

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

Nos. 17-4084/4124

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Sep 14, 2018
DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA,)	
)	
Plaintiff-Appellee,)	
)	
v.)	ON APPEAL FROM THE UNITED
)	STATES DISTRICT COURT FOR
NELSON FIGUEROA,)	THE NORTHERN DISTRICT OF
)	OHIO
Defendant-Appellant.)	
)	
)	

ORDER

Before: McKEAGUE and STRANCH, Circuit Judges; HOOD, District Judge.*

Nelson Figueroa, a federal prisoner represented by counsel, appeals the judgment of conviction and sentence on thirteen counts of using a phone to facilitate drug trafficking (Case No. 17-4084) and a district court order imposing sentence for four supervised-release violations (Case. No. 17-4124). The parties have waived oral argument, and we unanimously agree that oral argument is not needed. *See* Fed. R. App. P. 34(a).

In 2016, a federal grand jury charged Figueroa with thirteen counts of using the mail to facilitate a felony drug offense, in violation of 21 U.S.C. § 843(b). Figueroa fled the district but was arrested one year later and appeared for arraignment in March 2017. Because Figueroa had been on supervised release for a prior offense, the district court also held an initial hearing on a

*The Honorable Joseph M. Hood, United States District Judge for the Eastern District of Kentucky, sitting by designation.

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report that he had violated his supervised release. However, the district court deferred the matter until after it had resolved the criminal case involving the § 843(b) counts. Subsequently, the government filed a notice pursuant to 21 U.S.C. § 851 indicating that Figueroa was subject to an enhanced penalty raising the maximum prison sentence for the § 843(b) offenses from four to eight years. In June 2017, Figueroa pleaded guilty to the charged offenses.

During the sentencing hearing, the district court determined that Figueroa's total offense level was 28 and that he had a criminal history category of IV, resulting in a guidelines range of 110 to 137 months. In light of the statutory maximum, the government sought a combined sentence of 96-months. However, after reviewing the applicable factors set forth in 18 U.S.C. § 3553(a), the district court varied upward and sentenced Figueroa to 96-month terms of imprisonment on each count and ordered the sentences on counts 2 through 13 to run concurrently with each other and consecutively to count 1, for a total sentence of 192 months of imprisonment. After the district court inquired whether the parties had any objections, Figueroa's counsel replied that he had none. Next, Figueroa stipulated to four supervised-release violations. The district court noted that the guidelines range was 6 to 12 months and that a new term of supervised release up to life could be imposed. After considering the relevant § 3553(a) factors, the district court imposed a 12-month prison sentence and ordered it to run consecutively to the 192-month term of imprisonment for the new criminal convictions. The district court also imposed a 20-year term of supervised release. Figueroa's counsel again stated that he had no objections. Figueroa appealed his sentences for the § 843(b) offenses and the supervised-release violations. The appeals have been consolidated.

On appeal, Figueroa argues that: (1) his guilty plea is invalid because the district court's repeated statements that the statutory maximum in his case was 96 months of imprisonment led him to reasonably believe that he could only be sentenced to a maximum aggregate term of 96 months of imprisonment; (2) his sentence for the § 843(b) offenses is substantively unreasonable because the court failed to justify the 55-month upward variance from the applicable guidelines range and failed to consider mitigating factors; (3) his sentence for the supervised-release violations is substantively unreasonable because the district court failed to justify the imposition

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of a consecutive 12-month sentence and a new 20-year term of supervised release. In addition to these challenges to his sentence, Figueroa argues that his sentence was improperly enhanced based on his prior convictions. Although Figueroa acknowledges that the fact of a prior conviction does not have to be proven to a jury pursuant to the Supreme Court's holdings in *Alleyne v. United States*, 570 U.S. 99, 115-16 (2013), and *Apprendi v. New Jersey*, 530 U.S. 466, 488 (2000), he argues that the holdings in those cases “[have] been contradicted, eroded, and criticized.” Finally, Figueroa requests that the case be remanded and assigned to a different judge.

Guilty Plea

We generally review de novo the validity of a guilty plea. *United States v. Dixon*, 479 F.3d 431, 434 (6th Cir. 2007). A guilty plea is constitutionally valid if it is voluntary, knowing, and intelligent. *Brady v. United States*, 397 U.S. 742, 748 (1970); *Dixon*, 479 F.3d at 434. In accordance with Federal Rule of Criminal Procedure 11, the district court “must verify that ‘the defendant’s plea is voluntary and that the defendant understands his or her applicable constitutional rights, the nature of the crime charged, the consequences of the guilty plea, and the factual basis for concluding that the defendant committed the crime charged.’” *Dixon*, 479 F.3d at 434 (quoting *United States v. Webb*, 403 F.3d 373, 378-79 (6th Cir. 2005)). When no objection is raised before the district court, as in this case, we review an alleged violation of Rule 11 for plain error. *United States v. Vonn*, 535 U.S. 55, 59 (2002). Plain error requires a showing of “(1) error (2) that was ‘obvious or clear,’ (3) that ‘affected [the] defendant’s substantial rights’ and (4) that ‘affected the fairness, integrity, or public reputation of the judicial proceedings.’” *United States v. Vonner*, 516 F.3d 382, 386 (6th Cir. 2008) (en banc) (quoting *United States v. Gardiner*, 463 F.3d 445, 459 (6th Cir. 2006)).

Figueroa argues that the district court’s warnings about the consequences of his plea were ambiguous because it repeatedly stated that the statutory maximum was “96 months” without explaining that the maximum applied to each of the thirteen counts. Figueroa emphasizes that the district court early on explained that “the statutory maximum of 96 months [would] come into play” if he were to be convicted in this case. After Figueroa explained that he had hoped to

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plead guilty without facing the § 851 enhancement, the district court stated that no such plea agreement would be accepted and again stated that “[t]he statutory maximum is 96 months.” The district court noted that the government’s plea offer was for a sentence between 70 to 87 months and that it would not accept that plea agreement, and explained, yet again, that “the 96 months will be involved here” if Figueroa were convicted. After Figueroa expressed a desire to plead guilty without the government’s written plea offer, because “[he was] not trying to go to trial and get 20 years,” the district court again explained that “[f]or this offense, the statutory maximum is eight years.”

Figueroa has not established that the district court plainly erred when explaining the consequences of his guilty plea. Assuming arguendo that the district court misstated Figueroa’s maximum sentence by not expressly stating that the 96-month statutory maximum applied to each of the thirteen § 843(b) counts, “the ‘demanding’ plain error standard still requires [Figueroa] to ‘show a reasonable probability that, but for the error, he would not have entered the plea.’” *United States v. Swinney*, No. 17-3505, 2018 WL 1517179, at *1-2 (6th Cir. Mar. 28, 2018) (quoting *United States v. Hogg*, 723 F.3d 730, 737 (6th Cir. 2013)). “[A]ffirmative misstatements of the maximum possible sentence” may “invalidate a guilty plea.” *Id.* at *2 (quoting *Pitts v. United States*, 763 F.2d 197, 201 (6th Cir. 1985)). However, “an error may be found harmless when the defendant was aware of the omitted or misstated information through other means.” *Id.* (quoting *Hogg*, 723 F.3d at 746-47).

As a preliminary matter, Figueroa’s presentence report advised him that he faced a maximum of four years of imprisonment (later increased to 96 months based on his prior drug-trafficking convictions) as to “all counts.” The presentence report also advised him that he faced an applicable guidelines range of 135 to 168 months of imprisonment (later reduced to 110 to 137 months after the district court lowered Figueroa’s total offense level to 28). Figueroa did not object to the sentencing range identified in this report, and a defendant’s “failure to move to withdraw his plea or otherwise object after reviewing the accurate information in the presentence report creates a ‘high hurdle’ for him to overcome on appeal.” *Id.* (quoting *Williams v. United States*, 47 F. App’x 363, 368–69 (6th Cir. 2002)).

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Figueroa cannot overcome the “high hurdle” of demonstrating that the district court’s alleged misstatement affected his substantial rights. In particular, the record shows that other sources informed Figueroa of his correct statutory penalty range before he pled guilty. The plea agreement identified counts “1-13” of his indictment and stated that the “statutory sentence per count” was “8 years.” Although the district court did not accept the proposed plea agreement, Figueroa confirmed during his plea colloquy that he had reviewed the proposed agreement and that his attorney had “go[ne] over it with [him] in great detail.” Further, Figueroa’s statements during the colloquy suggest that he was aware of his statutory maximum sentence and that he never intended to proceed to trial. When asked if he intended to go to trial, Figueroa responded that he “never said [he] wanted to go to trial” and that he “made that decision since the beginning.” He added that he wished to accept the government’s proposed deal because he did not want “to go to trial and get 20 years.” Figueroa’s reference to a potential 20-year sentence—coupled with his statement that he had reviewed the proposed plea agreement “in great detail” with his trial counsel—indicates that he was aware of the correct statutory range before pleading guilty. On these facts, Figueroa has failed to show a reasonable probability that, but for the district court’s alleged error, he would not have entered a guilty plea.

Reasonableness of § 843(b) Sentence

We review a district court’s sentencing decision for substantive reasonableness under the abuse of discretion standard. *United States v. Cunningham*, 669 F.3d 723, 728 (6th Cir. 2012). Upward departures and variances from the advisory guidelines range are also reviewed for reasonableness using the abuse of discretion standard. *United States v. O’Georgia*, 569 F.3d 281, 287 (6th Cir. 2009). In order for a sentence to be deemed substantively reasonable it must be proportionate to the circumstances of the offense and offender, and sufficient, but not greater than necessary, to comply with 18 U.S.C. § 3553(a). *See United States v. Vowell*, 516 F.3d 503, 512 (6th Cir. 2008). A sentence may be found substantively unreasonable if the district court

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“selects a sentence arbitrarily, bases the sentence on impermissible factors, fails to consider relevant sentencing factors, or gives an unreasonable amount of weight to any pertinent factor.” *United States v. Conatser*, 514 F.3d 508, 520 (6th Cir. 2008). “While a sentence outside the guidelines range is not presumptively unreasonable, we must consider ‘the extent of the deviation and ensure that the justification is sufficiently compelling to support the degree of the variance.’” *United States v. Payton*, 754 F.3d 375, 377 (6th Cir. 2014) (quoting *Gall v. United States*, 552 U.S. 38, 51 (2007)). In reviewing sentences that fall outside the advisory guidelines range, we “may consider the extent of the deviation, but must give due deference to the district court’s decision that the § 3553(a) factors, on a whole, justify the extent of the variance.” *Gall*, 552 U.S. at 51.

Figueroa argues that there were no objective grounds warranting the upward variance imposed in this case. In support of that claim, he notes that the presentence report advised that there were no “possible grounds for a departure from the applicable sentencing guideline provisions.” He also notes that the government did not seek an upward variance. Figueroa also argues that, in light of the significance of the 55-month variance, the district court failed to meet its burden of providing a compelling justification for the variance. *See United States v. Tate*, 516 F.3d 459, 470 (6th Cir. 2008). In addition, Figueroa relies on this court’s opinion in *Payton*, 754 F.3d at 377, to argue that the sentence was substantively unreasonable because the district court failed to consider his age as a mitigating factor. He contends that this court has vacated a sentence under similar circumstances after noting that recidivism rates decrease significantly after released inmates turn fifty years old. *See id.* at 379. Finally, Figueroa argues that the variance is substantively unreasonable because the district court relied on the same factors to impose a second “increase” when it ordered the 12-month sentence for the supervised release violation to run consecutively to the sentence for the § 843(b) offenses.

The district court sufficiently explained its reasoning for imposing the 192-month sentence. First, the district court thoroughly examined the relevant § 3553(a) factors. The district court determined that the nature and circumstances of the offense established that Figueroa was a “high-level drug trafficker,” that Figueroa’s history and characteristics

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established that he was a 37-year-old individual with an extensive criminal history that included eighteen adult convictions, and that there was a need for a lengthy sentence in order to deter Figueroa because he failed to learn respect for the law following his prior sentences. The district court also noted that Figueroa had twice violated his supervised release. *See United States v. Wells*, 443 F. App'x 997, 998 (6th Cir. 2011) (“[I]t may be reasonable for a district court to vary upward when sentencing an offender who commits repeated supervised-release violations.”). The district court determined that high-level drug traffickers like Figueroa are indirectly responsible for the significant and continuous increase in deaths due to drug overdoses. The district court acknowledged that the 55-month upward variance was “substantially above the guidelines and the mandatory [maximum sentence]” but concluded that the lengthy sentence was warranted based on the above factors and the determination that Figueroa was a large-scale drug trafficker. Finally, the district court concluded that Figueroa’s history indicated that he would continue to deal drugs unless he was serving a lengthy sentence, and the district court explained that its determination was supported by Figueroa’s statement that he was involved in drug-trafficking because “everybody’s doing it.”

Figueroa failed to establish that the district court plainly erred by not considering his age as a mitigating factor. His reliance on *Payton* is unavailing because that case is distinguishable. There, the forty-six-year-old defendant specifically argued that he should be sentenced within the guidelines range because his age at the time of his release from prison—he would have been at least sixty-three years old if sentenced within the guidelines range—would make him a low risk for recidivism. *Payton*, 754 F.3d at 377. The court nevertheless imposed a forty-five-year prison sentence—twenty-three years greater than the maximum sentence under the guidelines. In the present case, Figueroa—who was thirty-seven years old at sentencing—never asked the sentencing court to consider his age as a mitigating factor, and he will be approximately fifty-four at the time of his release. The district court noted that Figueroa was thirty-seven at the time of sentencing, but also considered other characteristics and § 3553(a) factors to support its imposition of a lengthy sentence. Nothing in the record reflects that the district court did not consider Figueroa’s age or overlooked any significant mitigating factor associated with his age.

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Further, Figueroa's reference to the disparity between possible sentences with and without the § 851 notice is unavailing because it is undisputed that the current state of the law establishes that Figueroa's maximum sentence was properly enhanced based on his prior convictions. Finally, Figueroa's challenge to the holdings in *Alleyne* and *Apprendi* "is squarely foreclosed by our precedent." *United States v. Anderson*, 695 F.3d 390, 398 (6th Cir. 2012).

Sentence for Supervised Release Violations

Generally, we review challenges to sentences imposed after the revocation of supervised release under the same standard that is applied to sentences after conviction. *See United States v. Kontrol*, 554 F.3d 1089, 1092 (6th Cir. 2009). When there is no dispute over the procedural reasonableness of a sentence, we must then consider the substantive reasonableness of the imposed sentence. *Gall*, 552 U.S. at 51. A sentence "may be substantively unreasonable if the district court chooses the sentence arbitrarily, grounds the sentence on impermissible factors, or unreasonably weighs a pertinent factor." *United States v. Brooks*, 628 F.3d 791, 796 (6th Cir. 2011) (citing *Conatser*, 514 F.3d at 520). A rebuttable presumption of reasonableness attaches to sentences within the applicable guidelines range. *Id.* (citing *Vonner*, 516 F.3d at 389).

Figueroa argues that the 12-month prison sentence and the new 20-year period of supervised release are substantively unreasonable because there was no justification for ordering the prison sentence to run consecutively to the sentence for the underlying offense. He also contends that the new 20-year term of supervised release is unreasonable under the circumstances of this case, resulting in a 204-month sentence that was greater than necessary and unconstitutional. Figueroa does not dispute that the applicable guidelines range for his supervised-release violation was 6 to 12 months and that maximum term of supervised release for the original offense of conviction was life. The district court considered: (1) the relevant § 3553(a) factors, including the nature and circumstances of the violations; (2) evidence indicating that Figueroa's new criminal conduct was similar in nature to the underlying offense for which he was on supervised release; and (3) Figueroa's repeated violations of supervised release. The district court met its duty to generally explain the reason for ordering the 12-month sentence to run consecutively to the sentence for the underlying offenses by stressing Figueroa's

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“record and history.” And the district court explained that the 20-year term would ensure that Figueroa would understand that he would be under supervision, provide the government with some idea of his activities, and remind him that any further violations of the law would result in another lengthy sentence.

Miscellaneous Issue

Finally, in light of the validity of Figueroa’s guilty plea and the substantive reasonableness of his sentences for the underlying offenses and the supervised-release violations, we deny Figueroa’s request that the case be remanded and assigned to a different district court judge.

Accordingly, we **DENY** the request to remand the case to the district court and assign it to a different judge, **AFFIRM** the judgment of conviction and sentence, and **AFFIRM** the sentence imposed for violating supervised release.

ENTERED BY ORDER OF THE COURT

A handwritten signature in black ink, appearing to read "Deborah S. Hunt", is written over a horizontal line.

Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA

v.

NELSON FIGUEROA

§ **JUDGMENT IN A CRIMINAL CASE**

§

§

§ Case Number: **1:16-CR-00081-JRA(1)**§ USM Number: **38688-060**§ **Timothy Haffey**

§ Defendant's Attorney

THE DEFENDANT:

<input checked="" type="checkbox"/>	pleaded guilty to count(s)	1-13
<input type="checkbox"/>	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	
<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

21:843(B) Use Of A Communication Facility To Facilitate The Commission Of A Felony

Offense Ended

08/03/2015

Count

1-13

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) ☐ 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.

October 3, 2017

Date of Imposition of Judgment

s/John R. Adams

Signature of Judge

John R. Adams, U. S. District Judge

Name and Title of Judge

October 12, 2017

Date

DEFENDANT: NELSON FIGUEROA
CASE NUMBER: 1:16-CR-00081-JRA(1)

IMPRISONMENT

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

96 months as to count 1; 96 months as to counts 2-13 concurrent with each other and consecutive to Count 1.

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

The Court recommends placement at a facility in Florida. The Court further recommends Defendant obtain his GED.

☒ 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: NELSON FIGUEROA
CASE NUMBER: 1:16-CR-00081-JRA(1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of : **twelve (12) months as to Counts 1-3 concurrent.**

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, are a student, or were convicted of a qualifying offense. *(check if applicable)*
6. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

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

DEFENDANT: NELSON FIGUEROA
CASE NUMBER: 1:16-CR-00081-JRA(1)

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. If not in compliance with the condition of supervision requiring full-time occupation, you may be directed to perform up to 20 hours of community service per week until employed, as approved or directed by the pretrial services and probation officer.
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: NELSON FIGUEROA
CASE NUMBER: 1:16-CR-00081-JRA(1)

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall provide the probation officer with access to any requested financial information.

The defendant shall participate in an approved program of substance abuse testing and/or outpatient or inpatient substance abuse treatment as directed by their supervising officer; and abide by the rules of the treatment program. The defendant shall not obstruct or attempt to obstruct or tamper, in any fashion, with the efficiency and accuracy of any prohibited substance testing.

You must submit your person, property, house, residence, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), 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 may be grounds for revocation of release. You must warn any other occupants that the premises may be subject to searches pursuant to this condition.

The probation officer may conduct a search under this condition only when reasonable suspicion exists that you have violated a condition of supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.

The defendant shall not participate in any form of legal or illegal gambling, which also includes the internet and lottery. The defendant shall not frequent any gambling establishments or associate with any individuals involved in gambling.

DEFENDANT: NELSON FIGUEROA
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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>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$1,300.00		\$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: NELSON FIGUEROA
CASE NUMBER: 1:16-CR-00081-JRA(1)

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 \$ _____ 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 \$1,300.00 for Counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 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 of the court.

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:

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) JVT Assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.