

Appendix 1

District Court Judgment

5:15-cr-00116-1

DE# 85 February 23, 2018

FILED

UNITED STATES DISTRICT COURT FEB 23 2018

Eastern District of Kentucky – Central Division at Lexington, AT LEXINGTON
ROBERT R. CARR, CLERK U.S. DISTRICT COURT

UNITED STATES OF AMERICA

v.

Bryant Lamar Monie, aka B, aka Bee Deezy

JUDGMENT IN A CRIMINAL CASE

Case Number: 5:15-CR-116-DCR

USM Number: 20400-032

Christopher A. Spedding

Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) 1 & 8

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

was found guilty on count(s) 6 & 7 after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

| Title & Section | Nature of Offense | Offense Ended | Count |
|------------------------------|--|---------------|-------|
| 21:841(a)(1), 846 & 851 | Conspiracy to Distribute Heroin and Cocaine | 08/13/2015 | 1 |
| 21:841(a)(1), 851k & 18:2 | Possession with the Intent to Distribute Heroin and Cocaine, Aiding & Abetting | 08/13/2015 | 6 |
| 18:924(c)(1) | Possession of a Firearm in Furtherance of a Drug Trafficking Crime | 08/13/2015 | 7 |
| 18:922(g)(1) & 924(c)(1) | Felon in Possession of a Firearm (Armed Career Criminal) | 08/13/2015 | 8 |

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

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

Count(s) 2 - 5 _____ is are dismissed on the motion of the United States.

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

February 23, 2018

Date of Imposition of Judgment

Signature of Judge

Honorable Danny C. Reeves, U.S. District Judge

Name and Title of Judge

February 23, 2018

Date

DEFENDANT: Bryant Lamar Monie, aka B, aka Bee Deezy
CASE NUMBER: 5:15-CR-116-DCR

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IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:
One Hundred Eighty (180) Months on each of Counts 1, 6, and 8, all to run concurrently with each other, and Sixty (60) Months on Count 7, to run consecutively to Counts 1, 6, and 8, for a total term of TWO HUNDRED FORTY (240) MONTHS

The court makes the following recommendations to the Bureau of Prisons:
It is recommended to the Bureau of Prisons that the defendant participate in a job skills and/or vocational training program.
It is recommended to the Bureau of Prisons that the defendant participate in a substance abuse treatment program, although the RDAP program is not recommended.
It is recommended to the Bureau of Prisons that the defendant participate in an anger management program.

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: Bryant Lamar Monic, aka B, aka Bee Deezy
CASE NUMBER: 5:15-CR-116-DCR

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SUPERVISED RELEASE

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

Six (6) Years on each of Counts 1 and 6, and Five (5) Years on each of Counts 7 and 8, all to run concurrently, for a total term of SIX (6) YEARS

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. (Check, if applicable.)
4. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. (Check, if applicable.)
5. You must cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. (Check, if applicable.)
7. 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: Bryant Lamar Monie, aka B, aka Bee Deezy
CASE NUMBER: 5:15-CR-116-DCR

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STANDARD CONDITIONS OF SUPERVISION

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

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

U.S. Probation Office Use Only

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

Defendant's Signature _____ Date _____

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DEFENDANT: Bryant Lamar Monie, aka B, aka Bee Deezy
CASE NUMBER: 5:15-CR-116-DCR

SPECIAL CONDITIONS OF SUPERVISION

1. You must provide the probation officer with access to any requested financial information.
2. You must submit your person, property, house, residence, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1), but including other devices excluded from this definition), other electronic communications or data storage devices or media, or office, to a search conducted by a United States probation officer. Failure to submit to a search will be grounds for revocation of release. You must warn any other occupants that the premises may be subject to searches pursuant to this condition.
3. You must participate in a substance abuse treatment program and must submit to periodic drug and alcohol testing at the direction and discretion of the probation officer during the term of supervision. Said program may include one or more cognitive behavioral approaches to address criminal thinking patterns and antisocial behaviors. You must pay for the cost of treatment services to the extent you are able as determined by the probation officer.
4. You must refrain from obstructing or attempting to obstruct or tamper, in any fashion, with the efficiency and accuracy of any prohibited substance testing required as a condition of release.
5. You must abstain from the use of alcohol.
6. You must provide to the USPO, within 7 (seven) days of release from the custody of the Bureau of Prisons, a written report, in a form the USPO directs, listing each and every prescription medication in your possession, custody or control. The list must include, but not be limited to, any prescription medication that contains a controlled substance and encompasses all current, past and outdated or expired prescription medications in your possession, custody, or control at the time of the report.
7. You must notify the USPO immediately (i.e., within no later than 72 hours) if you receive any prescription for a medication containing a controlled substance during the period of supervised release. You must provide the USPO such documentation and verification as the USPO may reasonably request and in a form the USPO directs.
8. You must comply strictly with the orders of any physician or other prescribing source with respect to use of all prescription medications.
9. You must report any theft or destruction of your prescription medications to the U.S. Probation Officer within 72 hours of the theft or destruction.
10. You must not purchase, possess, use, distribute or administer any controlled substance or paraphernalia related to controlled substances, except as prescribed by a physician and must not frequent places where controlled substances are illegally sold, used, distributed or administered.

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CRIMINAL MONETARY PENALTIES

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

| <u>TOTALS</u> | <u>Assessment</u> | <u>JVTA Assessment*</u> | <u>Fine</u> | <u>Restitution</u> |
|---------------|----------------------------|-------------------------|-------------|---------------------|
| | \$ 400.00 (\$100/Count) | \$ 0.00 | \$ 1,200.00 | \$ Community Waived |

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

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

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

| <u>Name of Payee</u> | <u>Total Loss**</u> | <u>Restitution Ordered</u> | <u>Priority or Percentage</u> |
|----------------------|---------------------|----------------------------|-------------------------------|
| | | | |

TOTALS \$ _____ \$ _____

Restitution amount ordered pursuant to plea agreement \$ _____

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

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

the interest requirement is waived for the fine restitution.

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

* 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.

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SCHEDULE OF PAYMENTS

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

A Lump sum payment of \$ 1,600.00 due immediately, balance due
 not later than _____, or
 in accordance with C. D E, or F below; or

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

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

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

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

F Special instructions regarding the payment of criminal monetary penalties:

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

INCLUDE CASE NUMBER WITH ALL CORRESPONDENCE

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

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

Joint and Several

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

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:
(1) A 9mm Taurus Pistol, Model PT1911, Serial No. TFX39141557, (2) 16 rounds 9mm ammunition, and (3) 83 rounds of assorted ammunition.

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.

Appendix 2

6th Circuit Opinion Affirming

18-5198

August 31, 2018

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 18-5198

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Aug 31, 2018
DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA,)
)
Plaintiff-Appellee,)
)
v.)
) ON APPEAL FROM THE UNITED
BRYANT LAMAR MONIE,) STATES DISTRICT COURT FOR
) THE EASTERN DISTRICT OF
Defendant-Appellant.) KENTUCKY
)
)

ORDER

Before: ROGERS, KETHLEDGE, and NALBANDIAN, Circuit Judges.

Bryant Lamar Monie, a federal prisoner represented by counsel, appeals the district court's judgment sentencing him to 240 months of imprisonment. The parties have waived oral argument, and this panel unanimously agrees that oral argument is not needed. *See Fed. R. App. P. 34(a).*

In 2016, Monie pleaded guilty to conspiring to distribute heroin and cocaine, in violation of 21 U.S.C. § 846, and to being a felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1) and 924(e)(1). A jury then convicted him of possessing with intent to distribute heroin and cocaine, in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2; and possessing a firearm in furtherance of a drug-trafficking crime, in violation of 18 U.S.C. § 924(c)(1). After we determined that the district court had erroneously informed Monie that he faced a maximum ten-year sentence for possessing a firearm as a felon, when he actually faced a minimum fifteen-year term as an armed career criminal, *see United States v. Monie*, 858 F.3d 1029, 1034 (6th Cir.

No. 18-5198

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2017), we remanded the case to the district court to allow him to withdraw his guilty plea on that count. Monie reentered his guilty plea, and the district court sentenced him to 60 months of imprisonment on the possession-of-a-firearm-in-furtherance count, to run consecutively to 180 months on the remaining counts, for a total of 240 months of imprisonment, to be followed by six years of supervised release.

On appeal, Monie challenges the district court's determination that he possessed the requisite predicate offenses under the Armed Career Criminals Act ("ACCA") to categorize him as an armed career offender and require a 15-year mandatory minimum prison sentence pursuant to 18 U.S.C. § 924(e). He argues that his four predicate Kentucky drug-trafficking convictions carried a maximum sentence of five years of imprisonment prior to any enhancements, *see Ky. Rev. Stat. §§ 218A.1412(3)(b)(1), 532.060*, and thus would not satisfy the ACCA's definition of a "serious drug offense," which requires "a maximum term of imprisonment of ten years or more . . . prescribed by law." 18 U.S.C. § 924(e)(2)(A)(ii). He claims that his maximum sentences for these offenses were increased to ten years by his "status" as a persistent offender under Kentucky law, *see Ky. Rev. Stat. § 532.080(2), (5)*, and not by a conviction for a second or subsequent drug-trafficking offense. He argues this distinction differentiates his case from *United States v. Rodriguez*, 553 U.S. 377 (2008), in which the Supreme Court held that recidivism enhancements should be taken into account when determining the "maximum term of imprisonment . . . prescribed by law" under the ACCA. *Id.* at 393.

We review *de novo* a district court's determination that a predicate offense qualifies under the ACCA. *See United States v. Kearney*, 675 F.3d 571, 573 (6th Cir. 2012); *United States v. Benton*, 639 F.3d 723, 729 (6th Cir. 2011). Monie's assertion that his maximum sentences for his predicate offenses were enhanced by his "status" as a persistent offender, as opposed to his having been convicted of drug trafficking as a second or subsequent offense, does not change the fact that his Kentucky drug-trafficking offenses, as "prescribed by law," carried a potential maximum sentence of ten years. *See 18 U.S.C. § 924(e)(2)(A)(ii)*. In *Rodriguez*, the Supreme Court addressed a similar situation in which that defendant's prior drug convictions, if considered "without taking recidivist enhancements into account," would not have met the

No. 18-5198

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ACCA's requirement that a "serious drug offense" be punishable by "a maximum term of imprisonment of ten years or more." 553 U.S. at 380-81. There, the Washington statutes of conviction prescribed a maximum term of five years for a first offense, but a second statute required ten years imprisonment for a "second or subsequent offense." *See id.* at 382-83. The Supreme Court concluded that "evaluating a predicate conviction under the serious drug offense provision requires a sentencing court to take into account prior recidivism enhancements," *Kearney*, 675 F.3d at 575-76 (citing *Rodriguez*, 553 U.S. at 393), and concluded that the enhanced ten-year maximum set by the applicable recidivist provision should apply. *Rodriguez*, 553 U.S. at 382-84, 393.

Here, Monie's drug-trafficking convictions—prior to applying Kentucky's recidivism statute—carried a maximum term of five years of imprisonment. *See Ky. Rev. Stat. §§ 218A.1412(3)(b)(1), 532.060.* However, Kentucky Revised Statutes § 532.080(2) and (5) require a persistent felony offender—a person over twenty-one years of age who stands convicted of a felony after having been convicted of a previous felony—to be sentenced to the next highest degree than the offense of conviction, which in Monie's case would carry a potential maximum of ten years of imprisonment. The distinction he seeks to draw between his "status" under Kentucky law as a subsequent offender and that of the defendant in *Rodriguez*, who was convicted of a second or subsequent drug-trafficking offense, is an illusory one. Monie's maximum possible sentences "prescribed by law" for his predicate offenses were ten years after enhancement by Kentucky's recidivism statute. *Rodriguez* directs sentencing courts to include recidivism enhancements when determining whether a prior conviction qualifies as a "serious drug offense."

Accordingly, we **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

Appendix 4

Criminal Minutes: Sentencing

DE#83

February 23, 2018

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION AT LEXINGTON
CRIMINAL MINUTES - SENTENCING

Case No. 5:15-CR-116-DCR

At Lexington

Date February 23, 2018

USA vs Bryant Lamar Monie X present X custody bond OR Age

DOCKET ENTRY: Defendant's objection to the Presentence Report ("PSR") is **OVERRULED**. The Court adopts the findings and guideline calculations contained in the PSR. The government's oral motion for a three-level reduction for acceptance credit is **SUSTAINED**. The defendant filed a motion for a reasonable sentence. [Record No. 78] Inasmuch as the Court has determined that a reasonable sentence has been imposed, and the defendant has requested a term of imprisonment below the sentence imposed, the motion [Record No. 78] is **DENIED**. The government's oral motion to dismiss remaining counts 2-5 is **SUSTAINED** effective upon entry of the Judgment.

PRESENT: HON. DANNY C. REEVES, U.S. DISTRICT JUDGE

| | | | |
|---|--------------------------------------|----------------------------|--|
| <u>Lisa Moore</u> Deputy Clerk | <u>Peggy Weber</u> Court Reporter | <u>None</u> Interpreter | <u>Roger West</u> Assistant U.S. Attorney |
| Counsel for Defendant <u>Christopher Spedding</u> | | <u>X</u> present | <u> </u> retained <u>X</u> appointed |

PROCEEDINGS: **SENTENCING** (Non-evidentiary)

X Objection to Presentence Report.

 No objection to Presentence Report.

 The Court Reporter shall transcribe the proceeding of the hearing on the Objections to the Presentence Report and file in the record.

X Court's Advice of Right to Appeal provided to defendant.

X Transcript shall be deemed as written findings of Court.

X Judgment shall be entered (See Judgment & Commitment.)

X Defendant remanded to custody of U. S. Marshal.

Copies: COR, USP, USM

Initials of Deputy Clerk: lkm
TIC: /25

Appendix 5

Sentencing Transcript

DE#93

March 28, 2018

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION
LEXINGTON, KENTUCKY

UNITED STATES OF AMERICA,) Lexington Criminal
Plaintiff,) Action No. 15-116
-vs-) At Lexington, Kentucky
BRYANT LAMAR MONIE,) February 23, 2018
Defendant.) 1:30 p.m.

TRANSCRIPT OF SENTENCING HEARING PROCEEDINGS
BEFORE THE HONORABLE DANNY C. REEVES
UNITED STATES DISTRICT JUDGE

13 | Appearances of Counsel:

14 On behalf of Plaintiff: ROGER W. WEST, ESQ.
15 Assistant U.S. Attorney
260 West Vine Street
16 Suite 300
Lexington, Kentucky 40507

17 On behalf of Defendant: CHRISTOPHER A. SPEDDING, ESQ.
18 271 West Short Street
Suite 100
Lexington, Kentucky 40507

20 Court Reporter: PEGGY W. WEBER, RPR
Official Court Reporter
U.S. District Court
P.O. Box 362
Lexington, Kentucky 40588
(859) 421-0814
21
22

25 Proceedings recorded by mechanical stenography,
transcript produced by computer.

1 (Whereupon, the Sentencing Hearing proceedings
2 commenced on Friday, February 23, 2018, at 1:30 p.m., on
3 the record in open court, as follows.)

4 THE COURT: Thank you.

5 Madam Clerk, if you would call the matter
6 scheduled for 1:30, please.

7 THE CLERK: Yes, Your Honor.

8 Lexington Criminal Action Number 15-116,
9 United States of America versus Bryant Lamar Monie,
10 called for sentencing.

11 THE COURT: Thank you.

12 If counsel would state their appearances,
13 please.

14 Mr. West.

15 MR. WEST: Yes, Your Honor. Good afternoon.

16 Roger West on behalf of the United States.

17 THE COURT: Thank you.

18 Mr. Spedding.

19 MR. SPEDDING: Good morning, Your Honor.

20 Christopher Spedding for Bryant Monie, seated
21 to my right.

22 THE COURT: All right. Thank you.

23 This matter is scheduled for a sentencing
24 hearing this afternoon.

25 Before we proceed let me first confirm that

1 Mr. Monie has had the opportunity to review his
2 presentence report and also to discuss it with his
3 attorney to his satisfaction.

4 Is that correct?

5 DEFENDANT MONIE: Yeah.

6 THE COURT: All right. Mr. Spedding?

7 MR. SPEDDING: Yes.

8 THE COURT: All right. The presentence report
9 will be filed in the record under seal. It is available
10 if the parties should need it for any reason, but it's
11 not available for the general public to review.

12 There's one objection to the presentence report
13 filed by the defendant. The defendant challenges his
14 status as an armed career criminal.

15 Mr. Spedding, would you like to be heard on
16 that, or do you wish to stand on the pleadings?

17 MR. SPEDDING: Your Honor, actually, I would
18 like to be heard on it, please.

19 THE COURT: All right. Yes, sir.

20 MR. SPEDDING: As you can see from the
21 memorandum that I provided, and I can be very brief as to
22 what our position is on it.

23 Mr. Monie, the predicate offenses that they're
24 using to support the armed career criminal are four prior
25 convictions out of Montgomery -- or Montgomery County,

1 Kentucky. They were originally charged as class C
2 felonies. They were amended, and he pled guilty to
3 class B felonies, which all carry one to five years. As
4 charged they carry five to 10.

5 THE COURT: With a PFO designation, that would
6 enhance the penalty to a next higher class of felony;
7 correct, under Kentucky law?

8 MR. SPEDDING: That's correct, and that's
9 532.080.

10 In this particular case he was convicted of
11 four class D felonies, which carried one to five years,
12 and by virtue of his status as a persistent felony
13 offender, he was given five years concurrent on each
14 count.

15 So our position, and the case law in Kentucky
16 supports this, Your Honor, is that the persistent felony
17 offender is not -- it's not a conviction. It's simply a
18 status. It's not a criminal offense. And Derringer,
19 which is 386 Southwest 3d, 123, as well as White versus
20 Commonwealth, 770 Southwest 2d, 222, both stand for the
21 fact that they are not -- persistent felony offender is
22 not, in fact, a conviction. It is a status.

23 THE COURT: Isn't your argument foreclosed by
24 the Rodriguez case?

25 MR. SPEDDING: I don't believe it is,

1 Your Honor, because the Rodriguez case deals with the
2 Washington statute, which my reading of it is that the
3 statute itself is enhanced. It's a recidivist statute,
4 much like Kentucky's 218A.1412. And what those statutes
5 stands for are subsequent offenses, meaning, for
6 instance, in Kentucky if you pick up a trafficking,
7 controlled substance first offense, it's a class
8 D felony -- or, I'm sorry, it's a class C felony, five to
9 10 years. If you pick up a subsequent offense, it's a
10 class B.

11 So what Rodriguez stands for, at least my
12 reading of it, was that they could use the penalties on
13 the subsequent offense even though the subsequent offense
14 was itself a class B felony -- class C felony. So I
15 think that there's a distinction because you're dealing
16 with substantive offenses in the Rodriguez case; whereas,
17 here you're dealing with a status.

18 THE COURT: Aren't we really looking at the
19 potential penalty that may be imposed under Rodriguez?

20 MR. SPEDDING: I don't believe we are. I
21 believe we're looking at the conviction.

22 THE COURT: If we do look at the potential
23 penalties, I suppose you would have to agree that this
24 would -- these prior convictions would qualify as serious
25 felonies under the statute, 924.

1 MR. SPEDDING: I believe as they were charged
2 they do. Is that what you mean, Your Honor?

3 THE COURT: No, if we look at the potential
4 penalties.

5 MR. SPEDDING: If we are solely looking at the
6 penalties, yes, I agree with it.

7 THE COURT: All right. Thank you.

8 Mr. West.

9 MR. WEST: Your Honor, I filed a memorandum on
10 this matter, and I think the Court is exactly correct,
11 as probation officer, Rodriguez case forecloses this.
12 It's very seldom when you look at cases for comparison
13 that they're almost virtually identical.

14 In this matter the only distinction is the
15 State of Washington, as opposed to the State of Kentucky.

16 It -- I was a state prosecutor for almost a
17 decade, and I look at the original conviction charge,
18 trafficking in controlled substances, cocaine, which is a
19 five to 10-year offense.

20 How it got amended from a C down to D felony is
21 a bit of a mystery, but the important part is it was
22 enhanced as a PFO second degree, changing the penalty
23 from 10 to 20 years.

24 The only way that Mr. Spedding's argument would
25 make any sense at all is if he wasn't convicted of a PFO

1 second degree charge. The penalty would be as amended,
2 one to five years, but in this case he wasn't with a PFO
3 two. The Rodriguez case is controlling.

4 I submit the objection should be denied,
5 please.

6 : THE COURT: I agree with the United States.
7 I've read Rodriguez again, and I do believe that we're
8 looking at the potential penalty that may be imposed
9 based upon the status as a prior felony offender. Under
10 that scenario when we look at the penalty, the range
11 would be such that it would constitute a serious violent
12 felony as the term is defined by 924, specifically,
13 Title 18, Section 924(e)(2)(A)(ii); and, therefore, the
14 defendant is properly classified as an armed career
15 criminal subject to the enhanced penalty.

16 The objection will be overruled.

17 The Court will adopt the findings that are
18 contained in the presentence report, as well as the
19 guideline calculations. I will review those with the
20 parties at this time.

21 The 2016 edition of the guideline manual is
22 used in this matter. There are no amendments in 2017.

23 Counts 1 and 6 are grouped under the section of
24 the guidelines. It's referenced in paragraph 24.

25 Count group one would include Counts 1 and 6,

1 and the base offense level would be a level 16.

2 There is a two-level increase based upon the
3 defendant's status as an organizer/leader. That results
4 in an adjusted offense level of 18.

5 The second count group consists of Count 8,
6 which is felon in possession of a firearm, and that has
7 an offense level of 20.

8 Those two counts -- those two count groups are
9 then combined together.

10 When we look at the chapter 4 enhancement,
11 based upon the defendant's status as an armed career
12 criminal, the enhancement is up to an offense level 33
13 under 4B1.4(b), subsection (3)(B).

14 For Count 7, which is possession of a firearm
15 in furtherance of a drug trafficking crime, that carries
16 an additional term of -- minimum term of five years,
17 which would be consecutive to any other term that would
18 be for the other counts.

19 There's a three-level reduction shown for
20 acceptance of responsibility.

21 What is the United States' position with regard
22 to the third level for acceptance of credit?

23 MR. WEST: Your Honor, he did save the
24 United States the cost of going to trial on this other
25 matter, so we would make our motion for the third level,

1 please.

2 THE COURT: All right. That motion will be
3 sustained, and that has the effect of reducing the total
4 offense level to a level 30.

5 Information regarding Mr. Monie's criminal
6 history is contained in the report. He has nine criminal
7 history points that would otherwise place him in Criminal
8 History Category IV, but based upon his status as a
9 career offender -- I believe that should reflect
10 category VI, Mr. Hammond. Am I mistaken?

11 MR. SPEDDING: Your Honor, if I may.

12 THE COURT: Yes, sir.

13 MR. SPEDDING: I believe under the career
14 offender guidelines it is a VI, and I believe under the
15 armed career criminal guidelines it is a IV. I think if
16 we went -- from what I've read, the previous PSR and the
17 objections, there was an objection that recalculates it
18 by Mr. -- or Officer Robinson at the time, I believe, and
19 they determined that it should be a IV.

20 PROBATION OFFICER: Yes, Your Honor, that's
21 correct.

22 THE COURT: All right. Very well. Thank you.
23 The guideline range is set forth in the report,
24 part B. For -- the guideline range for the first group
25 would be a range of 135 to 168 months.

1 However, as to Count 8, the guideline range of
2 imprisonment becomes 180 months.

3 And Count 7 requires a 60-month term, which
4 would be consecutive to that term of incarceration.

5 For supervision as to Count 1 and 6, the term
6 of supervised release is six years.

7 As to Count 7 and 8, it would be two to five
8 years.

9 The fine range in the case is a range of 15,000
10 to \$2 million.

11 And reviewing the judgment from the previous
12 sentencing prior to remand, the Court imposed a \$1,200
13 fine, if I'm not mistaken, of course, with the \$400
14 special assessment.

15 Those are the guideline calculations that have
16 been adopted in the case.

17 Let's see, I believe the United States
18 indicated that at the time of the sentencing hearing it
19 would be moving to dismiss Counts 2 through 5, which had
20 been reinstated, but it would be subject to dismissal at
21 the time of sentencing.

22 MR. WEST: We make that motion at this time,
23 sir.

24 THE COURT: All right. That motion is
25 sustained, and that has the effect of -- or

1 sustained in -- those counts will be dismissed effective
2 upon entry of the judgment in the case.

3 All right. We'll proceed with allocution at
4 this time.

5 Mr. Spedding, I'll hear from you, and also,
6 Mr. Monie, if you would like to add anything to what he
7 has to say.

8 MR. SPEDDING: Your Honor, quite simply I rest
9 on the pleadings I submitted to the Court.

10 THE COURT: All right. Thank you.

11 Mr. Monie, would you like to add anything?

12 (Defendant Monie shakes head)

13 THE COURT: All right. The record shall
14 reflect that the defendant is shaking his head no.

15 Mr. West.

16 MR. WEST: Your Honor, I don't see much of a
17 distinction today than we were several months ago. That
18 plea initially was set aside on what -- for lack of
19 better term, it puts us back exactly where we were
20 beforehand. I see no reason to change the sentence today
21 and the Court gave the last time he sentenced Mr. Monie.

22 Thank you.

23 THE COURT: All right. Thank you.

24 Well, the Court nevertheless must go through a
25 proper analysis under Title 18, Section 3553, in

1 determining an appropriate sentence. I'll do so.

2 Of course, I do begin from the guideline
3 calculations. In this particular case, of course, we
4 have the one group that would require a term of not less
5 than 180 months and a term of 60 months consecutive.

6 The question would be whether the Court should
7 impose a higher term of incarceration. I don't believe
8 that is necessary in this particular case when we look at
9 the -- first, the guidelines as the starting point, but
10 then also the factors of 3553.

11 The factors -- the 3553 factors would indicate
12 that a total term of incarceration of 240 months would
13 certainly be appropriate in this particular matter.

14 When we look at the defendant's conduct and his
15 history and characteristics, they're very negative. His
16 criminal history section is used to calculate in part the
17 guideline range, but criminal history is also an
18 indication -- and the nature of criminal history is an
19 indication of recidivism in some instances, and this
20 defendant does have some history of violence in his past
21 when we look at some domestic issues set forth in the
22 presentence report. Although, they didn't result in
23 convictions, but there is some indication of violent
24 conduct.

25 There's also instances of robbery and burglary

1 for which the defendant received lenient treatment when
2 he was much younger.

3 He then has the prior drug convictions, and he
4 did not reform his conduct after that. Instead, he
5 distributed very dangerous substances that were the
6 subject of this particular prosecution, including heroin,
7 a very dangerous substance.

8 At the time he was confronted with law
9 enforcement, he not only had a firearm but he ran into
10 another room and attempted to use a child to -- he
11 perhaps prevent incarceration, or for some other reason,
12 but the conduct on his part certainly -- at the least
13 certainly does put a child in danger when that happens.

14 So the seriousness of the offense can't be
15 understated.

16 The defendant has not shown the respect for the
17 law.

18 Prior terms of incarceration have not provided
19 deterrence for him, but perhaps the sentence that the
20 Court will impose will do that and hopefully will provide
21 deterrence for others that might be inclined to engage in
22 similar conduct.

23 And a term of incarceration of effectively
24 20 years hopefully will provide some measure of
25 protection to the public, and it would not be an

1 unwarranted sentencing disparity in light of this
2 defendant's history and characteristics.

3 Also, I don't see a reason to either increase
4 or decrease the fine that I determined was appropriate
5 earlier. No reasons have been given to do that.

6 Since the defendant was first sentenced and
7 since the remand in the case, this Court -- the judges of
8 this Court have altered the language that's used for
9 search condition, and I will use that new language, but
10 the Court does believe that it's certainly necessary to
11 impose a search condition for this particular defendant
12 based upon his past history and his inclinations to
13 engage in drug trafficking behavior and other dangerous
14 behavior.

15 I'll announce the sentence at this time.

16 It will be the sentence of the Court pursuant
17 to the Sentencing Reform Act of 1984, as modified by the
18 decisions in Booker and Fanfan, and I do find the
19 following sentence to be sufficient but not greater than
20 necessary to meet all of the purposes of Title 18,
21 Section 3553(a).

22 And, therefore, it will be the judgment of the
23 Court that the defendant, Bryant Lamar Monie, also known
24 as B, and also known as Bee Deezy, will be committed to
25 the custody of the Bureau of Prisons for a term of

1 180 months on Counts 1, 6, and 8 -- let me double-check
2 something here -- to be served concurrently with each
3 other, and 60 months on Count 7 to be served
4 consecutively to all other counts, to produce a total
5 term of incarceration of 240 months.

6 It will again be recommended to the Bureau of
7 Prisons that Mr. Monie participate in a job skills and
8 vocational training program.

9 I will recommend that he also participate in
10 the Substance Abuse Treatment Program. I notice in
11 paragraph 63 of the presentence report that the defendant
12 is currently enrolled or on the list for the RDAP
13 program. I wonder whether that would be pursuant to BOP
14 policies in light of the firearm conviction, but, of
15 course, that's for the Bureau of Prisons to make that
16 ultimate determination. But if he is not able to enroll
17 in the RDAP program, which has not been recommended by
18 the Court, I would recommend other substance abuse
19 treatment programs.

20 Also, I will again recommend that he
21 participate in an anger management program.

22 Upon release, he'll be placed upon supervised
23 release for a term of six years on Counts 1 and 6 and
24 five years on Counts 7 and 8, to be served concurrently.
25 That will produce a total term of supervision of six

1 years for the longer -- on the longer counts, on Counts 1
2 and 6.

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

6 And while on supervised release, he may not
7 commit another federal, state, or local crime, and he
8 must comply with the mandatory and the standard
9 conditions that will be set forth in the judgment and the
10 commitment order.

11 They include that he not possess a firearm, a
12 destructive device, ammunition, or a dangerous weapon,
13 and that he submit to one drug test within 15 days of
14 release and at least two periodic drug tests thereafter.

15 As special conditions they will include that
16 the defendant provide the probation office with access to
17 any requested financial information, that he submit his
18 person, property, house, residence, vehicle, papers, or
19 computers, as that term is defined by Title 18 of the
20 United States Code, Section 1030(e)(1), but it includes
21 other devices that are excluded from the definition.

22 He must also submit other electronic
23 communications or data storage devices or media or any
24 office to a search conducted by the probation office.
25 Failure to submit to a search would be grounds for

1 revocation of supervision.

2 And he must warn all occupants, any other
3 occupants, at the premises that would be subject to
4 search pursuant to this condition.

5 He must also participate in a Substance Abuse
6 Treatment Program and submit to periodic drug and alcohol
7 testing. That would be at the direction and discretion
8 of the probation office during the term of supervision.

9 That program may include one or more cognitive
10 behavioral approaches to address criminal thinking
11 patterns and antisocial behaviors.

12 He'll be required to pay the cost of treatment
13 services to the extent that he's able as determined by
14 the probation office.

15 He must also refrain from obstructing or
16 attempting to obstruct or tamper in any fashion with the
17 efficiency and accuracy of any prohibited substance
18 testing that is required as a condition of release, and
19 he must abstain from the use of alcohol.

20 Based upon the defendant's history of drug
21 trafficking, I will also impose the special conditions
22 that have been adopted in this district for prescription
23 drug use.

24 Mr. Monie must provide the probation office
25 within seven days of release from the custody of the

1 Bureau of Prisons with a written report in a form that
2 the probation office directs, listing each and every
3 prescription medication in his possession, custody, or
4 control.

5 The list includes but is not limited to any
6 prescription medication that contains a controlled
7 substance, and it includes all current, past, and
8 outdated, or expired, prescription medications in his
9 possession, custody, or control at the time of the
10 report.

11 The defendant must also notify the probation
12 office immediately, and that is within no later than
13 72 hours, if he receives any prescription for a
14 medication containing a controlled substance, and that
15 would be for the entire period of supervised release.

16 He must provide the probation office with such
17 documentation and verification as the probation officer
18 may reasonably request and also in a form that he
19 directs.

20 Mr. Monie must also comply strictly with the
21 orders of any physician or other prescribing source with
22 respect to the use of all prescription medications, and
23 he must report any theft or destruction of any
24 prescription medication to the probation office within
25 72 hours of any theft or destruction.

1 Next, he must not purchase, possess, use,
2 distribute, or administer any controlled substance or
3 paraphernalia relating to any controlled substance except
4 as prescribed by a physician.

5 And he may not frequent places where controlled
6 substances are illegally sold, used, distributed, or
7 administered.

8 Now, again, I will reimpose a fine, which was
9 below the fine range in the case, but I believe that this
10 defendant has the ability to pay a fine in a lesser
11 amount, the amount of \$1,200. That will be due
12 immediately. And the Court considers the issues outlined
13 in the guidelines in determining whether the defendant
14 can pay a fine based upon his condition, financial and
15 otherwise, and does determine that \$1,200 may be paid by
16 this defendant.

17 However, community restitution will be waived.

18 And it will be ordered that he pay a special
19 assessment of \$400, which is \$100 per count of
20 conviction. That will be due immediately.

21 And the items that are listed in the forfeiture
22 allegation of the indictment will be included as items of
23 forfeiture in the judgment, which will include the
24 9-millimeter Taurus pistol, 16 rounds of 9-millimeter
25 ammunition, and 83 rounds of assorted ammunition.

1 And that will be the judgment of the Court.

2 In just a moment I will ask the clerk to advise
3 Mr. Monie of his right to appeal. I believe he retained
4 the right to appeal any sentencing determination and also
5 the Court's determination as to his status as an armed
6 career criminal.

7 Before I do that I'll ask the parties to state
8 any objections that they may have, either to the sentence
9 or conditions of supervised release.

10 Second, to any objections under United States
11 versus Bostic. Under that decision from the Sixth
12 Circuit any objections not previously raised would need
13 to be raised at this time to be properly preserved for
14 review on appeal.

15 Of course, the defendant has made objections to
16 the classification as an armed career criminal, and
17 that's certainly reserved for appeal.

18 But if there are any other objections, they
19 should be raised at this time.

20 Finally, if the parties would like the Court to
21 make additional findings, I'll certainly do so if
22 requested.

23 Mr. West.

24 MR. WEST: Yes, Your Honor. No objections to
25 the sentence or terms of supervised release, and no

1 Bostic objections, and no request for further findings,
2 sir.

3 THE COURT: Thank you.

4 Mr. Spedding.

5 MR. SPEDDING: Your Honor, no objections to the
6 sentence other than those noted, no Bostic objections,
7 and no further findings required.

8 THE COURT: All right. Thank you.

9 Oh, one other matter I'll just note for the
10 record. The defendant had filed a motion for a
11 reasonable sentence. The Court believes it's imposed a
12 reasonable sentence, but in the event that this was a
13 request for a sentence below that, then the motion would
14 be denied for that reason.

15 All right. Thank you.

16 Madam Clerk.

17 THE CLERK: You are notified by this Court that
18 you have a right to appeal your case to the Sixth Circuit
19 Court of Appeals, which on proper appeal will review this
20 case and determine that there has or has not been an
21 error of law.

22 A defendant may waive those rights as part of a
23 plea agreement, and you have entered into a plea
24 agreement which waives some or all of your rights to
25 appeal the conviction.

1 Such waivers are generally enforceable, but if
2 you believe the waiver is unenforceable, you can present
3 that theory to the appellate court.

4 If you're unable to pay for the cost of the
5 appeal, you have a right to apply for leave to appeal in
6 forma pauperis, which means you may appeal without paying
7 for it.

8 If you are without the services of an attorney
9 and desire to appeal, upon request the clerk of this
10 Court shall prepare and file forthwith a notice of appeal
11 on your behalf.

12 With few exceptions this notice of appeal must
13 be filed within 14 days from the date of entry of the
14 judgment.

15 If you do not have sufficient funds to employ
16 an attorney, the Court of Appeals may appoint your
17 present attorney, or another, to prosecute the appeal for
18 you.

19 You may request to be released on a reasonable
20 bond pending the appeal.

21 THE COURT: Thank you.

22 Mr. Monie, you're about to be handed what was
23 just read. Please take a moment to review your appellate
24 rights with counsel.

25 After you've assured yourself you understand

1 those rights, if you could sign the original document.

2 There's one copy you can keep for your records.

3 (Whereupon, Defendant Monie signs the form.)

4 THE COURT: Thank you.

5 Any other issues to take up in the case,

6 Mr. West?

7 MR. WEST: No, sir. Thank you.

8 THE COURT: All right. Mr. Spedding, anything
9 else?

10 MR. SPEDDING: No, Your Honor.

11 THE COURT: All right. Thank you.

12 We will be in recess until 3:00 p.m. this
13 afternoon.

14 (Whereupon, the Sentencing Hearing proceedings
15 concluded at 1:55 p.m.)

16 C E R T I F I C A T E

17 I, Peggy W. Weber, certify that the foregoing is a
18 correct transcript from the record of proceedings in the
19 above-entitled matter.

20

21

March 29, 2018

22 DATE

s/Peggy W. Weber

PEGGY W. WEBER, RPR

23

24

25

Appendix 6

Sentencing Memorandum

DE#80

February 14, 2018

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION AT LEXINGTON
Electronically Filed

CRIMINAL NO. 15-CR-116-DRC

UNITED STATES OF AMERICA

PLAINTIFF

V. **MEMORANDUM OF FACT AND LAW IN SUPPORT OF DEFENDANT'S
MOTION FOR REASONABLE SENTENCE PURSUANT
PURSUANT TO 18 U.S.C. §3553(a)(2)**

BRYANT LAMONT MONIE

DEFENDANT

Comes the Defendant, BRYANT LAMAR MONIE (hereinafter "Monie") and for his Memorandum of Fact and Law in support of his Motion for Reasonable Sentence, states as follows:

The facts of this case are somewhat lengthy and circuitous. On December 17, 2015 Monie was originally charged in an eight count indictment for, among other things, distribution of heroin and cocaine, possession of a firearm in furtherance of a drug trafficking crime and felon in possession of a firearm. Monie ultimately went to trial on Counts Six and Seven and was found guilty following a jury trial and pled guilty to Counts 1 and 8. As to Count Seven, a mandatory minimum of 60 months was imposed¹ and as to Count Eight a mandatory minimum of 180 months was imposed² which ran consecutive to the 60 months under Count Seven for a total of 240 months.

Monie appealed his sentence and the Sixth Circuit Court of Appeals remanded the case to this Court to allow Monie to withdraw his plea as to Count Eight and to resentence Monie consistent with their opinion.

¹ See 18 U.S.C. §924(c)(1) and 18 U.S.C. §924(c)(1)(A)(i).

² See 18 U.S.C. §924(e)(1).

After remand, Monie entered a plea of guilty to Count Eight of the indictment and now stands before this Court for sentencing.

Included in the Presentence Report prepared by the U.S. Probation Office is the designation that Monie is an Armed Career Criminal pursuant to 18 U.S.C. §922(g) and §924(e) and thus must receive a sentence of 180 months. Again, Monie was sentenced under 18 U.S.C. 924(c)(1)(A)(i) to a consecutive 60 month sentence resulting in a mandatory minimum of 240 months. Monie was advised of the mandatory minimums at the time of his plea. In his plea agreement, Monie reserves the right to appeal his designation as an Armed Career Criminal if it is applied to him at sentencing.

I. THE NATURE AND CIRCUMSTANCES OF THE OFFENSE:

Monie was arrested following four (4) controlled buys in Montgomery County, Kentucky. At the time of his arrest, he was in possession of a firearm. The controlled buys occurred on four separate occasions, June 23, 2015, July 29, 2015, August 5, 2015 and August 13, 2015. Monie remained in state custody until he was indicted by a federal grand jury and taken into federal custody. He has been in custody continuously for over two (2) years.

II. THE USPO'S DESIGNATING MONIE AS AN ARMED CAREER CRIMINAL IS IMPROPER:

In the PSR, Monie is designated as an armed career criminal because "the defendant has at least three prior convictions for a violent felony or serious drug offense or both, which were committed on different occasions". (¶ 38). In support of this designation, the Probation Officer relies on that dates of the controlled buys contained in Montgomery Circuit Court Indictment No. 10-CR-00155 namely July 23, 2009, July 29, 2009, September 9, 2009 and November 20, 2009. (¶

49).³ On July 27, 2011, Monie was adjudged guilty of four (4) class D felony counts of TICS 1st all carrying a penalty range of 1-5 years. The sentence in this case was enhanced by Monie's status as a Persistent Felony Offender (hereinafter "PFO"). (Emphasis added). *Please see attached Exhibit B.* His status as a PFO has no effect on the fact that the charges for which he was convicted were class D felonies which again, carry 1-5 years. He was ultimately sentenced to 3 years on each count enhanced to five (5) years by virtue of his status as a PFO 2nd.

As stated above, Monie was indicted for violating 18 U.S.C. §922(g)(a) and was ultimately sentenced to fifteen (15) years in the penitentiary, the minimum he could have received. In order to be found to be an Armed Career Criminal, a person has to commit an offense "... for which a maximum term of imprisonment of ten years or more is prescribed by law;" 18 U.S.C. 924(e)(2)(ii). The predicate convictions used by the Probation Officer to support the designation under the ACCA are misguided. The predicate offenses were all amended to Class D felonies that, as stated, supra, only carry a penalty of 1-5 years. The only factor in the state action that allows a penalty of up to ten (10) years is the fact that Monie had the status of being a PFO and his sentence was thus increased to that of a Class C felony. See *KRS 532.080(5)*. See also *Commonwealth v. Derringer*, 386 S.W.3d 123 (Ky. 2012). In Derringer, the Kentucky Supreme Court clarified that "Conviction as a PFO is not a charge of an independent criminal offense but rather a particular criminal status, that enhances the punishment for a crime committed by a defendant who qualifies as a PFO" Id. at 126 citing *White v. Commonwealth*, 770 S.W.2d 222, 224 (Ky. 1989).

In the instant case, the Probation Officer designates Monie as an Armed Career Criminal on the basis that he was previously charged with four (4) counts of TICS 1st, a Class C felony. While

³ See attached Exhibit A attached hereto wherein Monie was indicted for four (4) counts of TICS 1st, a Class C felony under Kentucky law carrying a penalty range of 5-10 years as charged.

it is true that standing alone, this would qualify and support the designation under the ACCA, it misses that mark and misinterprets what actually happened in that case. The fact of the matter is that Monie was charged in a four (4) count indictment with TICS 1st, all Class C felonies that carry a penalty range of 5-10 years. He was not, however, found guilty of the Class C felonies and instead pled guilty to four (4) Class D felonies which carry a penalty range of 1-5 years. This in and of itself causes the convictions to fall outside of the ACCA, however, the issue of the PFO statute must be considered in the analysis. As set forth in *Derringer* and *White*, *supra*, even though the PFO statute enhances the sentence for Monie's convictions to 5-10 years, it has absolutely no effect on the underlying substantive convictions which are Class D felonies that carry no more than 5 years. PFO is merely a status. It is not a charge. It is not a conviction. Nor does it change the nature of an underlying conviction. The simple fact of the matter is that for the reasons set forth above, Monie is not an Armed Career Criminal and should be sentenced pursuant to the USSG as calculated irrespective of the designation as an Armed Career Criminal.

For the foregoing reasons, BRYANT LAMAR MONIE respectfully requests the Court to overrule that USPO's designation of him as an Armed Career Criminal and sentence him within that appropriate sentencing range using an adjusted offense level of 17 with a criminal history category of IV resulting in a sentencing range of 37-46 months.

Respectfully Submitted,

/s/ Christopher A. Spedding
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was filed via the US/ECF which will send a true and accurate copy to all counsel of record on this 13th day of February, 2018.

/s/ Christopher A. Spedding
CHRISTOPHER A. SPEDDING

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