

No. \_\_ - \_\_\_\_\_

IN THE SUPREME COURT OF THE UNITED STATES

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PERCY ELWAYNE DEMERSON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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PETITION FOR A WRIT OF CERTIORARI

APPENDIX

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Appendix A Judgment and Opinion of Fifth Circuit

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Northern District of Texas

## APPENDIX A

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 18-10349  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

October 26, 2018

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

PERCY ELWAYNE DEMERSON,

Defendant - Appellant

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:17-CR-222-1

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Before SMITH, WIENER, and WILLETT, Circuit Judges.

PER CURIAM:\*

Appealing the judgment in a criminal case, Percy Elwayne Demerson raises arguments that are foreclosed by *United States v. Alcantar*, 733 F.3d 143, 145-46 (5th Cir. 2013), and *United States v. Trejo*, 610 F.3d 308, 313 (5th Cir. 2010). In *Alcantar*, we rejected the argument that *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519 (2012), affected our prior jurisprudence rejecting challenges to the constitutionality of 18 U.S.C. § 922(g)(1). *Alcantar*, 733 F.3d

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

at 146. In *Trejo*, we applied the plain error standard of review to a factual sufficiency claim that was raised for the first time in this court. *Trejo*, 610 F.3d at 313.

Accordingly, the Government's motion for summary affirmance is GRANTED, its alternative motion for extension of time is DENIED, and the judgment of the district court is AFFIRMED.

## APPENDIX B

**UNITED STATES DISTRICT COURT**

NORTHERN DISTRICT OF TEXAS

Fort Worth Division

UNITED STATES OF AMERICA

v.

PERCY ELWAYNE DEMERSON

**JUDGMENT IN A CRIMINAL CASE**

Case Number: 4:17-CR-00222-O(01)

U.S. Marshal's No.: 56380-177

John P. Bradford, Assistant U.S. Attorney

Taylor Brown, Attorney for the Defendant

On November 15, 2017 the defendant, PERCY ELWAYNE DEMERSON, entered a plea of guilty as to Count One of the Superseding Information filed on November 14, 2017. Accordingly, the defendant is adjudged guilty of such Count, which involves the following offense:

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 922(g)(1)	Felon in Possession of Firearm	September 10, 2017	One

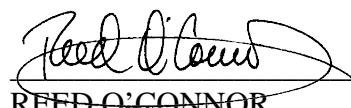
The defendant is sentenced as provided in pages 2 through 3 of this judgment. The sentence is imposed pursuant to Title 18, United States Code § 3553(a), taking the guidelines issued by the United States Sentencing Commission pursuant to Title 28, United States Code § 994(a)(1), as advisory only.

The defendant shall pay immediately a special assessment of \$100.00 as to Count One of the Superseding Information filed on November 14, 2017.

Upon Motion of the government, all remaining Counts are dismissed, as to this defendant only.

The defendant shall notify the United States Attorney for this district within thirty 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.

Sentence imposed March 5, 2018.



REED O'CONNOR  
U.S. DISTRICT JUDGE

Signed March 9, 2018.

Judgment in a Criminal Case

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Defendant: PERCY ELWAYNE DEMERSON

Case Number: 4:17-CR-00222-O(1)

**IMPRISONMENT**

The defendant, PERCY ELWAYNE DEMERSON, is hereby committed to the custody of the Federal Bureau of Prisons (BOP) to be imprisoned for a term of **EIGHTY-FOUR (84) months** as to Count One of the Superseding Information filed on November 14, 2017. This sentence shall run consecutive to any sentence(s) which may be imposed in Case Nos. 1513408D and 1513308D, in the 213<sup>th</sup> District Court of Tarrant County; and Case Nos. 1513306D and 1513973, in the 396<sup>th</sup> District Court of Tarrant County, and to run concurrently to Case No. 1513409D in the 213<sup>th</sup> District Court of Tarrant County.

The Court recommends to the BOP that the defendant be housed at the FCI Seagoville, Texas facility, if possible.

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

**SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of **THREE (3) years** as to Count One of the Superseding Information filed on November 14, 2017.

While on supervised release, in compliance with the standard conditions of supervision adopted by the United States Sentencing Commission, the defendant shall:

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

Judgment in a Criminal Case

Defendant: PERCY ELWAYNE DEMERSON

Case Number: 4:17-CR-00222-O(1)

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(13) notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement, as directed by the probation officer.

In addition the defendant shall:

not commit another federal, state, or local crime;

not possess illegal controlled substances;

not possess a firearm, destructive device, or other dangerous weapon;

cooperate in the collection of DNA as directed by the U.S. probation officer;

report in person to the U.S. Probation Office in the district to which the defendant is released from the custody of the Federal Bureau of Prisons within 72 hours of release;

refrain from any unlawful use of a controlled substance, submitting to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer pursuant to the mandatory drug testing provision of the 1994 crime bill;

refrain from any unlawful use of a controlled substance, submitting to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer pursuant to the mandatory drug testing provision of the 1994 crime bill;

participate in a program approved by the probation officer for treatment of narcotic or drug or alcohol dependency that will include testing for the detection of substance use, abstaining from the use of alcohol and all other intoxicants during and after completion of treatment, contributing to the costs of services rendered (copayment) at the rate of at least \$25 per month; and,

participate in mental health treatment services as directed by the probation officer until successfully discharged, which services may include prescribed medications by a licensed physician, with the defendant contributing to the costs of services rendered (copayment) at a rate of at least \$25 per month.

#### **FINE/RESTITUTION**

The Court does not order a fine or costs of incarceration because the defendant does not have the financial resources or future earning capacity to pay a fine or costs of incarceration.

Restitution is not ordered because there is no victim other than society at large.

Judgment in a Criminal Case

Defendant: PERCY ELWAYNE DEMERSON

Case Number: 4:17-CR-00222-O(1)

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**RETURN**

I have executed this judgment as follows:

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

\_\_\_\_\_  
United States Marshal

\_\_\_\_\_  
BY  
Deputy Marshal