NO. 18-~~7089~~
18-7098

IN THE SUPREME COURT OF THE UNITED STATES

AMOS JUNIOR SCOTT,
Petitioner,

V.

HERIBERTO H. TELLEZ, ACTING WARDEN,
Respondent.

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

Reply Brief

RESPONSE TO THE UNITED STATES MEMORANDUM IN OPPOSITION

Amos Junior Scott
Reg. No. 16665-058
FCI Victorville #1
P.O. Box 3725
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QUESTION PRESENTED RESTATED

Whether Petitioner is Entitled to Seek Federal Habeas Corpus Relief Under 28 U.S.C. § 2241, From an Erroneous Mandatory Minimum Sentence, That Was Based Upon a Nonexistent Prior Conviction, on the Ground That 28 U.S.C. § 2255 is "Inadequate or Ineffective" to Test The Legality of His Detention?

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RESPONSE TO THE UNITED STATES MEMORANDUM IN OPPOSITION

There is a remarkable distance between the Respondent and the Petitioner in this case concerning the facts, governing law, and the relief sought. Specifically, the Respondent argues that Petitioner, Mr. Scott, seeks review of a similar question as United States v. Wheeler, (No. 18-420): "[W]hether the portion of Section 2255(e) beginning with "unless," known as savings clause, allows a defendant who has been denied Section 2255 relief to later file a habeas petition that challenges his

conviction or sentence based on an intervening change in the judicial interpretation of a statute." (See Respondent's Opposition ("RO") at 2). Petitioner disagrees. The similarities between Petitioner and Wheeler starts and ends with one question: Whether Sections 2241 and 2255(e) can be invoked to challenge a fundamental sentencing defect on the ground that 28 U.S.C. § 2255 is inadequate or ineffective to test the legality of a prisoner's "detention?" Wheeler does not address the question presented in Petitioner's writ concerning a defendant who invokes the savings clause that have never been convicted of the alleged predicate that illegally tripled his mandatory minimum under the career offender Guideline. This kind of categorization and legal error creates a grave miscarriage of justice upon a defendant like Petitioner, more than it does a defendant who in Wheeler's case, was convicted of a valid prior conviction, but the law changed after their federal conviction.

Petitioner stands convicted of an offense - committing a federal felony drug conspiracy while already having two prior felony convictions for a "crime of violence" and a drug offense - when in fact, he only had one prior felony drug offense. As the Supreme Court emphasized in United States v. Rodriquez, a recidivist offense is a different, more serious offense than a non-recidivist offense. 533 U.S. 377, 385-86 (2008). See also United States v. Maybeck, 23 F.3d 888, 893 (4th Cir. 1994); United States v. Mikalajuana, 186 F.3d 490, 494 (4th Cir. 1999) (Petitioner actually innocent of recidivist enhancement when the underlying conviction is invalid). In this case, Petitioner is "innocent" of the mandatory minimum 360

months to life imprisonment penalty because the elements required to impose that penalty under the career offender Guideline are not satisfied. Sawyer v. Whitley, 505 U.S 333, 347 (1992).

Petitioner's sentencing court had no authority to classify him as a career offender in the face of Congress' contrary intent. And it had no discretion to sentence him above his proper mandatory Guideline range of 168-210 months. Thus, because it is undisputed by the record that Petitioner have never been convicted of AWDW, and his Petition implicates the legality of his detention, he falls within the narrow class of prisoner's who merit savings clause relief. This Court should reject the Respondent's Opposition, grant the writ, and hold that fundamental sentencing defects, as well as undermined convictions may proceed under Sections 2241 and 2255(e)'s savings clause.

STATEMENT OF RELEVANT FACTS

The Respondent admits and denies in part the facts applicable to all claims. Mr. Scott maintains that all of his factual allegations stated in each of his habeas corpus proceedings under 28 U.S.C. § 2241, and the Statement of the Case and Relevant Facts included in the writ of certiorari, are true and correct and have been verified in affidavit format under penalty of perjury. (See Doc. 1, EX. D).[1] (See also App. A. attached hereto). The Court should appoint counsel to resolve the factual disputes. To that end, counsel may compel the production of papers - Shepard approved documents, or may exercise any other power of this Court which the principles of justice may require.

1. "Doc." refers to the district court docket number. "EX." refers to the exhibit(s). "ACD" refers to the Ninth Circuit Court of Appeals docket number. "Appx." refers to the Appendix number or letter. "RO" refers to the Respondent's Memorandum in Opposition. "Pet." refers to the Petitioner's writ of certiorari.

I. ARGUMENT

THE RESPONDENT DISPUTES THAT SCOTT SHOULD HAVE NEVER BEEN SENTENCED AS A CAREER OFFENDER AND THAT SENTENCING CLAIMS ARE COGNIZABLE ON FEDERAL HABEAS CORPUS.

There can be no question that Petitioner does not have an AWDW prior conviction. (See Appx. B at 4, 15-16). Neither can it be disputed that the district courts mistaken belief that Petitioner was convicted in state court of AWDW was based on a false premise, and that the AWDW predicate was used as a crime of violence under the career offender Guideline. (See Pet. at Appx. C). The Respondent does not dispute these facts. (See RO at 2-3). Thus, Petitioner's sentence is indisputably predicated on an error of law. The only question before this Court then is whether that error is redressable in a § 2241 habeas proceeding. The answer is yes.

The Respondent argues that "petitioner has not shown that his claims was foreclosed at the time of his Section 2255 motion by any since - abrogated precedent." (See RO at 7). Indeed, Petitioner's claims are not predicated on an intervening change in the law. (See Pet. at 4-4-18). However, the Respondent's attempt at citing to cases like Wheeler, Hill, and Brown of the Fourth, Sixth, and Seventh Circuits for the proposition that only intervening changes in the law are the kind of issues that have been recognized under the savings clause of § 2255(e) is flawed. (See RO at 6,8). The legal principle forged in the savings clause was not whether the savings clause is applicable only to intervening changes in the law, but whether a prisoner may utilize the savings clause to challenge the misapplication of the career offender Guideline,

at least where, as here, the defendant was sentenced in the pre-Booker era,.... See Brown v. Caraway, 719 F.3d 583, 588 (7th Cir. 2013). The Court relied on the fact that an erroneous, mandatory career offender classification increased, "dramatically, the point of departure" for the defendant's sentence. Id. at 587. Therefore, the Respondent's argument cuts the other way. Congress could have made savings clause relief dependent only on changes in intervening law by using these specific words, and by removing the word "detention," but it did not. Congress anticipated the savings clause would apply to prisoner's who are "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3).

Indeed, Petitioner's claims respects the finality concerns embodied in AEDPA's limits on second or successive petitions. Like claims brought within one year on the basis of newly discovered facts or retroactive rules, Petitioner's claims were not available on direct review or when he filed his initial petition under § 2255. It was not until late December 2015, when Petitioner through due diligence, finally received a copy of his state court transcripts to prove his claim. United States v. Johnson, 544 U.S. 295 (2005). So Petitioner cannot be accused of sandbagging or failing to exercise due diligence.

On the contrary, where a prisoner had no meaningful opportunity to present his claim any sooner, these are precisely the procedural circumstances this Court has recognized the savings clause is meant to address. See United States v. Tucker, 404 U.S. 447 (1972). In Tucker, the Supreme

Court explained, "[w]e deal here, not with a sentence imposed in the informed discretion of a trial judge, but with a sentence founded at least in part upon misinformation of Constitutional magnitude." Id. at 447. It continued, "[T]his prisoner was sentenced on the basis of assumptions concerning his criminal record which were materially untrue." Id. (quoting Townsend v. Burke, 334 U.S. 736 (1948)). Likewise, here, the district court assumed the AWDW conviction was sufficient to triple Petitioner's statutory minimum under the career offender Guideline. But it is decidedly not.

In Hicks v. Oklahoma, 447 U.S. 343 (1980), the Supreme Court held that "imposing an erroneous mandatory-minimum sentence "implicates the very substance of the sentencing and thereby the fundamental fairness concerns protected by habeas corpus." This is consistent with Congress' intent under the savings clause because when a prisoner has only one conviction and one sentence, his "detention" is illegal if the sentence is illegal. Therefore, a prisoner should be allowed to open the portal to § 2255(e)'s savings clause where he was erroneously sentenced as a career offender under the mandatory Guidelines regime, that rendered his sentence illegal and ultra vires, even thought it fell within the maximum term provided by the statute that defined his crime. Hicks, 447 U.S. at 346.

In light of these decisions, and Congress' use of the word "detention" in § 2255(e) suggest that Congress intended for at least some species of sentencing claims (other than actual innocent of the underlying offense claims) to justify savings clause relief. That framework harmonizes this Court's prior

invocation of an "actual innocence standard with Congress' express intent to allow prisoner's a means to test the legality of their detention.

This Court should grant the writ, reject the Respondent's arguments, and resolve the question presented to bring uniformity and understanding throughout the circuits.

II. ARGUMENT

THERE IS NO CONTROLLING PRECEDENT ADDRESSING WHETHER CALIFORNIA PENAL CODE SECTION 245's ASSAULT "BY ANY MEANS OF FORCE" IS A CRIME OF VIOLENCE.

Throughout Petitioner's habeas proceeding under 28 U.S.C. § 2241, he argued that he is innocent of the AWDW conviction used to enhance this sentencing under the career offender Guideline, and that the conviction for assault "by any means for force" does not qualify as a crime of violence. (See Pet. at 12-18). See also (Doc. 1 at 11-17). Relying primarily on United States v. Grajeda, 581 F.3d 1186, 1192 (2009), the Respondent argues that his issue has already been resolved by circuit precedent. (See RO at 8). This simply is not the case. Grajeda has never squarely addressed the issue or even attempted to apply the requisite Taylor analysis. United States v. Taylor, 495 U.S. 575 (1990). Accordingly, whether § 245's assault "by any means of force" is categorically a crime of violence is an important issue of first impression that should get the opportunity to be substantively addressed by the lower courts.(See Pet., Appx. C at 13 n.5)[2]

2. The California Supreme Court and lower courts have consistently weighed in on this issue by distinguishing between "AWDW" and assault "by any means of force..." offenses under § 245. See People v. Martinez, 125 Cal. App. 4th 1035, 1043 (2005) ("As is readily apparent, the statute

In Grajeda, the Ninth Circuit held that "AWDW" qualifies as a crime of violence under the elements clause of U.S.S.G. § 2L1.2(b)(1)(A) when a defendant has a "gun" or "deadly weapon" because "even the least touching with a deadly weapon or instrument is violent in nature." Id. at 1191. However, the Grajeda court did not address the disjunctive portion of Cal. Penal Code § 245(a)(1), assault "by any means of force...," where a defendant does not use a gun, deadly weapon, or instrument. Id. at 1192. Accordingly, the sole issue on appeal was whether the alien's AWDW conviction qualifies as a crime of violence under the immigration statute. The Grajeda court never undertook a Taylor analysis to determine whether § 245's "by any means of force" categorically qualifies as a crime of violence under U.S.S.G. § 4B1.2's force clause, where a gun, deadly weapon, instrument, or force is not elements of the offense. Rather, the Ninth Circuit held AWDW is a crime of violence under the elements clause because "even the least touching with a deadly weapon or instrument is violent in nature." Grajeda, at 1191.

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describes two different ways of committing a prohibited assault: (1) "by use of a deadly weapon or instrument other than a firearm or (2) by any means of force likely to produce great bodily injury."); People v. Williams, 222 Cal. App. 3d 911 *1 (Cal. Ct. App. 1990) (quoting People v. Equarte, 42 Cal. 3d 456, 465 (1986) (§245(a)(1) punishes two separate offenses: (1) assault with a deadly weapon or instrument other than a firearm or (2) assault by any means of force..."); People v. Sohal, 53 Cal. App. 4th 913 (1997) ("An assault under Section 245, subdivision (a)(1) is not necessarily a serious felony as defined by section 1192.7, subdivision (c)(23). An assault conviction based on an assault "by any means of force likely to produce great bodily injury" is not one in which defendant "personally used a dangerous or deadly weapon."); People v. Delgado, 43 Cal. 4th 1095, 1065 (2008) ("assault merely by means like to produce [great bodily injury], without the additional element of personal infliction, is not included in the list of serious felonies").

The published case cited by the Respondent has nothing in common: Grajeda never substantively addressed whether § 245, the disjunctive, "by any means of force" is categorically a crime of violence under § 4B1.1. Rather, the Respondent assumed that to be the case because the issue was not in dispute between the parties. Accordingly, Grajeda has no precedential value to the issue at bar. See Webster v. Fall, 266 U.S. 507, 511 (1925) ("Questions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been decided as to constitute precedent's"); Sakamoto v. Duty Free Shoppers, Ltd., 764 F.2d 1285, 1288 (9th Cir. 1985) ("unstated assumptions on non-litigated issues are not precedential holdings binding further decisions"); and V.S. ex rel. A.O. v. Los Gatos-Saratoga Joint Union High School Dist., 484 F.3d 1230, 1232 n.1 (9th Cir. 2007) (this Court not bound by a holding "made casually and without analysis, ...uttered in passing without due consideration of the alternatives or whether it is merely a prelude to another legal issue that commands the panel's full attention").

Notably, the Respondent cannot dispute that Petitioner does not have a prior conviction for AWDW. Neither can they cite to any case in which the Ninth Circuit applied Taylor's analysis to determine whether § 245's assault by any means of force is a crime of violence under the categorical approach. This is because the issue is one of first impression. Therefore, this Court is not constrained by prior precedent, and should finally grant the Petition and address the issue of

whether a prisoner can challenge a fundamental sentencing defect under § 2241 to test the legality of their "detention" to give guidance to litigants in the lower courts.

III. ARGUMENT

ASSAULT BY ANY MEANS OF FORCE UNDER § 245(a) IS NOT A CRIME OF VIOLENCE UNDER § 4B1.2's ELEMENTS CLAUSE.

Arguendo, the question that would be at issue in the lower court's is whether "assault by any means of force" qualifies as a crime of violence under § 4B1.2's elements clause.

To meet the elements clause, the offense must have "as an element the use, attempted use, or threatened use of physical force against the person of another." U.S.S.G. § 4B1.2(a)(1). This means the underlying statute must require two elements: (1) violent physical force capable of or potentially causing physical pain or injury to another person. Stokeling v. United States, ___ S.Ct. ___, 2019 WL 189343 at *6, *8 (Jan. 15, 2019) (citing Johnson v. United States, 559 U.S. 133, 140 (2010) (Johnson 2010); and (2) the use of force must be intentional and not merely reckless or negligent. Leocal v. Ashcroft, 543 U.S. 1, 12-13 (2004).

The categorical approach applies to determine if the offense meets the elements clause requirements. United States v. Benally, 843 F.3d 350, 352-53 (9th Cir. 2016). Courts must "disregard[] the means by which the defendant committed his crime, and look[] only to that offense's elements." Mathis v. United States, 136 S.Ct. 2243, 2248 (2016). Under that rubic, courts "must presume that the conviction 'rested on nothing more than the least acts' criminalized." Moncrieffe v. Holder,

569 U.S. ___, 190-91 (2013). And, when the statute of conviction criminalizes some conduct that does not, it is overbroad and cannot categorically be a crime of violence. Rodriquez-Castellon v. Holder, 733 F.3d 847, 853 (9th Cir. 2013).

To this end, the district court was wrong to use a non-existent AWDW conviction to triple Petitioner's mandatory minimum. And the Respondent is wrong because "assault by any means of force" is overbroad under the force clause. (See Pet. at 14-18). In addition, the Respondent is also wrong to automatically conclude that assault "by any means of force..." under Cal. Penal Code § 245(a) satisfied both requirements -- in fact, "by any means of force" requires neither violent physical force or intentional force. See People v. Flores, 68 Cal. Rptr. 3d 472, 475 (Ct. App. 2007) ("it was appropriate to advise the jury that prosecution need not prove defendant harbored an intent to use force against another"); CALCRIM No. 875 ("[t]he People are not required to prove that the defendant actually intended to use force against someone when he acted"). As a result, § 245's "by any means of force..." cannot categorically satisfy the definition of crime of violence which "require[s] proof of an intentional use of force. Leocal, at 12-13.[3]

3. People v. Whalen, 124 Cal. App. 2d 713, 720 (1954) ("The kind of force is immaterial;... it may consist in the taking of indecent liberties with a woman, or laying hold of and kissing her against her will."); People v. Golde, 163 Cal. App. 4th 101, 122 (2008) (The People are not required to prove the defendant actually intended to use violent physical force against someone when he acted); People v. Duke, 174 Cal. App. 3d 296, 303 (1985) (reasonable jury could not find beyond a reasonable doubt that headlock on victim constituted force likely to produce great bodily injury); People v.

In sum, Section 245's offense is categorically overbroad as to the force clause because it does not require as an element, a hightened degreed of force as required by Johnson 2010, (See Pet. at 14-18), nor does it require such intentional use of force.

This standard has been clearly set forth by the California Supreme Court, which have repeatedly held that intent to use force is not an element of the relevant portion of § 245. This is consistent with state law as well because a specific intent to cause injury, or even a subjective awareness that such injury might occur, is not a required element. See People v. Williams, 26 Cal 4th 779, 788, 790 (2001).

Pullins, 95 Cal. App. 2d 902, 904 (1950) (the statute does not define the means to be used as a requisite to a conviction. Its language "is a general and comprehensive term designed to embrace many and various means of force." (citing People v. Hinsh, 194 Cal. 1, 17 [227 P. 156]) "A grain of wheat may be blown with sufficient force to destroy the vision of an eye; a pillow in the hands of a demon may be the instrument of murder. While it is not essential to a conviction under Section 245 that an intent to severely injury by force be proved...or that injuries be serious." Id.); People v. Grant, 8 Cal. App. 4th 1105, 1113 (1982) ("There are many situations where one is compelled, i.e., forced to do something against ones will but the compulsion does not involve personal violence or threat of personal violence.... The force is psychological force compelling the victim to comply with the orders..."); The term "great bodily injury" as used in the felony assault statute, Mr. Witkins notes the salient aspect of this crime: (1) no specific intent is required; (2) no weapon or instrument is required; (3) the victim is usually injured, "but this is not a necessary element of the crime." (Witkin, Cal. Crimes (1963) §271, p. 255). Witkin's explains further "the crime...like other assaults...may be committed without infliction of any physical injury, and even though no blow is actually struck." See Duke, at 174 Cal. App. 3d 302.

CONCLUSION

Petitioner's sentencing court had no authority to classify him as a career offender in the face of Congress' contrary intent. And it had no discretion to sentence him above his proper mandatory Guideline range of 168-210 months. Thus, because it is undisputed by the record that Petitioner have never been convicted of AWDW, and his Petition implicates the legality of his detention, he falls within the narrow class of prisoners who merits savings clause relief. This Court should grant this writ, reject the Respondent's Opposition, and hold that fundamental sentencing defects, as well as undermined convictions, may proceed under § 2241 and § 2255(e)'s savings clause.

RESPECTFULLY SUBMITTED this 12 day of March, 2019.

Amos Junior Scott
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APPENDIX A

AFFIDAVIT IN SUPPORT OF DISPUTED FACTS

I. Amos Junior Scott, being duly sworn, deposes, and says:

1) I am the Petitioner in Case No. 18-7098.

2) I received the Respondent's Memorandum in Opposition on Tuesday, March 5, 2019, at approximately 6:00 pm.

3) The institution here at FCI Victorville has been on lock down since February 25, 2019, due to alleged staff training. However, the institution is expected to resume normal operations on Monday, March 10, 2019.

4) The Respondent at page 2 makes a legal conclusion that "[a]t the time of his sentencing, Petitioner had prior California convictions for assault with a deadly weapon and possession of cocaine base."[1] This is incorrect. (See Appx. B at 15-16 attached hereto for the Court's convenience. The original filing of same is at Doc. 1, EX. A). Contrary to the RO's legal conclusion, I have never been convicted of AWDW. Neither did I have an AWDW conviction at the time of my original sentencing. (See Appx. B at 4, 15-16).

5) The RO concludes at page 2 that "[t]he relevant California assault statute made it unlawful to 'commit[] an assault upon the person of another with a firearm' or with a deadly weapon or instrument other than a firearm or by any means of force likely to produce great bodily injury." This reading of the statute is incorrect. California Penal Code § 245 read in relevant part" "Any person who commits an assault upon the person of another with a deadly weapon or instrument other than a firearm or by any means of force like to produce great bodily injury...." (emphasis added). As is readily apparent, the RO mistated the law. The relevant portion of the statute only described two ways of committing the prohibited assault: (by use of a deadly weapon or instrument other than a firearm, or (2) by any means of force likely to produce great bodily injury. People v. Martinez, 125 Cal. App. 4th 1035, 1043 (2005). The latter portion of the statute, "by any means of force" that I pled no contest to was/is classified as a nonserious and nonviolent offense. (See Appx. B at 15-16).

6) The RO at page 3 incorrectly concludes that "[a]ccording to California court records, petitioner shot and killed an individual in Stockton, California.... He was initially charged with first degree murder but later pleaded guilty to assault with a deadly weapon, in violation of Cal. Penal Code § 245(a)." These statements are incorrect. Contrary to the above misstatements, I have never shot or killed anyone. (See Doc. 1, EX. D at para. 7). Neither have I personally been charged with, or accused of, shooting and killing any individual. (See Appx. B at 3, Ln. 16-22). The court voluntarily agreed to completely dismiss the charges against me. (Id, at Ln. 19-20). As reiterated, the RO is also incorrect that I "later pleaded guilty to AWDW. (See Appx. B. at 15-16), The actual charge I plead no contest to was "assault with means likely to produce a great bodily harm." (Id. at 15, Ln. 22-26).

7) The RO is correct at page 3 that the district court determined that prior convictions for AWDW and possession of cocaine base classified me as a career offender. (Id. at 3). However the district court was incorrect in its

determination which the RO fails to acknowledge. There were no Shepard approved documents presented at my sentencing. My attorney, Mr. Banzhoff, did not verify the legitimacy of the priors and relied on information siphoned from the PSR by the government. (See Doc. 1, EX. B, affidavit from attorney). The Fourth Circuit Court of Appeals used the inaccurate findings of the district court to affirm my sentence under the career offender Guideline. However, the record clearly supports the fact that I have never been convicted of AWDW. (See Appx. B).

8) The RO is incorrect at page 3, to imply "as relevant here," that I have brought the same issue concerning not having a predicate conviction for AWDW when challenging the career offender designation under ineffective assistance of counsel. See Scott v. United States, 2005 U.S. Dist. LEXIS 44473. The issue I raised was "trial counsel failed to investigate and obtain evidence to prove that my probationary sentence for a prior conviction was never revoked." Id. It would have been impossible prior to late December 2015, to contend that I do not have a prior conviction for AWDW because I, nor my appellate attorney, Ms. Pendry, had any knowledge of the actual charge, and we could not obtain a copy of my state court transcripts. (See Doc. 1, EX. C). In denying my motion under § 2255, the district court's opinion verifies that I did not know that I was not convicted of AWDW. The court stated: "The Petitioner does not deny, and did not at sentencing, that he was convicted in 1987 in California for assault with a deadly weapon...." Scott, at 5.

9) The RO at page 4 is incorrect when it states "petitioner's argument was based on this Court's decision in Mathis v. United States, 136 S.Ct. 2243 (2016)..." Contrary to the RO, the primary issue raised in my § 2241 Application and Memorandum of Law was "Mr. Scott is factually innocent of the AWDW conviction that was used as a crime of violence predicate to enhance his sentence to life." (See Doc. 1, at 3 of Application, and 10-16 of Memorandum of Law). I withdrew Issues Two and Three, "the Mathis arguments," in my Reply to the Respondent (See Doc. 15 at 2 n.3), reiterated my position in the Objections to the Magistrate's Report and Recommendation (See Doc. 20 at 1, n.1) ("To avoid filing a mixed Petition, Issue One is the only relevant claim: Whether or not Scott has a prior conviction for AWDW? if not, he is factually innocent of the predicate conviction."). I did not litigate any Mathis based arguments in the Reply or Objections mentioned above. Neither did I raise any Mathis based claims in the Ninth Circuit seeking certificate of appealability. (See ACD 1). Finally, I have not regurgitated any Mathis based arguments in the present Petition.

10) The RO's conclusion at page 5, Section 3 is wrong. The RO states "Petitioner renews his contention (Pet. 12-18) that he was erroneously sentenced as a career offender,... and which he asserts to be separate crimes in light of Mathis." (See RO at 5, § 3). Contrary to the RO, Mathis has not bearing on my Petition. Neither was it cited in my Table of Authorities. The fact is, at the time of my conviction, § 245(a)(1) prohibited two separate acts: (1) AWDW or [assault] (2) by any means of force.... The Superior Court of California made the distinction on the record between the two offenses, and the one I pled no contest to as well. (See Appx. B at 4, Ln. 9-20). Mathis has no bearing on the issue in this Court, and the issue is not based on an intervening decision, but on the fact that I do not have the predicate AWDW that was used to enhance my sentence from 168-210 months to 360 months to life.

11) The RO contends at pages 5-6 that Wheeler's petition which is based upon an intervening decision does not entitle me to relief. Id. My Petition is not based on an intervening change in the law as in Wheeler. Unlike Wheeler, I do not have an AWDW conviction - the one used to triple my mandatory minimum and classify me as a career offender. Although we do request relief based on a fundamental sentencing defect under the savings clause of § 2255(e) to test the legality of our detention, my Petition raises greater Due Process concerns because I am required to spend the rest of my natural life in prison for a prior conviction I clearly do not have.

12) Contrary to the RO at page 6, I am entitled to savings clause relief where I did not receive my transcripts at Appendix B until late December 2015. My direct appeal and first motion under § 2255 became final in 2005. Therefore, I have not had an opportunity to litigate my innocence of the AWDW conviction and illegal career offender designation. My first motion/Petition was filed within one year of receiving the transcripts at Appendix B. (See Doc. 1, EX. D at para. 9-15).

13) I should not have been sentenced to more than 168-210 months under the then mandatory guideline regime. However, due to the erroneous AWDW conviction, my mandatory minimum sentence increased to 360 months to life. I was classified as a career offender, and the Guidelines under the career offender designation recommended that I be sentenced to the top end - life. This is precisely the kind of miscarriage of justice and fundamental sentencing defect § 2241 and § 2255(e) were implemented to address.

FURTHER I SAY NOT.

With personal knowledge of the facts stated herein, and throughout the habeas proceedings, these undisputed facts are true and correct under the penalty of perjury. See 28 U.S.C. § 1746.

EXECUTED this 12 day of March, 2019.

Amos Junior Scott
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APPENDIX B

COPY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

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FILED

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. JAHDI BERNARD WILLIAMS, AMOS JUNIOR SCOTT and GEORGE McBRIDE, Defendants.	Nos. 39348 and 39498 Department No. 6 CHANGE OF PLEAS, ORDER GRANTING FORMAL PROBATION, STATEMENT FOR PRISON OFFICIALS

The above-entitled matter came on regularly for hearing on Monday, June 8, 1987 at the hour of 3:50 p.m. thereof, before HON. FRANK A. GRANDE, Judge of the Superior Court of the State of California, in and for the County of San Joaquin.

Reported by: JEANNE F. DOWNER, C.S.R. No. 7084

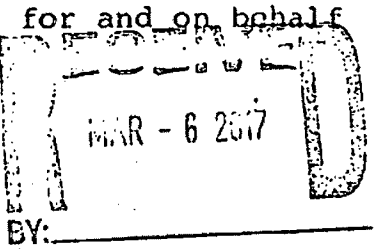
APPEARANCES OF COUNSEL:

WILLIAM J. MURRAY, Deputy District Attorney, County of San Joaquin, Courthouse, 222 East Weber Avenue, Room 202, Stockton, California, appeared as counsel for and on behalf of the People.

ARON LAUB, Deputy Public Defender, County of San Joaquin, 24 South Hunter Street, Room 201, Stockton, California, appeared as counsel for and on behalf of the Defendant JAHDI BERNARD WILLIAMS.

DOUGLAS G. JACOBSEN, Attorney at Law, 4637 Quail Lakes Drive, Stockton, California, appeared as counsel for and on behalf of the Defendant AMOS JUNIOR SCOTT.

JEFFREY HIRSCHFIELD, Attorney at Law, of the law offices of DARRELL GLAHN, 11 South San Joaquin Street, Stockton, California, appeared as counsel for and on behalf of the Defendant GEORGE McBRIDE.



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(All parties present, the following proceedings were had:)

THE COURT: We have this other matter. We have counsel here on the case of Williams, Scott and McBride.

MR. LAUB: Your Honor, Mr. Williams is present in custody.

MR. JACOBSEN: Mr. Scott is present in custody.

MR. HIRSCHFIELD: Mr. McBride is present in custody. We have had some discussions on the last

few days and I think at this time we're prepared to resolve the entire case and the charges against the three Defendants.

I think we probably were going to deal with Mr. McBride's case first. Is that okay, Mr. Murray?

THE COURT: Let me see if the plea bargain is as I think it is.

The Defendant, Mr. McBride, is charged with 187 of the Penal Code, murder, a felony.

The other two Defendants are charged with 245(a)(1) of the Penal Code, assault with a deadly weapon, or assault with means likely to produce great bodily harm. They are on separate Informations.

Is there an Amended Information on file?

MR. MURRAY: No, Your Honor.

MR. LAUB: The way procedurally that this happened was that testimony on the hearing of the 995 Motion or Motions, which had been brought on behalf of Mr. Scott and Mr. Williams -- Judge Fransen indicated that he was going to grant the Motions to Dismiss and then Mr. Murray asked would the Court issue a holding order on the 245, and although there may have been some procedural defect in not having an Amended Information filed, on behalf of Mr. Williams, we'd be prepared to waive whatever procedural defects exist in order for the plea to be taken at this time.

THE COURT: Certainly.

MR. JACOBSEN: Submitted on behalf of

Mr. Scott, as such is the case.

THE COURT: The Information in regard to Mr. McBride also had an enhancement under 12022.5 of the Penal Code. I understand the disposition will be as follows:

Mr. McBride and the two co-Defendants will plead to the following charges. Mr. McBride to a charge of involuntary manslaughter and the enhancement charge will be dismissed or stricken. Each of the other two Defendants will enter pleas of guilty or no contest to charges of 245 of the Penal Code, assault with a deadly weapon.

MR. LAUB: I think it's actually assault with force likely to produce great bodily harm.

MR. MURRAY: That's correct, Your Honor.

THE COURT: All right. Very well. And the disposition would be each Defendant, with the exception of Mr. McBride, will receive felony local dispositions; one year or less in the County Jail, felony probation on the charge. Mr. McBride would receive then a term of four years, which would be upper term for the involuntary manslaughter charges in State Prison with no probation. Is that basically the plea bargain you understand, Mr. Murray?

MR. MURRAY: Yes, Your Honor.

THE COURT: For Mr. McBride, is that correct?

MR. HIRSCHFIELD: Yes.

THE COURT: Is that what you understand to be the plea bargain, Mr. McBride?

DEFENDANT McBRIDE: Yeah.

THE COURT: For Mr. Williams?

MR. LAUB: Yes, Your Honor. And if the Court intends to refer this matter to Probation after accepting these pleas, we would request that instead of giving the usual four weeks, if it were possible to get a shorter setting in June. Mr. Williams was the first in custody, and he will have at that point in time, if we return at the end of June, he will have approximately eight months credit for time served.

THE COURT: Well, we will make that order. Mr. Williams, is that your understanding of the plea bargain?

DEFENDANT WILLIAMS: Yes.

THE COURT: And finally to Mr. Scott, is that what you understand to be the plea bargain?

DEFENDANT SCOTT: Yes.

THE COURT: Mr. Jacobsen?

MR. JACOBSEN: Yes, Your Honor.

THE COURT: All right. Now, let's first go to Mr. McBride.

Mr. McBride, there is going to be an amendment here to the -- actually, you don't have to amend. You can just enter a plea on the lesser included. Correct?

MR. MURRAY: Yes, Your Honor.

THE COURT: On that procedure?

MR. MURRAY: I'm sorry. Yes.

THE COURT: I'm sorry. Is that agreeable, to accept a plea of a lesser included, Mr. Murray?

MR. MURRAY: Yes.

THE COURT: Mr. McBride -- and then the charge would be to a lesser included offense within 187 of the Penal Code.

MR. MURRAY: 192(d), Your Honor.

THE COURT: 192(d) of the Penal Code, called involuntary manslaughter. In the allegations somewhat along these lines. As a matter of fact, it would be that the Defendant, Mr. George McBride, did commit a violation on October 25, 1986, a charge of 192(d) of the Penal Code, involuntary manslaughter, in that the Defendant, Mr. McBride, did without malice aforethought, kill one Paul Saucier, a human being in the commission of an unlawful act not amounting to a felony. That charge is a felony charge and does carry a State Prison sentence; the maximum being four years.

Do you understand the charge, Mr. McBride?

DEFENDANT McBRIDE: Yeah, I do.

THE COURT: And do you offer a plea of guilty to that charge?

MR. HIRSCHFIELD: Would the Court accept and the Prosecutor accept a no contest plea?

THE COURT: Sure.

MR. MURRAY: Yes, Your Honor.

THE COURT: Do you plead no contes

to that charge?

DEFENDANT McBRIDE: No contest.

THE COURT: All right. Have there been any threats or promises of any kind, except the Prosecutor agreed to accept that plea to the lesser charge and the Court has indicated approval of the four year State Prison term? Any other threats or promises?

MR. HIRSCHFIELD: Your Honor, the Prosecutor indicated that he would contact the authorities in Riverside and request that they not proceed on any violation of probation. Because my client is under informal probation from Riverside. It's unlikely, in light of the plea and the disposition in Mr. McBride's case that there would be any action from Riverside, but Mr. Murray indicated he would make that request.

MR. MURRAY: Your Honor, the record should be made clear that however I intend to make that request, that request is not binding. That is that the people in Riverside don't have to follow that request, and if they decide not to follow the request and do decide to file it, the Defendant -- that should not be grounds for withdrawal of the no contest plea.

THE COURT: Okay. Is that understood, Mr. McBride?

DEFENDANT McBRIDE: No.

THE COURT: Pardon?

DEFENDANT McBRIDE: No.

THE COURT: The idea is that he can make the call and request they not file a violation of probation, but Riverside County can ignore that and go ahead and file if they want to. And they could actually send you to prison on a consecutive term. I don't know what you are on probation for.

MR. HIRSCHFIELD: It's 11350. It's a three year -- may I have just a moment?

THE COURT: Sure. It's unlikely they'd do it, but that's always a possibility.

(Discussion off the record.)

MR. HIRSCHFIELD: Your Honor, I think we can proceed.

THE COURT: Okay. Is it clear to Mr. McBride that there is no way that the Judge, the Prosecutor or any of the attorneys, anybody could in any way bind another county to not file an Order to Show Cause or do anything? They're wholly independent from our jurisdiction. We don't have the control over them. Do you understand that, Mr. McBride?

DEFENDANT McBRIDE: Yeah, I understand.

THE COURT: Do you still want to plead no contest?

DEFENDANT McBRIDE: Yeah.

THE COURT: Okay. To go further then regarding the rights that you have, you do have the right to have a jury trial to determine whether you are guilty or not guilty of the charge. And a jury trial

means 12 persons picked at random from the community, who listen to the case and decide whether you are guilty or not guilty, based upon the evidence that comes in during the trial.

Do you understand what a jury trial is?

DEFENDANT McBRIDE: I understand what a jury trial is.

THE COURT: Do you agree to give up that right today?

DEFENDANT McBRIDE: I agree.

THE COURT: Okay. You also have the right during the trial to confront all the witnesses who give evidence against you.

That means the right to see, to hear and to question all those witnesses in court. Do you understand what that means, to confront witnesses?

DEFENDANT McBRIDE: I understand what it means.

THE COURT: Do you give up that right today?

DEFENDANT McBRIDE: Yep.

THE COURT: You also have the right to subpoena witnesses and evidence to be presented on your defense.

That means at no charge to you, we will issue orders of Court making witnesses come to court, and also make property come to court to be presented on your defense. Do you understand that right?

DEFENDANT McBRIDE: I understand that right.

THE COURT: Do you give up that right today?

DEFENDANT McBRIDE: I give up that right.

THE COURT: You will have the right against self-incrimination. You can't be forced to say, "Guilty, or, "No contest," or in any way to make any statements that might be held against you.

You also can't be forced to be a witness during your trial. You can remain silent if you want. When you say, "No contest," the Court of course has taken that as a plea of guilty, based upon the pre-trial conference and the stipulation that they're going to receive later. Do you understand that?

DEFENDANT McBRIDE: I understand that.

THE COURT: Do you give up that right today?

DEFENDANT McBRIDE: I give up that right today.

THE COURT: All right. You have the right to present a defense to the charges.

A defense means to present yourself as a witness if you'd like, to call other witnesses, present other evidence, present law, present argument; generally speaking, to present a defense to the charges during the trial. Do you understand the right to present a defense?

DEFENDANT McBRIDE: Yeah.

THE COURT: Do you give up that right today?

DEFENDANT McBRIDE: I do.

THE COURT: Okay. Do you understand that maximum penalty for this particular charge is four years in prison? Do you understand that?

DEFENDANT McBRIDE: Yes, I do.

THE COURT: Now, once you are released from prison, if you have a parole violation, you will be on parole for up to four years.

If you have a parole violation, you can be returned to prison for one year for each parole violation. Do you understand that, Mr. McBride?

DEFENDANT McBRIDE: Yeah.

THE COURT: All right. Stipulate to a factual basis?

MR. MURRAY: There is a factual basis in the preliminary hearing transcript, Your Honor. And People would so stipulate.

THE COURT: Stipulate for the Defendant?

MR. HIRSCHFIELD: I will stipulate to a factual basis.

THE COURT: All right. All right. Then you still want to maintain then a plea of no contest to the charge of involuntary manslaughter, Mr. McBride, correct?

DEFENDANT McBRIDE: No contest.

THE COURT: No contest. All right. The Court then finds as follows: The plea is voluntary and free. There is a knowing, intelligent, understanding

waiver of Constitutional and statutory rights. There is a factual basis for the plea and acceptance thereof. And the Defendant understands the maximum penalty and the directing primary consequences of plea.

Okay. The Court then will refer the matter to Probation for a pre-sentence report.

MR. HIRSCHFIELD: Could I have a moment?

THE COURT: Sure. I will go on to the other Defendants.

MR. HIRSCHFIELD: Okay. Well, just really quickly the Defendant, based on the plea negotiations, he is willing to give up having the probation report.

THE COURT: Okay.

MR. HIRSCHFIELD: So he can be sentenced earlier.

THE COURT: Would you then stipulate that under Rule 440, that the Court need not state any reason for giving the upper term?

MR. HIRSCHFIELD: No. I think based on the negotiated plea --

THE COURT: It's a 192.5 plea. The Court accepting that as a reasonable disposition, in light of the disputed facts that the Court's been advised of, but the Court would like your agreement that the Court need not state any reason.

MR. HIRSCHFIELD: I will agree to that.

THE COURT: Mr. McBride, you do have the right to have a probation report, although the

Court would not be granting probation because of the circumstances here, based upon what I know now.

Of course -- but you do have a right to have a probation report nonetheless, and the probation report, of course, has your background and circumstances in it. And the Court would look at that and decide whether or not to grant you probation.

But based upon the negotiated disposition, the Court is not allowed to give you probation, because the District Attorney has agreed to allow you to plead for a lesser included offense, under 192.5. It's an agreed involuntary manslaughter with four years. But do you want to give up your right to a probation report? You still have a right to have it, either way.

DEFENDANT McBRIDE: Yeah, I want to give it up.

THE COURT: And do you waive filing written statement of mitigation, Counsel?

MR. HIRSCHFIELD: Yes.

THE COURT: That agreed with you, Mr. McBride?

DEFENDANT McBRIDE: Yes.

THE COURT: All right. Very well. Then you wish to waive arraignment for judgment? No legal cause why we shouldn't pronounce judgment?

DEFENDANT McBRIDE: Repeat that?

THE COURT: I was talking to the attorney.

MR. HIRSCHFIELD: No legal cause why judgment

can't be pronounced right now.

THE COURT: And you waive formal arraignment?

MR. HIRSCHFIELD: Formal arraignment for judgment is waived.

THE COURT: All right. Very well. The Court will at this time then find the Defendant has knowingly, intelligently, understandingly given up his right to a probation report. And the Court then will proceed to pronounce sentence, if there's nothing else to be said.

MR. HIRSCHFIELD: Nothing else to be said.

THE COURT: Mr. McBride, anything else that you want to tell the Court? You want to think about that for a minute?

DEFENDANT McBRIDE: Yeah.

THE COURT: You want to think about it for a second?

DEFENDANT McBRIDE: Yeah.

THE COURT: All right. Let's go on to the other two Defendants, to Mr. Williams and Mr. Scott.

Pursuant to the negotiated disposition, it's agreed now that there is no formal charging document here. So --

MR. LAUB: Correct. It's our understanding that on behalf of Mr. Williams, that he is currently charged with a violation of Penal Code Section 245, that although there is no piece of paper that says that, that that's the reason that he's been in custody since

the 995 hearing to the present time, and that were this case to proceed further without this plea, that he would be en route to trial on the charge of 245.

THE COURT: When the 995 came up, was there a -- an Amendment to the Information?

MR. MURRAY: No, Your Honor. I just asked the Court to hold him to answer to that charge, the 245.

THE COURT: But you didn't file an Amended Information?

MR. MURRAY: I didn't file an Amendment.

THE COURT: Is it agreed we would amend the Information orally at this time?

MR. MURRAY: People so move to orally amend the Information to read a charge of 245.

MR. JACOBSEN: No objection.

THE COURT: Do you agree to that, Mr. Williams?

DEFENDANT WILLIAMS: Yes.

THE COURT: Mr. Scott?

DEFENDANT SCOTT: Yeah.

THE COURT: Okay. We will amend the Information to show that the 25th of October, 1986, each Defendant committed a felony, a violation of 245(a) of the Penal Code, in that they committed assault with means likely to produce a great bodily harm, and that the victim was one Paul Saucier.

To that charge then, Mr. Williams, how do you plead?

DEFENDANT WILLIAMS: No contest.

THE COURT: Mr. Scott, how do you plead?

DEFENDANT SCOTT: No contest.

THE COURT: Okay. Now, you each heard me give the advisement of rights to Mr. McBride, telling about the right to a jury trial to determine guilt or innocence.

Do you understand what a jury trial is, Mr. Scott?

DEFENDANT SCOTT: Yes.

THE COURT: Do you give up that right today?

DEFENDANT SCOTT: Yes.

THE COURT: Mr. Williams, do you understand what a jury trial is?

DEFENDANT WILLIAMS: Yes.

THE COURT: Do you give up that right today?

DEFENDANT WILLIAMS: Yes.

THE COURT: You both have the right to confront all the witnesses who give evidence at your trial, and I explained that to Mr. McBride a few moments ago.

Do you understand what that means, Mr. Williams?

DEFENDANT WILLIAMS: Yes.

THE COURT: Mr. McBride -- Mr. Scott?

DEFENDANT SCOTT: Yes.

THE COURT: Do you give up those rights, Mr. Williams?

DEFENDANT WILLIAMS: Yes.

THE COURT: Mr. Scott, do you give up

the right to confront witnesses?

DEFENDANT SCOTT: Yes.

THE COURT: You have the right to subpoena witnesses and evidence to be presented on your defense, and I explained that to Mr. McBride.

Did you understand that, Mr. Williams?

DEFENDANT WILLIAMS: Yes.

THE COURT: Mr. Scott?

DEFENDANT SCOTT: Yes.

THE COURT: Do each of you give up that right, Mr. Williams?

DEFENDANT WILLIAMS: Yes.

THE COURT: Mr. Scott?

DEFENDANT SCOTT: Yes.

THE COURT: You have the right to remain silent and not incriminate yourself. And I mentioned about if you plead no contest, you end up incriminating yourself and you can't be forced to testify at your trial.

Do you understand what it means to be free from self-incrimination, Mr. Williams?

DEFENDANT WILLIAMS: Yes.

THE COURT: Mr. Scott?

DEFENDANT SCOTT: Yes.

THE COURT: Do you give up that right, Mr. Williams?

DEFENDANT WILLIAMS: Yes.

THE COURT: Mr. Scott?

DEFENDANT SCOTT: Yes.

THE COURT: You have a right to present a defense. And I explained what that meant to Mr. McBride.

Did you understand what that means, Mr. Williams?

DEFENDANT WILLIAMS: Yes.

THE COURT: Mr. Scott?

DEFENDANT SCOTT: Yes.

THE COURT: Do each of you give up that right, Mr. Williams?

DEFENDANT WILLIAMS: Yes.

THE COURT: Mr. Scott?

DEFENDANT SCOTT: Yes.

THE COURT: Now, the maximum penalty to the 245 --

MR. LAUB: Two, three, four, Your Honor.

THE COURT: It's four years in State Prison, is the maximum penalty. And then the Court grants you probation that you later on, if you have a probation violation, you could be sent to State Prison on this particular charge. That would mean you could get up to four years.

Do you understand that, Mr. Williams?

DEFENDANT WILLIAMS: Yes.

THE COURT: Mr. Scott?

DEFENDANT SCOTT: Yes.

THE COURT: Now, if you are in violation of probation and you get sent to State Prison, you will be on parole after your release for a period up to four

years.

And during the parole period, there would be conditions of parole. If you violated parole, you would get back in State Prison one year for each parole violation.

Do you understand, Mr. Scott?

DEFENDANT SCOTT: Yes.

THE COURT: Mr. Williams?

DEFENDANT WILLIAMS: Yes.

THE COURT: And finally, conviction of a felony could result in your deportation, loss of right to become a citizen or resident alien and exclusion from returning to the United States if you are an alien.

Do you understand that, Mr. Williams?

DEFENDANT WILLIAMS: Yes.

THE COURT: Mr. Scott?

DEFENDANT SCOTT: Yes.

THE COURT: But you are not, either of you, aliens?

DEFENDANT WILLIAMS: No.

DEFENDANT SCOTT: No.

THE COURT: Wouldn't apply then.

Stipulate to a factual basis on behalf of the Prosecution?

MR. MURRAY: Yes, Your Honor.

THE COURT: For each Defendant?

MR. MURRAY: Yes, Your Honor. As stated in the preliminary hearing transcript.

MR. LAUB: On behalf of Mr. Williams, we stipulate from the transcript.

MR. JACOBSEN: Same as to Mr. Scott.

THE COURT: Very well.

MR. LAUB: Your Honor, at this time, as to a probation referral, I am calculating the amount of time that Mr. Williams has actually served, and I am also considering the surrounding of the nature of the offense and the likelihood that the Court would impose a full year on the matter.

I think that at this point we would be willing to waive referral if the Court wished to impose the year. As I calculate it, he's got 217 actual days in adding in 109 for good time at this point.

THE COURT: Uh-huh.

MR. LAUB: He is getting pretty close to time served.

THE COURT: Both Defendants want to waive referral to Probation? I have no problem with that.

The Court would grant them the probation, based upon the facts of the case. The Court feels disposition is fair. So I don't have any problems about granting the probation.

I see their age is youth, so I don't have any problem granting the probation to them.

MR. JACOBSEN: Mr. Scott would waive referral to Probation and be sentenced today, Your Honor.

MR. LAUB: On behalf of Mr. Williams, we

THE COURT: In other words, you want to avoid going to trial, the risk you would get convicted of greater charges?

DEFENDANT McBRIDE: Yes. Because of the rumors of Stockton juries.

THE COURT: You think that you would be better off because you might get convicted of a greater charge because of the jury? You feel you might have problems with them?

DEFENDANT McBRIDE: Yes.

THE COURT: Okay. That's up to you, if you feel that's the thing you want to do. That's fine with the Court.

The Court then at this time will propose to and in fact will sentence Mr. McBride to serve the upper term for the charge of involuntary manslaughter, to-wit: Term of four years in State Prison.

And I will discuss appeal and parole in a second. But I want to go back to the other Defendants first.

Ready for sentencing?

MR. LAUB: Yes, Your Honor.

THE COURT: Okay. Do you waive formal arraignment for judgment and any legal cause on behalf of Mr. Williams?

MR. LAUB: On behalf of Mr. Williams, we waive formal arraignment for sentencing. There is no legal cause why sentencing cannot be imposed now.

We will waive referral to the Probation. We

waive our right to file a statement in mitigation. And I have calculated his actual CTS time as 217 days, as of today. His arrest date was November 4th.

THE COURT: Is that all correct, Mr. Williams?

DEFENDANT WILLIAMS: Yes.

THE COURT: Mr. Scott's case?

MR. JACOBSEN: Your Honor, with regard to Mr. Scott's case, first of all, I calculate credit for time served. He informed me he went into custody voluntarily on December 17th, 1986. I have a pre-trial services interview report where the date of his interview was December 17th of '86. And I add all those days up and it comes to 174 days through and including today.

THE COURT: All right.

MR. JACOBSEN: With regard to the referral to Probation, we would waive that. Waive time for sentencing and there's no legal cause, that I am aware of, why he could not be sentenced now.

THE COURT: You waive formal arraignment for judgment?

MR. JACOBSEN: Yes.

THE COURT: Do you agree to that, Mr. Scott?

DEFENDANT SCOTT: Yes.

THE COURT: All right. What is Mr. McBride's credit?

MR. HIRSCHFIELD: I was just looking at the papers I brought today, and I don't believe I've got that information available. He was arrested in

Riverside County.

THE COURT: Do you know the date of your arrest?

DEFENDANT McBRIDE: 13th of December.

THE COURT: Is that close to any of the Defendants here?

MR. JACOBSEN: Mine was December 17th.

THE COURT: You were arrested on what?

DEFENDANT McBRIDE: I was apprehended on the 13th, came to Stockton.

THE COURT: He was four more days, so that would give him --

MR. JACOBSEN: One hundred seventy-eight.

THE COURT: -- 178 days credit. We will give him 178 days credit for time served on the four year sentence and Mr. McBride will be remanded for transportation to Vacaville for the execution of sentence.

And you have the right to appeal the judgment of the Court granting you then the four years in State Prison, Mr. McBride.

In order to make an appeal, you have to file the document called Notice of Appeal within a period of 60 days from today's date.

If you fail to do that, you will lose your right to appeal.

You have the right to an attorney to represent you on appeal; one free if you don't have money to hire one.

If you want an attorney to represent you, you must apply to the Appellate Court for the attorney, not to this Court.

And Mr. Hirschfield will not represent you any further in this particular case.

Also, you must keep the Appellate Court advised of your correct address, so they will know where to send notices to you, and also if you have an attorney, you can tell the attorney where to contact you.

Do you understand those rights?

DEFENDANT McBRIDE: I do.

THE COURT: And do you understand about parole? Once you are released, you're going to be on parole for up to four years. And if you have a parole violation, you will receive an extra one year for each parole violation.

Do you understand that?

DEFENDANT McBRIDE: Yeah.

THE COURT: Okay. Thank you.

To Mr. Williams, ready for sentencing then?

MR. LAUB: Yes, Your Honor.

THE COURT: Anything else you want to say on his behalf?

MR. LAUB: I just wanted to inform the Court that it's his intention when he is done doing his sentence, his plans are to return to Alameda County, where his family is in Oakland.

THE COURT: Due to the Defendant's age

and his circumstances and lack of a substantial prior record, the Court's going to grant him five years formal probation; suspend imposition of sentence for a period of five years; placed on probation for that period of time.

Conditions of probations as follows:

1) Obey all laws regarding personal conduct. Report to Probation in such manner and at such times as Probation shall direct.

2) Obtain employment of a nature to be approved by Probation; remain continuously employed thereafter.

3) To refrain from the excessive consumption of alcoholic beverages.

4) To keep Probation advised at all times of correct living and mailing address, and if Defendant should leave San Joaquin County to reside elsewhere, to do so only after written permission of Probation from this county.

Probation shall have discretion to provide Defendant may make reports to county to which he's changed his residence.

Defendant shall also pay a restitution fine in the sum of $250, payable at direction of Probation.

MR. LAUB: Your Honor, if Mr. Williams is going to be on formal probation, would it be appropriate to have Probation see him at the jail?

THE COURT: Yes.

MR. LAUB: In order to set up whatever they need so when he's released, he can go directly to his home in Alameda County.

THE COURT: I hope they will take care of that transfer, but I can't guarantee they will do it. They will be directed to contact him.

All right. Do you agree to those terms of probation, Mr. Williams?

DEFENDANT WILLIAMS: Yes.

THE COURT: All right. Court also will impose a term in the County Jail of one hundred -- 365 days, credit for time served, 217.

MR. LAUB: Thank you.

THE COURT: Mr. Scott, ready for sentencing?

MR. JACOBSEN: Yes, Your Honor.

THE COURT: All right. We will impose the same sentence of formal probation as just pronounced as to Mr. Williams, including a 365 day jail term, credit for time served 174 days.

Do you agree to that probation, Mr. Scott?

MR. JACOBSEN: Your Honor, he has asked me about credit for good time credit, and I indicated that --

THE COURT: He receives it automatically.

MR. JACOBSEN: I calculate that would be one-half of the other time, which would be 87 days.

THE COURT: Right. Okay. Do you agree to that, Mr. Scott?

DEFENDANT SCOTT: Yes.

THE COURT: Okay. Fine. Very good. The Probation will come out to the jail and have each of you sign a probation order.

MR. JACOBSEN: He also, I believe, Your Honor, will be residing out of county when he finishes his term. And so if they come out to see him at the jail, that could be arranged. And otherwise, he is supposed to report within so many days after getting out of jail.

THE COURT: I have no problem. They will probably come out to see him within a couple of weeks. Okay. Thank you.

(Proceedings concluded.)

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STATE OF CALIFORNIA,)
) ss.
COUNTY OF SAN JOAQUIN.)

I, JEANNE F. DOWNER, Superior Court Reporter of the State of California, in and for the County of San Joaquin, do hereby certify:

That I was present in the Superior Court of the State of California, in and for the County of San Joaquin, at the time of the proceedings had in the above-entitled matter; that at said time and place, I took down in shorthand notes all the proceedings had; that I thereafter caused said shorthand notes to be transcribed into longhand typewriting, the above and foregoing being a full, true and correc transcription thereof, and a full, true and correct transcript of all proceedings had.

Jeanne F Downer
C.S.R. No. 7084