on each of the remaining nine counts, all sentences to run concurrently. The district court also imposed mandatory special assessments of \$50.00 on each of the eleven convictions. *See 18 U.S.C. § 3013(a)(2)(A).*

On appeal, Walker raises only one argument: he contends that his conviction and sentence for both the conspiracy and the continuing criminal enterprise ("CCE") counts represents unauthorized, cumulative punishment for the same conduct. He urges this court to enter an order vacating the district court's judgment and conviction on Count One, and the government agrees. After assuring ourselves that this court has jurisdiction to entertain Walker's appeal, an issue that neither party has addressed, we consider his argument on the merits. *See United States v. Dumas*, 94 F.3d 286, 289 n.1 (7th Cir. 1996); *see also Hope v. United States*, 43 F.3d 1140, 1143-44 (7th Cir. 1994); *Bernstein v. Lind-Waldock & Co.*, 738 F.2d 179, 182-83 (7th Cir. 1984).

The government's confessions of error are afforded great weight, but they do not relieve a reviewing court of the its burden to perform its judicial function. *See Sibron v. New York*, 392 U.S. 40, 58-59 (1968). "[T]he proper administration of the criminal law cannot be left merely to the stipulation of the parties." *Id.* (internal quotation and citation omitted). As the defendant and the government have correctly pointed out, however, resolution of Walker's case is squarely controlled by the Supreme Court's decision in *Rutledge v. United States*, 517 U.S. 292, 300, 307 (1996). The *Rutledge* Court concluded that a guilty verdict on a charge of engaging in a continuing criminal enterprise, *see 21 U.S.C. § 848*, necessarily includes a finding that the defendant participated in a drug conspiracy, *see id.* at § 846. Because the district court had entered sentences on both the continuing criminal enterprise and drug conspiracy convictions (and imposed statutory special assessments for each), the Court concluded that the second conviction amounted to an impermissible second punishment for the same underlying conduct. *See Rutledge*, 517 U.S. at 301.

That analysis holds here: the district court entered convictions and sentences against Walker on the continuing criminal enterprise and drug conspiracy counts, and imposed statutory special assessments for each conviction. On the facts of this case, the second conviction and its attendant sentence amount to an impermissible second punishment for the same underlying conduct. Accordingly, **IT IS ORDERED** that the conviction and sentence of defendant Jerry Walker for conspiracy to possess with intent to distribute cocaine, *see 21 U.S.C. § 846*, are **VACATED**.

SO ORDERED.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

JERRY WALKER,

Defendant.

Case No. 96-CR-04-1-JPS

ORDER

This criminal prosecution was assigned to the late Judge Rudolph T. Randa back in 1996, when the indictment was filed. It was not reassigned to this branch of the Court until twenty-one years later, in May 2017. The reassignment came in light of a letter from Defendant, requesting that the remainder of the fine imposed in his case be vacated. (Docket #588). As reasons therefor, Defendant cited his life sentence, consistent payments, and rehabilitative efforts. *Id.* In consultation with the U.S. Probation Department and the government, the Court concluded that it had no authority to grant Defendant the relief he requested. (Docket #589). Admittedly, the Court did not otherwise engage in a detailed review of the decades-old docket, wherein most of the relevant documents are not available in electronic format.

The Court heard nothing further on this case until the evening of August 28, 2017. At that time, it received notice from the Court of Appeals that Defendant had filed a petition for a writ of mandamus against the Court. Defendant's petition states that in 1998, the Court of Appeals vacated Count One of his sentence, but when the mandate issued and the case returned to the district court, nothing was done to memorialize this fact; no

amended judgment was issued to reflect the Court of Appeals' order. Defendant's petition seeks an amended judgment which eliminates the conviction and sentence for Count One in its entirety. In particular, the fine Defendant complained of in his May 2017 letter was imposed only as to Count One, meaning that it should have been vacated long ago and no funds should have been collected towards the payment thereof. On September 27, 2017, Defendant filed a motion with this Court requesting the same relief. (Docket #590).

The Court will now grant Defendant's motion and act to correct this long-standing error.¹ It will issue an amendment to the judgment and commitment order of April 4, 1997, (Docket #322), reflecting the dismissal of Count One by the Court of Appeals on October 19, 1998, (Docket #412). *See* 18 U.S.C. § 3572(c)(3). This amended judgment shall be *nunc pro tunc* to October 19, 1998. The Court will further order that the Clerk of the Court refund to Defendant any amounts which were collected pursuant to his financial obligations under the Count One sentence, namely his special assessment and fine. The Court also notes that no additional funds are required to be paid by Defendant as to Count One's sentence, so that if any are received in the interim between the date of the amended judgment and

¹Blame for this oversight cannot be laid entirely at the district court's feet. The Court of Appeals' order did not remand the case for resentencing, but instead merely vacated the sentence imposed as to Count One. (Docket #412). This action did not comport with the Court of Appeals' duty upon disposition of the appeal. *see* 18 U.S.C. § 3742(f)(1) ("If the court of appeals determines that--(1) the sentence was imposed in violation of law . . . , the court *shall* remand the case for further sentencing proceedings with such instructions as the court considers appropriate[.]") (emphasis added). Had the statute been followed, Judge Randa could have simply re-imposed the fine as to the remaining counts. At this late stage, however, the Court finds it more appropriate to eliminate the fine entirely.

the issuance of the refund check (a period that may comprise some days or weeks), those funds will likewise be returned.

Accordingly,

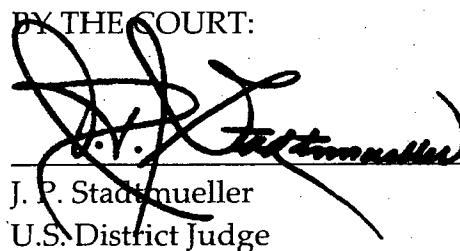
IT IS ORDERED that Defendant's motion to amend the judgment (Docket #590) be and the same is hereby **GRANTED**;

IT IS FURTHER ORDERED that an amendment to Defendant's judgment and commitment order (Docket #322) shall issue in accordance with the terms of this Order; and

IT IS FURTHER ORDERED that the Clerk of the Court shall remit payment to Defendant all amounts he has paid toward the financial obligations imposed as to the offense of conviction in Count One as a refund of those improperly collected amounts.

Dated at Milwaukee, Wisconsin, this 18th day of October, 2017.

BY THE COURT:



J. P. Stadtmueller
U.S. District Judge

United States District Court
Eastern District of Wisconsin

UNITED STATES OF AMERICA

v.

JERRY WALKER

AMENDED JUDGMENT AND ORDER VACATING
COUNT ONE OF THE SUPERSEDING INDICTMENT
PURSUANT TO THE MANDATE OF THE COURT OF
APPEALS

Case Number: 96-CR-4-1-JPS

Marshal Number: 04582-089

Martin Kohler

Defendant's Attorney

Joseph Wall

Assistant United States Attorney

DATE OF ORIGINAL JUDGMENT: April 4, 1997

DATE OF AMENDED JUDGMENT: *Nunc pro tunc* October 19, 1998

Pursuant to the mandate of the Court of Appeals, issued on October 19, 1998, Defendant's conviction and sentence as to Count One of the Superseding Indictment was vacated. The Court will, therefore, dismiss Count One of the Superseding Indictment in its entirety. This amended judgment shall have retroactive effect as of October 19, 1998. Accordingly,

IT IS ORDERED that Count One of the Superseding Indictment be and the same is hereby DISMISSED, along with the terms of the sentence which was imposed thereon, including a:

1. Term of life imprisonment;
2. Term of five years' supervised release and attendant conditions;
3. \$50.00 special assessment; and
4. \$5,000.00 fine.

Except as otherwise provided herein, all provisions of the previous judgment shall remain intact, and the same are incorporated herein by reference as though set forth herein at length.

Dated at Milwaukee, Wisconsin, this 18th day of October, 2017.

SHAQITA
KHABEER

Digitally signed by SHAQITA
KHABEER
DN: c=US, o=U.S. Government,
ou=Dept of Justice, ou=BOP,
cn=SHAQITA KHABEER
O:9.2342.19200300.100.1.1=1500
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Date: 2017.10.30 13:49:25 -05'00'

J.P. Stadtmueller
U.S. District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 96-CR-04-1-JPS

JERRY WALKER,

Defendant.

ORDER

In 1998, the Court of Appeals ruled that Count One of Defendant's conviction was impermissibly duplicative of the other counts of conviction. (Docket #412). On October 18, 2017, in accordance with this mandate, the Court entered an order and amended judgment vacating Defendant's conviction on Count One of his sentence. (Docket #593). On October 27, 2017, Defendant moved for reconsideration of that order, arguing that the Court must conduct a full resentencing in this case, including reevaluating the sentencing factors outlined in 18 U.S.C. § 3553. (Docket #596). This is not what the Court of Appeals directed, and this Court is not at liberty to do more. *U.S. v. Gibbs*, 403 F. App'x 82, 83 (7th Cir. 2010) (a full resentencing after an appeal is improper if the Court of Appeals' mandate directed the district court to correct a discrete error).¹ Defendant's motion must, therefore, be denied.

¹On January 29, 2018, Defendant filed a motion seeking a ruling on his motion for reconsideration. (Docket #608). The Court had refrained from deciding the motion because it believed jurisdiction was lacking. Defendant had filed a notice of appeal eight days after the motion was docketed. *See* (Docket #597). With Defendant's latest motion, the Court learned for the first time that the Court of Appeals was waiting for a ruling on the motion for reconsideration. With the issuance of this Order, Defendant's motion for a ruling becomes moot.

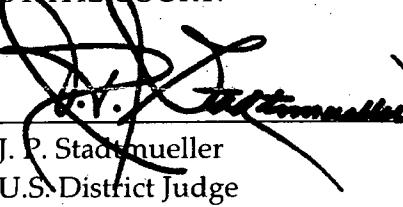
Accordingly,

IT IS ORDERED that Defendant's motion for reconsideration (Docket #596) be and the same is hereby **DENIED**; and

IT IS FURTHER ORDERED that Defendant's motion for a status update (Docket #608) be and the same is hereby **DENIED as moot**.

Dated at Milwaukee, Wisconsin, this 2nd day of February, 2018.

BY THE COURT:



J. P. Stadtmueller
U.S. District Judge

**Additional material
from this filing is
available in the
Clerk's Office.**