No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

EDWARD NOLAN NORWOOD, PETITIONER

vs.

UNITED STATES, RESPONDENT

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Petitioner, through counsel, asks leave to file the attached Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit without prepayment of costs and to proceed in forma pauperis. Counsel was appointed in the court of appeals under the Criminal Justice Act, 18 U.S.C. § 3006A(b). This motion is brought pursuant to Rule 39.1 of the Rules of the Supreme Court of the United States.

Respectfully submitted,

February 5, 2019

/s/ DAVID S. McLANE
DAVID S. McLANE
Attorney at Law

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

EDWARD NOLAN NORWOOD, PETITIONER,

vs.

UNITED STATES, RESPONDENT.

_____

ON WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

_____

PETITION FOR WRIT OF CERTIORARI

_____

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QUESTION PRESENTED

A. Resolving the issue explicitly left open by this Court in *McNeil v. United* States, 563 U.S. 816 (2011): Whether it violates the United States Constitution as well as the principles of comity and federalism to treat a prior state drug conviction that is explicitly a misdemeanor under state law as a felony for purposes of federal sentencing enhancement?

B. Whether 21 U.S.C. § 851 should be construed to allow the government to double a defendant's mandatory minimum sentence by proceeding on an §851 information that is not actually on file or in effect at the time of the defendant's plea or trial?

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PETITION FOR A WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Edward Norwood petitions for a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit in his case.

I.

OPINIONS BELOW

The unpublished memorandum of the United States Court of Appeals for the Ninth Circuit is attached as Appendix 1, A001-A006. The order denying a petition for rehearing is attached as Appendix 2, A007-008. The district court's minute order dismissing the Information filed pursuant to 21 U.S.C. §851 et seq. is attached as Appendix 3, A009-A0017.

II.

JURISDICTION

The unpublished memorandum of the United States Court of Appeals for the Ninth Circuit was entered on May 14, 2018, A001, and a timely petition for rehearing en banc was denied on August 22, 2019, A007. The jurisdiction of this Court is invoked pursuant to 62 Stat. 928, 28 U.S.C. § 1254(1).

III.

STATUTORY PROVISIONS INVOLVED

California Penal Code §1170.18(a) provides in pertinent part:

A person who, on November 5, 2014, was serving a sentence for a conviction, whether by trial or plea, of a felony or felonies who would have been guilty of a misdemeanor under the act that added this section ("this act") had this act been in effect at the time of the offense may petition for a recall of sentence before the trial court that entered the judgment of conviction in his or her case to request resentencing…

21 U.S.C. §841(b)(1)(B) provides in pertinent part:

…If any person commits such a violation *after a prior conviction for a felony drug offense has become final*, *such person shall be sentenced to a term of imprisonment which may not be less than 10 years* and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or $8,000,000 if the defendant is an individual or $50,000,000 if the defendant is other than an individual, or both. (Emphasis added.)

21 U.S.C. §802(44) provides in pertinent part:

The term "felony drug offense" *means an offense that is punishable by imprisonment for more than one year under any law of the United States or of a State* or foreign country that prohibits or restricts conduct relating to narcotic drugs, marihuana, anabolic steroids, or depressant or stimulant substances. (Emphasis added.)

21 U.S.C. §851(a)(1) provides in pertinent part:

No person who stands convicted of an offense under this part shall be sentenced to increased punishment by reason of one or more prior convictions, unless before trial, or before entry of a plea of guilty, the United States attorney files an information with the court (and serves a copy of such information on the person or counsel for the person) stating in writing the previous convictions to be relied upon.

IV.

STATEMENT OF THE CASE

A. JURISDICTION IN THE COURTS BELOW.

The district court had jurisdiction under 18 U.S.C. § 3231. The court of appeals had jurisdiction under 28 U.S.C. § 1291.

B. FACTS MATERIAL TO CONSIDERATION OF THE QUESTION PRESENTED.[1]

Mr. Norwood was charged in an indictment filed on May 30, 2013, with conspiracy to distribute and possess with intent to distribute approximately one ounce of crack cocaine, 33.8 grams, and supply it to a confidential informant. Mr. Norwood allegedly obtained the powder cocaine with money supplied by the confidential informant. A020, CR-1. It was Mr. Norwood's co-defendant who converted the powder into crack cocaine and supplied it to the confidential informant.

Subsequent to the filing of the indictment, the government filed an information on September 6, 2013, under 21 U.S.C. § 851 (hereinafter "851 information") alleging Mr. Norwood had been previously convicted of a state felony drug offense on or about February 14, 2007, for possession of a controlled substance under California Health and Safety Code Section 11350. A020, CR-20. This state conviction was based on straight possession of crack cocaine,

[1] The facts are taken from the district court's opinion dismissing Mr. Norwood's Information pursuant to 21 U.S.C. §851 (Appendix 3 at A009-A017), and the district court docket ("CR") (Appendix 4 at A018-A030).

involving 7.33 grams of crack cocaine. If sustained, this allegation would have increased the applicable mandatory minimum sentence from 5 years to 10 years and the applicable maximum sentence from 40 years to life. See 21 U.S.C. § 841(b)(1)(B); 21 U.S.C. § 851.

While this federal case was pending, after the Information was filed, on November 4, 2014, with 59.6 percent of the vote, California voters approved Proposition 47, which re-categorized possession of a controlled substance as a misdemeanor rather than a felony, and allowing defendants previously convicted of possession offenses to have their former felony convictions retroactively reduced to misdemeanors under California Penal Code § 1170.18(a).

The state court reduced Mr. Norwood's possession conviction to a misdemeanor under this new law on July 28, 2015. *See,* Appendix 5, at A032-A033. Mr. Norwood's counsel thereafter filed a motion to dismiss the 851 information in the federal case, on the ground that the prior conviction was no longer a felony. A023; CR-99. The district court granted that motion on January 15, 2016. A009;CR-148. This reduced the mandatory minimum sentence Mr. Norwood faced from 10 years to 5 years, so he decided to plead guilty instead of going to trial.

If the information had not been dismissed, he would have gone to trial since the mandatory minimum of ten years was above a guideline range of 100-125 months based on offense level 24, Category VI criminal history. The government neither filed a notice of appeal nor sought to stay the proceedings so

it could consider filing a notice of appeal. Mr. Norwood entered a guilty plea on January 19, 2015, with no § 851 information on file due to the district court's dismissal order. A026, CR-153. Mr. Norwood was sentenced to 72 months. A027, CR-194.

On appeal the Ninth Circuit reversed the dismissal of the §851 information and remanded to the district court. A001-A006.

V.

REASONS FOR GRANTING THE WRIT

The court of appeal violated petitioner's Constitutional rights as well as principles of comity and federalism by disregarding the will of the California voters that overwhelming determined that his prior conviction was a misdemeanor for all purposes under state law. This issue was explicitly left open by this Court in *McNeil v. U.S.,* 563 U.S. 816, 825 fn. 1 (2011) and is ripe for review now.

Additionally, if undisturbed by this Court, the court of appeal's flawed statutory interpretation of §851 will permit sentencing enhancements across the nation without the required information actually on file or in effect.

A. THE COURT SHOULD ADDRESS THE SENTENCING ENHANCEMENT ISSUE PRESENTED HERE THAT WAS EXPLICITLY LEFT OPEN IN *McNEIL v. U.S.*

In *McNeil v. U.S.,* 563 U.S. 816, 825 fn. 1 (2011) this Court explicitly left open the question presented here of whether it is appropriate to enhance a sentence under federal law based on a prior state offense when "a State subsequently lowers the maximum penalty applicable to an offense and makes

that reduction available to defendants previously convicted and sentenced for that offense." *Id.* For the reasons presented below, the Court should now rule that allowing a sentencing enhancement under these circumstances violates the Constitution as well as principles of comity and federalism.

1. Enhancing Petitioner's Sentence Here Violates His Constitutional Rights to Equal Protection, Due Process of Law, and the Eighth Amendment

Failing to apply Proposition 47 reclassification scheme to state convictions reduced to misdemeanors leads to absurd and irrational results where persons pre-Proposition 47 with prior convictions will have their sentences enhanced in federal court for simple possession, while those prosecuted post-Proposition 47 would only have misdemeanor convictions for the same conduct and not have their sentences enhanced. This will continue in perpetuity since there is no time limit to file an § 851 information for a prior felony conviction for simple possession. Such an interpretation violates equal protection.

Under the Court of Appeals opinion, due only to unfortunate timing, Mr. Norwood will forever have a "felony," albeit a felony conviction that was later "designated" as a misdemeanor, and will forever be subject to the enhanced sentence by means of a § 851 information. This is true even though persons convicted under the same statute after Proposition 47 would only be convicted of misdemeanors that could not support such enhancements. This conflict violates Mr. Norwood's equal protection rights: persons convicted of exactly the same state offense receive exactly the opposite treatment in federal court.

For challenges made on constitutional equal protection grounds, the general rule is that legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate government interest. *See City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 440 (1985); *Von Robinson v. Marshall*, 66 F.3d 249, 251 (9th Cir.1995); *United States v. Harding*, 971 F.2d 410, 412 (9th Cir.1992). A sentencing scheme that does not disadvantage a suspect class or infringe upon the exercise of a fundamental right, as is the case here, is subject only to rational basis scrutiny. *See Harding*, 971 F.2d at 412. It can be disturbed only if the defendant can prove "that there exist no legitimate grounds to support the classification." *Id*. at 413, *citing Minnesota v. Clover Leaf Creamery Co.,* 449 U.S. 456, 464 (1981).

There is no rational basis for the distinction here. As reflected in the Proposition' 47s language, the drafters', and the voters', interest in passing a liberally construed, broadly reaching, and fully retroactive statute was intense: "This act shall be liberally construed to effectuate its purposes." The Safe Neighborhoods and Schools Act (Proposition 47), Section 18. Given the immense popular mandate in California to "redesignate" certain felonies as misdemeanors, and given the non-ambiguous language in the proposition -- "[r]equire misdemeanors instead of felonies," *Id*. at Section 3. Purpose and Intent, Sub-Section (5) (emphasis added), What federal interest could there be in treating offenders differently based on the date they committed their simple drug possession offense as determined when the State passed Proposition 47?

Additionally, on the day the Panel opinion issued, Hon. Judge Valerie Baker Fairbanks in *Lorenzo Clay II v. United States of America*, 17-CV-052720-VBF (C.D.C.A. May 14, 2018), Dkt.-16 citing in part Petitioner's case, granted relief under §2255 to a defendant who similarly received an enhanced sentence based on a prior conviction subject to Proposition 47 on additional Constitutional grounds that it violated due process and the Eighth Amendment. The court noted that under *Johnson v. U.S.*, 544 U.S. 295 (2005) "…Clay's right to relief from the enhancement does not depend on showing that his prior has been found unconstitutional. Because Clay has shown his prior drug *felony* was vacated, he has a right to relief…" *Id.* at p.7 (emphasis in original).

Here too, this Court should grant relief to Mr. Norwood on the grounds that his felony conviction was vacated, and the enhancement violates his right to equal protection, to due process and under the Eighth Amendment.

2. Enhancing Petitioner's Sentence Here Violates Principles of Comity and Federalism

Federal sentencing law explicitly refers to state law to define the term "felony drug offense" for enhancement purposes. *See,* 21 U.S.C. §802(44) (" The term 'felony drug offense' *means an offense that is punishable by imprisonment for more than one year under any law of the United States or of a State* or foreign country that prohibits or restricts conduct relating to narcotic drugs, marihuana, anabolic steroids, or depressant or stimulant substances.") (Emphasis added.) Despite this clear language, however, the Court of Appeals in this case disregarded California law that explicitly defines petitioner's prior

offense as a misdemeanor.

On November 4, 2014, nearly 60% of California voters enacted Proposition 47. A010. As relevant here, Proposition 47 reclassified drug possession for personal use, see Cal. Health & Safety Code § 11350(a) from a felony to a misdemeanor. Proposition 47 also created a mechanism for individuals convicted of such offenses to petition a California court for reclassification under Cal. Penal Code § 1170.18. These modifications effected the will of the People of the State of California recognizing the lesser dangers posed by low-level drug possession and the high costs associated with imprisoning persons convicted of straight drug possession offenses.

Proposition 47 rejects lengthy prison sentences for persons convicted of minor drug possession, declaring that prison spending should be "focused on violent and serious offenses."[2] Three years before Proposition 47 passed, as this Court detailed in *Brown v. Plata*, 563 U.S. 493, 502 (2011), California prisons were exceptionally overcrowded to the point of Eighth Amendment violations, requiring California to reduce its prison population by 46,000 inmates. *Id.* at 501. The over-crowding stemmed in part from anti-recidivism laws that could produce long sentences based on prior convictions for non-violent offenses, such as trivial infractions such as petty theft, minor drug possession and minor drug sales. Marie Gottschalk, Sentence to Life: Penal Reform and the Most Severe Sanction, 9 Ann. Rev. L. & Soc. Sci. 353, 365

2 See, Proposition 47, § 2, http://vig.cdn.sos.ca.gov/2014/genreal/pdf/text-of-proposed-laws1.pdf.

(2013).

Proposition 47 provides that a reclassified felony conviction "shall be considered a misdemeanor for all purposes" except possession of firearms. Cal. Penal Code § 1170.18(k). Proposition 47 repeatedly states that it should be interpreted broadly. See Proposition 47, § 15 ("this act shall be broadly construed to accomplish its purposes.") *id.* § 18 ("This act shall be liberally construed to effectuate its purposes.") These statements reflect California voters' desire to enact wide-ranging sentencing and incarceration reform.

As a result of Proposition 47, California's jail and prison populations have seen a "50 percent decline in the number of individuals being held or serving sentences for Proposition 47 offenses. This change drove an overall decline in the jail population of 9 percent in the year following the proposition's passage." Mia Bird, et al., Public Policy Institute of California, How Has Proposition 47 Affected California's Jail Population?, at 3 (2016) http://www.ppic.org/content/pubs/report/R_316MB3R.pdf.

With its reclassification of prior convictions, Proposition 47 evinces California's voters' commitment to ensure that prisons are reserved for persons convicted of violent offenses, and those convicted of nonviolent offenses and simple drug possession serve shorter sentences. If Proposition 47 was correctly applied to federal prisoners to shorten federal sentences that rely on the former felony status of crimes reclassified as misdemeanors, the impact on federal system would be dramatic. Approximately half of all federal prisoners are incarcerated for drug crimes. E. Ann Carson, Bureau of Justice Statistics,

Prisoners in 2014, at 17 tbl. 12 (2015).

http://www.bjs.gov/content/pub/pdf/p14.pdf.

Because California is the most populous State in the Union, a significant number of federal inmates are likely to have prior convictions eligible for reclassification. California voters have declared that inmates convicted of nonviolent drug possession should not serve long and expensive prison sentences. The proper interpretation of federal law relying on state definitions of what offenses constitutes felonies for drug offenses punishable by over a year in jail, 21 U.S.C. § 802(44), should reflect that choice.

3. *United States v. Diaz,* 838 F.3d 968 (9th Cir. 2016), Relied on By The Panel Was Incorrectly Decided and Should be Overruled

This Court should overrule *United States v. Diaz*, 838 F.3d 968 (9th Cir. 2016) which was wrongly decided and relied upon by the Panel in this case. As noted above, reversing *Diaz* is not precluded by Supreme Court precedent which explicitly left this question open in *McNeil v. U.S.*, 563 U.S. 816, 825 fn. 1 (2011)("As the Government notes, this case does not concern a situation in which a State subsequently lowers the maximum penalty applicable to an offense and makes that reduction available to defendants previously convicted and sentenced for that offense.")

As the district court in this matter correctly noted, "Proposition 47 provides a change in state law and affords a former felon such as Norwood a process to have his felony conviction redesignated a misdemeanor. This makes Proposition 47 meaningfully different from general state post-conviction

procedures [criticized by *Diaz*] and demonstrate an intent to reduce the consequences for conduct Norwood was convicted of in 2007." A014-A015 (text not in original).

Further, *Diaz*'s reliance on *United States v. Norbury*, 492 F.3d 1012, 1014 (9th Cir. 2007) was misplaced, as the district court stated, because unlike expungements or certain dismissals that do not alter the state's perception of the wrongfulness of the conduct, in contrast Proposition 47 did alter the state's view that possession of drugs was no longer felonious behavior. Unlike expungements, which a defendant can obtain for good behavior through completion of probation in the interests of justice, under California Penal Code § 1203.4, which has nothing to do with the character of the crime and are given on an individual basis, Proposition 47 re-classified felony drug possession as misdemeanors across the board, thus, the very nature of the conviction changed.

Because the federal statutory scheme relies on the state's classification of conduct as to whether it qualifies as a felony, the federal government's definition of a prior state drug felony conviction is by definition derived from the State definition. (See, 21 U.S.C. § 802(44): "The term 'felony drug offense' means an offense that is punishable by imprisonment for more than one year under any law of the United States or of a State or foreign county . . . ."). Since the State has reclassified it and made that reclassification retroactive, it is inconsistent to rely on the "State" definition of what is a felony drug conviction, then ignore that definition and utilize federal case law interpretation by unelected judges to interpret what is a felony drug offense under State law.

Moreover, even if we look to federal law, it should be considered a misdemeanor. The *Diaz* court failed to consider the federal law that would have informed the court that even under federal law, simple possession is a misdemeanor. Under 21 U.S.C. § 844, if Mr. Norwood had been convicted under that statute for simple possession of cocaine base he would be sentenced to imprisonment for "not more than 1 year." Thus, looking to federal law, as *Norbury* and *Diaz* purportedly instruct, simple possession of drugs is not a felony and Mr. Norwood's conviction under both state law and applying federal law would be a misdemeanor.

B. PRINCIPLES OF STATUTORY INTERPRETATION REQUIRE THAT IN ORDER FOR AN § 851 INFORMATION TO BE USED TO ENHANCE A DEFENDANT'S SENTENCE IT MUST BE "IN EFFECT" OR "ON FILE" AT THE TIME OF A DEFENDANT'S PLEA OR SENTENCING

21 U.S.C. § 851 requires the United States Attorney to file an information with the court "…before trial, or before entry of a plea of guilty." *Id.* As clearly reflected in the attached criminal record, the district court dismissed the §851 information on January 15, 2016 (A026; CR 148). Thus, it is indisputable that there was no § 851 information on file "before entry of a plea of guilty" by petitioner on January 19, 2016 (A026; CR 153) that may validly be used to enhance petitioner's sentence.

This common sense statutory interpretation is demonstrated in *United States v. Sperow*, 494 F.3d 1223 (9th Cir. 2007), where the government indicted the defendant for possession of marijuana with intent to distribute and filed a notice of enhancement under § 841(b)(1)(B) (alleging a quantity of marijuana over 1000 kilograms) and for a prior conviction under § 851. *Id.* at 1225. Later,

the government determined that the marijuana involved, actually weighed only 98.5 kilograms, and filed a motion stating its intention "to strike the second paragraph of the grand jury indictment, which allegation established an enhanced penalty, on grounds subsequent investigation revealed that the amount of marijuana seized weighed no more than 98.5 kilograms..." *Id.* Despite the above statement, the government later argued that it only struck the enhancement based on quantity but not the prior conviction. *Id.* The Defendant argued that the § 851 notice was no longer valid in light of the government's subsequent motion to strike. *Id.* The district court held that the enhancement based on defendant's prior conviction did apply and enhanced his sentence from 5 to 10 years. *Id.*

The Ninth Circuit reversed and clearly held, contrary to the Panel here, that the mere filing of the § 851 notice was insufficient. *Id.* at 1228 ("We disagree with the dissent's implication that initial compliance with § 851(a)'s four procedural requirements makes the government's notice to seek a sentence enhancement immune from challenge if later modified or withdrawn.")

Moreover, the dissenting opinion by Judge O'Scannlain made clear that the enhancement had to be on file at the time of the plea or trial, stating, "contrary to the majority's assertion, I do not take the position that once the government files § 851 notice that satisfies the statutory requirements, it cannot later amend or withdraw that notice." *Id.* At 1231.

The logical import of Judge O'Scannlain's statement, and the well-reasoned majority opinion, is that the 851 information must be on file at the time of the plea or trial. Certainly, if the government's ambiguous statement regarding withdrawal in *Sperow* is sufficient to challenge an §851 despite its

filing, the district court striking the § 851 in the instant case is sufficient. Section 851 makes clear the information must be on file when a defendant pleads guilty or goes to trial.

The statute and common-sense mandates continuous compliance, otherwise, an information could still be on file even if dismissed by the Court, or the government withdraws it. If it is dismissed it is the same as if it was withdrawn. When it was dismissed, the government acquiesced in the fact that there was no 851 information at the time of the plea. The government could have, and must have, taken an interlocutory appeal in order to preserve the issue.

They were clearly permitted to take such an interlocutory appeal. *See United States v. Morris*, 633 F.3d 885 (9th Cir. 2011), 18 U.S.C. § 3731 (allowing an interlocutory appeal after dismissal or an indictment or information), and the time would be excludable under 18 U.S.C. § 3161(h)(1)(C). Since the government slept on its rights, Mr. Norwood should not be penalized in facing an additional four years after already being sentenced. (He was sentenced to 72 months, but allowing the government to pursue the 851 information would increase his mandatory minimum from 5 to 10 years.)

In this case the petitioner was fortunate that the Panel decision required the district court to permit him (over the government's objection) to withdraw his guilty plea. This may not occur, however, in future cases where an information is dismissed and the defendant pleads in reliance on that dismissal.

Here, the government had a remedy, interlocutory appeal, that they chose not to pursue. The plain language of § 851 requires that "before trial, or

before entry of plea of guilty, the United States attorney files an information with the court . . . ." *Sperow*, decided in 2007, placed the government on notice that the information had to be on file or in effect at the time of plea or trial. There was no information on file because the information had been dismissed, and the government did not seek an interlocutory appeal prior to the plea, thus there no information on file at the time of plea. The appeal by the government was moot and should have been dismissed.

CONCLUSION

The court of appeals opinion violates petitioner's Constitutional rights as well as the will of the voters of California by permitting his mandatory minimum sentence to double based on a prior conviction that is unequivocally a misdemeanor under state law. Federal law requires that it be treated as a misdemeanor, and the *Diaz* case was not only wrongly decided, it violates principles of comity and federalism and thwarts the will of the State of California. It also permits the government to proceed on a § 851 Information that is no longer "in effect" or "or file," to the unfair prejudice of defendants. Both of the above are independent bases to grant petitioner relief.

Respectfully submitted,

DATED: February 5, 2019 /s/ David S. McLane
David S. McLane
Attorney at Law

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IN THE

SUPREME COURT OF THE UNITED STATES

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EDWARD NOLAN NORWOOD, PETITIONER,

vs.

UNITED STATES, RESPONDENT.

_____

ON WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

_____

CERTIFICATE OF SERVICE

_____

I, David S. McLane, hereby certify that on this 5th day of February 2019, a copy of the Petitioner's Motion for Leave to Proceed in Forma Pauperis and Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit were sent via third party commercial carrier, for delivery within 3 calendar days, to the Solicitor General of the United States, Department of Justice, Room 5614, 950 Pennsylvania Avenue, N.W. Washington, D.C. 20530-0001, counsel for Respondent.

Additionally, all parties requires to be served have been served by third party commercial carrier for delivery within 3 calendar days, addressed as

follows:

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Dated: February 5, 2019

Respectfully submitted,

/s/ David S. McLane
David S. McLane
Attorney at Law

A P P E N D I X 1

NOT FOR PUBLICATION

FILED

MAY 14 2018

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. EDWARD NOLAN NORWOOD, AKA Polo, Defendant-Appellant.	No. 16-50215 D.C. No. 2:13-cr-00388-RGK-2 MEMORANDUM*

UNITED STATES OF AMERICA, Plaintiff-Appellant, v. EDWARD NOLAN NORWOOD, AKA Polo, Defendant-Appellee.	No. 16-50249 D.C. No. 2:13-cr-00388-RGK-2

Appeal from the United States District Court
for the Central District of California
R. Gary Klausner, District Judge, Presiding

Argued and Submitted April 9, 2018
Pasadena, California

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Before: BEA and MURGUIA, Circuit Judges, and KEELEY,** District Judge.

Edward Norwood was indicted on conspiracy and distribution charges for his role in the sale of crack cocaine to a confidential informant. The government filed an information pursuant to 21 U.S.C. § 851 (the Information), alleging that Norwood had a prior felony drug conviction and therefore was subject to a ten-year mandatory minimum sentence under 21 U.S.C. § 841(b)(1)(B). The Information identified the qualifying conviction as Norwood's February 14, 2007 felony conviction for possession of a controlled substance, in violation of California Health & Safety Code § 11350.[1]

In November 2014, while Norwood's federal case was pending, California voters approved Proposition 47, which allowed defendants with prior convictions for certain felony offenses to petition the California courts to reclassify those convictions as misdemeanors. *See* Cal. Penal Code 1170.18(f)–(h), (k). In July 2015, Norwood successfully petitioned to reclassify his prior felony drug conviction as a misdemeanor. Norwood then moved to dismiss the Information on the ground that he no longer had a qualifying prior felony drug conviction, and the district court granted the motion. Facing a mandatory minimum sentence of five

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** The Honorable Irene M. Keeley, United States District Judge for the Northern District of West Virginia, sitting by designation.

[1] Norwood was sentenced to five years of imprisonment for his 2007 conviction. He committed the instant offense while on parole for that conviction.

years, rather than ten years, Norwood entered a plea of guilty.

At sentencing, the district court treated the 2007 conviction as a felony, which yielded three additional criminal history points and two additional criminal history points because Norwood was still on parole at the time he committed the instant federal offense. U.S.S.G. § 4A1.1(a), (d). Based on a Criminal History Category VI, the district court sentenced Norwood to 72 months of imprisonment.

Norwood appeals the district court's calculation of his criminal history points. The government cross-appeals the district court's dismissal of the Information and its attendant failure to apply the ten-year mandatory minimum sentence. We have jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a), (b). We affirm in part and reverse in part.

1. We review "the district court's interpretation of the Sentencing Guidelines de novo, the district court's application of the Sentencing Guidelines to the facts of [a] case for abuse of discretion, and the district court's factual findings for clear error." *United States v. Cantrell*, 433 F.3d 1269, 1279 (9th Cir. 2006) (quoting *United States v. Kimbrew*, 406 F.3d 1149, 1151 (9th Cir. 2005)).

Whether a defendant's prior state conviction is a qualifying conviction under the Sentencing Guidelines is a question of federal, not state, law. *See United States v. Norbury*, 492 F.3d 1012, 1014 (9th Cir. 2007). Critically, when calculating criminal history points, the sentencing court "looks to a defendant's status at the

time he commits the federal crime." *United States v. Yepez*, 704 F.3d 1087, 1090 (9th Cir. 2012) (en banc) (per curiam); U.S.S.G. § 4A1.2. At the time Norwood committed the instant federal offense, he had a prior final state felony drug conviction and was on parole for that conviction. The district court correctly determined that a reclassification under Proposition 47 did not alter these "historical fact[s]." *See Yepez*, 704 F.3d at 1090 (holding that a state court's termination of probation "nunc pro tunc" as of the day before a defendant committed his federal crime has "no effect on [the] defendant's status at the moment he committed the federal crime"); *see also United States v. Salazar-Mojica*, 634 F.3d 1070 (9th Cir. 2011) (holding that a state court's relabeling of a conviction from a felony to a misdemeanor has no impact on the Guidelines calculation). Thus, the district court did not err in calculating Norwood's criminal history points.

2. We review de novo the district court's dismissal of an information based on its interpretation of a federal statute. *United States v. Olander*, 572 F.3d 764, 766 (9th Cir. 2009). Norwood argues that the government's cross-appeal is moot because the Information was not "in effect" at the time he pleaded guilty. Contrary to Norwood's claim, § 851(a) provides only that the information must be filed "before trial, or before entry of a plea of guilty"; it does not require that the information to be "in effect" at the time of a plea. 21 U.S.C. § 851(a). Further, the

government was not required to take an interlocutory appeal. The plain language of § 851(d) allows the government to appeal the dismissal of an information before sentencing, but does not require it. *See* 21 U.S.C. § 851(d)(2). Moreover, the government may always appeal a final sentence if it was "imposed in violation of law." 18 U.S.C. § 3742(b)(1). Thus, the government's cross-appeal is neither moot nor untimely.

During the pendency of Norwood's appeal, we decided *United States v. Diaz*, which held that Proposition 47 "does not undermine a prior conviction's felony-status for purposes of [18 U.S.C.] § 841." 838 F.3d 968, 975 (9th Cir. 2016). In *Diaz*, we made clear that the § 841 inquiry requires "only that a defendant have committed his federal crime after" the qualifying federal drug offense conviction became final. *Id.* at 973 (quoting 21 U.S.C. § 841(b)(1)(A)) (internal citations omitted). In other words, the event triggering application of the enhancement is the finality of the conviction. Here, it is undisputed that, at the time of his federal sentencing, Norwood's prior state felony drug conviction was final. Thus, under *Diaz*, Norwood's prior conviction remains a qualifying offense under § 841, and the district court erred when it dismissed the government's § 851 information. *See id.* at 973–94.

As we have explained, § 851(a) "ensures proper notice so a defendant is able to challenge the information. It allows a defendant to make an informed decision

about whether or not to plead guilty." *United States v. Hamilton*, 208 F.3d 1165, 1168 (9th Cir. 2000). Although Norwood was warned that the government could appeal the dismissal of the Information, he argues on appeal that he would not have pleaded guilty had the Information still been "in effect" at the time he entered his plea. Having reviewed the plea colloquy, we conclude that a reasonable person in Norwood's position could have been confused about the potential consequences of his guilty plea, which, in turn, could have affected the decision about whether or not to plead. *See United States v. Sperow*, 494 F.3d 1223, 1228 (9th Cir. 2007).

We therefore affirm the calculation of Norwood's criminal history points and reverse the dismissal of the government's § 851 information. Because we are not convinced that Norwood's plea was knowingly and intelligently made, we remand with instructions to the district court to allow Norwood to withdraw his guilty plea.

AFFIRMED in part, REVERSED in part, and REMANDED with instructions.

A P P E N D I X 2

FILED

AUG 22 2018

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. EDWARD NOLAN NORWOOD, AKA Polo, Defendant-Appellant.	No. 16-50215 D.C. No. 2:13-cr-00388-RGK-2 Central District of California, Los Angeles ORDER

UNITED STATES OF AMERICA, Plaintiff-Appellant, v. EDWARD NOLAN NORWOOD, AKA Polo, Defendant-Appellee.	No. 16-50249 D.C. No. 2:13-cr-00388-RGK-2

Before: BEA and MURGUIA, Circuit Judges, and KEELEY,* District Judge.

The panel has voted to deny the petition for panel rehearing. Judges Bea and Murguia voted to deny the petition for rehearing en banc, and Judge Keeley has recommended denying the petition for rehearing en banc.

The full court has been advised of the petition for rehearing en banc and no

* The Honorable Irene M. Keeley, United States District Judge for the Northern District of West Virginia, sitting by designation.

judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for panel rehearing and the petition for rehearing en banc (Doc. 55) are DENIED.

A P P E N D I X 3

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CRIMINAL MINUTES - GENERAL

Case No.	CR-13-0388-RGK-2	Date	January 15, 2016

Present: The Honorable	R. Gary Klausner, United States District Judge
Interpreter	N/A

S. Williams, Not Present	Not Reported	Julian Andre, Not Present
Deputy Clerk	*Court Reporter/Recorder*	*Assistant U.S. Attorney*

U.S.A. v. Defendant(s):	Present	Cust.	Bond	Attorneys for Defendants:	Present	App.	Ret.
Edward Nolan Norwood	N	X		David McLane, CJA Panel	N	X	

Proceedings: **Minute Order re: Defendant's Motions to Dismiss Information (DE 99,119)**

I. INTRODUCTION

Edward Norwood ("Norwood") has been indicted on two counts: (1) conspiracy to distribute, and possess with intent to distribute, cocaine base in the form of crack cocaine, in violation of 21 U.S.C. § 846; and (2) distribution of cocaine base in the form of crack cocaine, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(B)(iii) (the "Indictment").

Norwood moves to dismiss the Information alleging he sustained a prior felony conviction. (Docket No. 99.) Norwood asserts that this conviction is no longer a felony conviction, as this conviction was reduced to a misdemeanor pursuant to California's Proposition 47/Penal Code § 1170.18. (Mem. Supp. Mot. Dismiss Info. ("Def.'s Mem.") 1, Docket No. 99.) The Government has filed an Opposition. (Opp'n, Docket No. 104.) Norwood has replied. (Reply, Docket No. 107.)

For the following reasons, the Court **DISMISSES** the September 6, 2013 Information filed pursuant to 21 U.S.C. § 851 (the "Information").

II. FACTUAL & PROCEDURAL BACKGROUND

The Indictment was filed against Norwood on May 30, 2013. On September 6, 2013 the Government filed the Information alleging that Norwood committed the offenses charged in the Indictment after having been finally convicted of a felony drug offense. (Docket No. 20.) The Information charges Norwood with having been finally convicted of a felony drug offense on or about February 14, 2007 in Superior Court of the State of California, LA County, case number BA311513. (Id.) The offense is possession under California Health & Safety Code section 11350. The charge was for possession of "approximately 7 grams of crack cocaine in 2006." (McLane Reply Decl. Support Mot. Change Venue ¶ 2, Docket No. 108-1.)

On July 28, 2015 the Superior Court of the State of California, Los Angeles County ("Superior Court") held a "Proposition 47 Application Hearing." (Def.'s Mem. Ex. B-1, Docket No. 99-2.) The Superior Court found that Norwood was eligible and suitable to have his conviction reduced to a misdemeanor pursuant to California's Proposition 47. (Id.) Consequently, the Superior Court ordered the charging count to be reduced to a misdemeanor. (Id.) Specifically, the Superior Court ordered that the information filed November 27, 2006 in case No. BA311513 be "deemed amended" and ordered that the charging count "shall proceed as a misdemeanor."

The present motion followed.

A. California Health & Safety Code section 11350 amended by Voter Enacted Proposition 47

When Norwood was convicted in Superior Court on February 14, 2007, California Health & Safety Code section 11350(a) provided that possession of a controlled substance "shall be punished by imprisonment in the state prison"—a felony. Today, possession of a controlled substance is punishable only "by imprisonment in a county jail for not more than one year" unless the person convicted of possession also has one or more prior serious and/or violent felony convictions or is a person required to register under the Sex Offender Registration Act. Neither of these exceptions apply to Norwood.

This more lenient sentencing structure has been in effect since the day after California voters passed Proposition 47 on November 4, 2014 with 59.6% of the vote. Proposition 47, codified at Cal. Penal Code § 1170.18 et seq.

B. Proposition 47, California Penal Code section 1170.18 et seq., provides for redesignation of felonies as misdemeanors

Along with the new sentencing structure, Proposition 47 provided re-sentencing provisions. Any person who had previously been convicted, whether by trial or plea, of a felony under California Health & Safety Code section 11350 who would under the terms of Proposition 47 have been guilty only of a misdemeanor could petition the trial court for resentencing. Cal. Penal Code § 1170.18(a).

Finally, and most relevantly to this case:

> "A person who has completed his or her sentence for a conviction, whether by trial or plea, of a felony or felonies who would have been guilty of a misdemeanor under this act had this act been in effect at the time of the offense, may file an application before the trial court that entered the judgment of conviction in his or her case to have the felony conviction or convictions designated as misdemeanors."

Cal. Penal Code § 1170.18(f). The process for redesignation is nearly automatic. The trial court must designate the felony offense as a misdemeanor if it satisfies the conditions of section 1170.18(f). Cal. Penal Code § 1170.18(g).

Proposition 47 goes on to specify that any recalled felony conviction "shall be considered a misdemeanor for all purposes, except that such resentencing shall not permit that person to own, possess, or have in his or her custody or control any firearm." Cal. Penal Code § 1170.18(k). Proposition 47 section 15

states the act "shall be broadly construed to accomplish its purposes," and section 18 states the act "shall be liberally construed to effectuate its purposes." Text of Proposed Laws 74, available at http://vig.cdn.sos.ca.gov/2014/general/pdf/text-of-proposed-laws1.pdf.

Norwood applied to Superior Court for redesignation, and such application was acted upon, in favor of Norwood, on July 28, 2015. (Def.'s Mem. Ex. B-1, Docket No. 99-2.)

III. JUDICIAL STANDARD

A. Construction of 21 U.S.C. section 841 is a mixed question of Federal Law and State Law

Construction of certain terms of 21 U.S.C. section 841 is a matter of federal law. Specifically, the meanings of the terms "final" and "conviction" are questions of federal law.

United States v. Norbury, 492 F.3d 1012 (9th Cir. 2007), resolved that the term "conviction" in section 841 is a question of federal law. Id. at 1015. Norbury further held that "expunged" or "dismissed" state convictions still qualify as prior convictions under section 841 if the expungement or dismissal did not alter the legality of the conviction. Id. The Norbury court reasoned that the "legality of a conviction does not depend upon the mechanics of state post-conviction procedures, but rather involves the conviction's underlying lawfulness." Id. The Norbury court cited actual innocence and trial error as examples affecting a conviction's legality. Id.

United States v. Suarez, 682 F.3d 1214 (9th Cir. 2012), similarly resolved that the term "final" in section 841 is a question of federal law. Id. at 1220. However, it is a mixed question of federal and state law because the Ninth Circuit's finality standard turns on whether "the time for taking a direct appeal from the prior state conviction expires or has expired." Id. The Suarez court considered whether a guilty plea entered to felony drug possession, a plea which never resulted in the entry of judgment of guilt, was "final" for purposes of section 841. Id. at 1219. The Suarez court concluded that because the defendant's charges were dismissed before judgment was entered against him (due to deferred entry of judgment under California Penal Code §1000) and because the defendant's guilty plea was not appealable, it was not a "final" conviction under section 841. The Ninth Circuit consequently reversed the district court's imposition of a twenty-year mandatory minimum sentence, vacated the sentence, and remanded for resentencing.

Unlike "final" and "conviction," the term "felony drug offense," as it is used in this case, is defined with explicit reference to state law: "The term 'felony drug offense' means an offense that is punishable by imprisonment for more than one year under any law of the United States or of a State or foreign country that prohibits or restricts conduct relating to narcotic drugs, marihuana, anabolic steroids, or depressant or stimulant substances." 21 U.S.C. § 802(44). The Ninth Circuit has said that determining whether a prior conviction qualifies as a "felony drug offense" requires the court to look "only to the fact of the conviction and the statutory definition of the prior offense." U.S. v. Hollis, 490 F.3d 1149, 1157 (9th Cir. 2007), abrogated on other grounds by DePierre v. United States, _ U.S. _, 131 S. Ct. 2225 (2011).

IV. DISCUSSION

Under 21 U.S.C. section 841(b)(1)(B)(iii), a person who commits a violation of this section "after a prior conviction for a felony drug offense has become final" shall be sentenced to a term of not less than 10 years.

At the heart of the matter, Norwood argues that his conviction in BA311513 is no longer a "felony drug offense" because the Superior Court's order amended the charge in BA311513 and ordered that the conviction is now a misdemeanor.

The Government argues that Norwood's conviction in BA311513 was, at the time Norwood committed the present offense, a "prior conviction . . . that has become final." Further, because his conviction was a felony drug offense as the phrase is defined in section 802(44) at the time Norwood is alleged to have committed the present offense, the conviction alleged in the information remains a "conviction for a felony drug offense" that "has become final."

This dispute presents a pure question of law for the Court to resolve.

A. This case is resolved by the definition of "felony drug offense" rather than "final" or "conviction"

The present case is resolved on grounds similar to those stated in United States v. Summey, EDCR 08-0181 (C.D. Cal. Sept. 30, 2015) (Docket No. 75) motion for reconsideration filed No. 76 (Nov. 17, 2015).[1]

In Summey, Judge Phillips held that a California Superior Court's redesignation of a prior state court conviction in a petitioner's case from a felony to a misdemeanor under Proposition 47 was consequential in determining whether the defendant had a prior conviction for a felony drug offense under section 841. Id. at *8-9. The Summey court found that the sentence originally imposed in the petitioner's federal case was imposed in violation of the laws of United States, was in excess of the maximum sentence authorized by law, or was otherwise subject to collateral attack because the prior conviction used to enhance petitioner's sentence could no longer be considered a conviction for a "felony drug offense." Id. at *11.

This Court (and now the Summey Court on the motion for reconsideration) has the benefit of more focused briefing on the merits of this argument rather than the procedural propriety of a section 2255 petitioner's motion. Nevertheless, the same conclusion is warranted. In this case, the Information should be dismissed.

All a court must do in reviewing whether a prior conviction applies is look "only to the fact of the conviction and the statutory definition of the prior offense." Hollis, 490 F.3d at 1157. Both parties agree that there has been a conviction. Both parties agree on the statutory definition at the time of sentencing and the statutory definition today. The parties disagree strongly about which statutory definition to use, but Proposition

[1] The memorandum supporting the motion for reconsideration filed in Summey presents the same arguments as the Government's Opposition to Motion to Dismiss information filed in this case. It also cites no additional precedent save for cases laying out the standard for a motion for reconsideration.

47 provides the answer.

> "Any felony conviction that is recalled and resentenced under subdivision (b) or **designated as a misdemeanor under subdivision (g) shall be considered a misdemeanor for all purposes**, except that such resentencing shall not permit that person to own . . . any firearm or prevent his or her conviction under [certain control of deadly weapons statutes.]"

Cal. Penal Code § 1170.18(k) (emphasis added). Here, Proposition 47 has retroactively redesignated the drug conviction and, "for all purposes," Norwood's conviction in BA311513 is a misdemeanor. Norwood is no longer convicted of a "felony drug offense," as alleged in the Information, nor was he ever in terms of Proposition 47.

B. The Government's arguments in response fall short

The Government raises a few arguments in response to Summey. These arguments are made in the Opposition in this case, but are structured more clearly in the Government's motion for reconsideration in Summey. ("Mot. Reconsideration" available at United States v. Summey, EDCR 08-0181 (C.D. Cal. Sept. 30, 2015) (Docket No. 76).)

1. *The literal language suggesting a strict adherence to timing in determining whether to apply sentencing enhancements under 21 U.S.C. § 841 cannot alone decide the case*

First, the Government argues, the plain language of section 841 makes no exception for a latter change in the status of a defendant's prior conviction. (Opp'n 10. See also Mot. Reconsideration 1 ("under the plain language of 21 U.S.C. § 841, the relevant time at which felony status is determined is, at the latest, the date when the defendant committed the federal offense.") The Government would peg the date that the sentencing enhancement attaches as the date the present offense is committed on the sole grounds that the present offense occurred "**after** a prior conviction for a felony drug offense has become final." 21 U.S.C. § 841 (emphasis added). This argument is a red herring.

So far as the Government's construction of the text puts undue importance on the temporal aspects of the statute's language, the Government's construction in this instance is unwarranted. Such a construction of the statute would undermine the acknowledged exceptions to section 841 recited in Norbury and is contrary to some of the reasoning employed in Dickerson v. New Banner Institute, Inc., 460 U.S. 103 (1983) and Lewis v. United States, 445 U.S. 55 (1980). To be specific, the Government's construction of the plain text incorrectly suggests that even if a final conviction is vacated for reasons of the conviction's legality or the defendant's actual innocence—exceptions acknowledged in Norbury—it *could* still be used as a prior conviction based on when the federal crime is committed and when the predicate conviction is finally vacated. This would be contrary to the Norbury court's reading of Dickerson.

In Dickerson, the Supreme Court determined that Iowa's expunction provisions did not nullify a petitioner's conviction for purposes of a federal gun control statute. 460 U.S. at 114. The Dickerson Court noted that there could, however, be exceptions if the expunction modified the legality of the previous conviction or signified that the defendant was innocent of the crime. Id. at 115.

The Supreme Court explicitly stated that in the context of reading recidivist statutes, the plain language

does not necessarily control. In Lewis, the Court determined that even if a convict's conviction was subject to collateral attack, the conviction could remain a predicate felony for purposes of federal gun control laws. 445 U.S. 55. Nevertheless, in dicta, the Court analyzed and ultimately constrained the sweeping language of the federal law: "One might argue, of course, that the language is so sweeping that it includes in its proscription even a person whose predicate conviction in the interim had been finally reversed on appeal and thus no longer was outstanding. . . . though we have no need to pursue that extreme argument in this case, we reject it." Id. at 61 n. 5. Three years later, the Court formalized this dicta as an "obvious exception to the literal language of the statute." Dickerson, 460 U.S. at 115.

The reasoning applied to these federal statutes, though made in the context of gun control rather than section 841 sentence enhancements, is equally valid in this context. Norbury, 492 F.3d at 1015. If an exception to the literal language can be made for certain vacated convictions, the Court should be able to at least reach the merits of whether a similar exception applies in the present case of a conviction redesignated as a misdemeanor.

Finally, the Government also cites McNeill v. United States, _ U.S. _, 131 S. Ct. 2218 (2011), for the proposition that the proper time to look at whether the state court conviction is a felony is at the time of the original state court conviction. In this Armed Career Criminal Act (ACCA) case, an unanimous Supreme Court held that under the proper construction of ACCA, the time to look to see whether "an offense under State law" is a "serious drug offense" is to look at the offense at the time of the defendant's conviction for this predicate offense. Id. at 2221-22.[2] Nevertheless, the Supreme Court left as an open question whether federal courts should consider the effect of state action where "a State subsequently lowers the maximum penalty applicable to an offense and makes that reduction available to defendants previously convicted and sentenced for that offense." Id. at 2224 n. 1. Norwood's motion addresses the precise issue that the Supreme Court anticipated.

2. *Redesignation under Proposition 47 is broader than, and different in kind from, an expungement or a dismissal.*

Dickerson and Norbury reason:

> An expunged or dismissed state conviction qualifies as a prior conviction if the expungement or dismissal does not alter the legality of the conviction or does not represent that the defendant was actually innocent of the crime.

Norbury, 492 F.3d at 1015, citing Dickerson, 460 U.S. 103 (1983). Here, the government argues that Proposition 47 did not alter the legality of the conviction or represent that the defendant was actually innocent of the crime.

But a Proposition 47 redesignation is not an expungement or dismissal of a state conviction – it is instead a *redesignation* of a state conviction. This is not a mere distinction without a difference.

Expungements and dismissals are outcomes of states' general post-conviction procedures that "vary

[2] ACCA is constructed somewhat differently than section 841, and specifically says: "In the case of a person who . . . has three previous convictions by any court . . . for a violent felony or a serious drug offense, or both, committed on occasions different from one another, such person shall be . . . imprisoned not less than fifteen years . . . ." 18 U.S.C. § 924(e)(1).

widely from State to State." Dickerson, 460 U.S. at 120.[3] In contrast, the redesignation provisions in Proposition 47 are part of a voter-enacted proposition that also lowered the maximum sentence that can be imposed for the conduct charged in Norwood's prior state court conviction. To clarify: while expungements or certain dismissals may not indicate that the State has changed its perception of the wrongfulness of conduct, in contrast, Proposition 47 (1) reduced the maximum sentence, (2) provided a resentencing remedy, and (3) provided a redesignation remedy. Proposition 47 therefore reflects the position that California voters do not believe possession of controlled substances under section 11350 should have ever been treated as conduct worthy of a felony.[4] California voters were also willing to ante up to this position, by allowing even convicted felons (now misdemeanants) currently serving sentences to have their sentences reduced.

Because Proposition 47 reduced the consequences for engaging in prohibited behavior for new offenders, persons currently serving a sentence for that behavior, and for persons who have already completed their sentences, Proposition 47 significantly differs from laws cited in other cases addressing analogous issues. The Government chiefly cites U.S. v. McGlory, 968 F.2d 309 (3d Cir. 1992). In McGlory, the Third Circuit considered whether conduct that could no longer be charged as a felony under Pennsylvania state law could still be the basis of a predicate felony drug offense for purposes of section 841 if the defendant was properly charged and convicted under the prior law. 968 F.2d 348-51. The McGlory court concluded that such a conviction, even if the same conduct would not make defendant guilty of a felony at the time of his federal drug crime, could still qualify as a predicate drug offense. Id. at 351.

But as Judge Phillips recognized in Summey, dicta in McGlory recognized that a retroactive provision "strikingly similar to Cal. Penal Code § 1170.18" could have provided the result the defendant in McGlory desired. Summey at 10. See also McGlory, 968 F.2d at 351 n. 33. However, the retroactive provision had previously been found unconstitutional under Pennsylvania law. Id. citing Commonwealth v. Sutley, 474 Pa. 256 (1977). Therefore, there was no "wholesale reduction of prior . . . offenses from felony to misdemeanor status." McGlory, 968 F.2d at 351 citing U.S. v. Tobin, 408 F. Supp. 760, 762 (W.D. Pa. 1976). Here, in contrast, Proposition 47 through its resentencing and redesignation provisions, demonstrates an intent to reduce prior offenses under section 11350 for any qualifying prior offender.

Finally, the Government cites language in McNeill that "it cannot be correct that subsequent changes in state law can erase an earlier conviction for ACCA purposes." _ U.S. _, 131 S. Ct. 2223. (Opp'n 12. See also Mot. Reconsideration 7.) However, the remainder of the paragraph from which the Government quotes highlights that affirmative actions such as expungement or dismissal do "erase" certain violent felony convictions under ACCA—erasure is completely possible depending on the applicable federal and state laws.

Here, Proposition 47 accomplishes two objectives simultaneously. Proposition 47 provides a change in state law *and* affords to a former felon such as Norwood a process to have his felony conviction redesignated a misdemeanor. This makes Proposition 47 meaningfully different from general state post-conviction procedures

[3] Two cases that the Government cites in opposition, U.S. v. Yepez, 704 F.3d 1087 (9th Cir. 2012) (*en banc*) and U.S. v. Salazar-Mojica, 634 F.3d 1070 (9th Cir. 2011), address instances of varying "post-conviction procedures." California Penal Code section 17(b), provides a California superior court with discretion to designate "wobbler" offenses as misdemeanors. Here, there is no discretion, based on the mandatory language of California Penal Code section 1170.18(g).

[4] Additionally, possession is not a felony under federal law unless the defendant has certain drug-related prior convictions. 21 U.S.C. § 844.

and demonstrates an intent to reduce the consequences for conduct Norwood was convicted of in 2007.

3. *The extent of Proposition 47's retroactivity is unsettled and currently before the California Supreme Court*

The Government argues—even if there is an exception recognized in McGlory and left open by implication in McNeill for laws that retroactively reduce sentences—that Proposition 47 is not such a law because Proposition 47 is not retroactive. The Government cites People v. Feyrer, 48 Cal. 4th 426 (2010), and People v. Perez, 190 Cal. Rptr. 3d 738 (2015), pet. for review granted Nov. 18, 2015, 2015 WL 7294332, for this proposition.

People v. Feyrer was decided in 2010, before Proposition 47 was enacted. People v. Feyrer interpreted California Penal Code section 17(b)(3) which provides: "(3) When the court grants probation to a defendant without imposition of sentence and at the time of granting probation, or on application of the defendant or probation officer thereafter, the court declares the offense to be a misdemeanor." The Feyrer court determined that if a sentence is not initially imposed (i.e., the court suspends pronouncement of a sentence), the offense is not a misdemeanor until the court declares it to be one—and it is not a misdemeanor retroactively.[5] 48 Cal. 4th at 439.

People v. Park, 56 Cal. 4th 782 (2013), is instructive. In Park, the California Supreme Court clarified that although language in Feyrer and People v. Banks, 53 Cal. 2d 370 (1959), suggested that felonies remained felonies up until they were reclassified as misdemeanors, once the felony is indeed reclassified as a misdemeanor, it becomes a misdemeanor even for backward looking laws such as California's Three Strikes Law. Park, 56 Cal. 4th at 802-03.

Final state court interpretation of the retroactivity of Proposition 47 is not yet definitively determined. Norwood cites People v. Buycks, 241 Cal. App. 4th 519, 194 Cal. Rptr. 3d 33 (2015), for the position that a redesignated misdemeanor is treated liberally as a misdemeanor even for determining whether sentences can be enhanced based on conduct committed while the redesignated misdemeanor was still a felony. The California Supreme Court recently granted petition for review of the two California Court of Appeals cases cited by the Government (Perez and People v. Eandi, 239 Cal. App. 4th 801, 190 Cal. Rptr. 3d 923 (2015)) for the opposite proposition.

[5] Arguably, even this is a very minor point in Feyrer irrelevant to the present case. Feyrer's holding and result was to affirm an earlier ruling of the California Court of Appeals. The Court of Appeals had previously held that the sentencing court retained discretion to reduce a charge to a misdemeanor until the court imposes a sentence, notwithstanding defendant's admission to conduct that would restrict a sentencing court's discretion. 48 Cal. 4th 440-45.

V. CONCLUSION

For the foregoing reasons, the Court **DISMISSES** the September 6, 2013 Information filed pursuant to 21 U.S.C. § 851 (the "Information").

IT IS SO ORDERED.

_____ : _____

Initials of Deputy Clerk slw

A P P E N D I X 4

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA (Western Division - Los Angeles)
CRIMINAL DOCKET FOR CASE #: 2:13-cr-00388-RGK-2

Case title: USA v. Tims et al

Date Filed: 05/30/2013
Date Terminated: 06/08/2016

Assigned to: Judge R. Gary Klausner

Appeals court case numbers: 16-50215 9th Circuit, 16-50249 9th Circuit

Defendant (2)

Edward Nolan Norwood
TERMINATED: 06/08/2016
also known as
Polo
TERMINATED: 06/08/2016

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Designation: CJA Appointment

Pending Counts	Disposition
21:846 CONSPIRACY TO DISTRIBUTE, AND POSSESS WITH INTENT TO DISTRIBUTE, COCAINE BASE IN THE FORM OF CRACK COCAINE (1)	It is the judgment of the Court that the defendant, Edward Nolan Norwood, is hereby committed on Counts One and Two of the Indictment to the custody of the Bureau of Prisons for term of SEVENTY-TWO (72) MONTHS. This term consists of 72 months on each of Count One and Two of the Indictment, to be served concurrently. The Bureau of Prisons shall determine the defendant's eligibility for the RDAP drug treatment program. Supervised release for a term of FIVE (5) YEARS.
21:841(a)(1), 841(b)(1)(B)(iii), 18:2(a) DISTRIBUTION OF COCAINE BASE IN THE FORM OF CRACK COCAINE; AIDING AND ABETTING (2)	It is the judgment of the Court that the defendant, Edward Nolan Norwood, is hereby committed on Counts One and Two of the Indictment to the custody of the Bureau of Prisons for term of SEVENTY-TWO (72) MONTHS. This term consists of 72 months on each of Count One and Two of the Indictment, to be served concurrently. The Bureau of Prisons shall determine the defendant's eligibility for the RDAP drug treatment program. Supervised release for a term of FIVE (5) YEARS.

Highest Offense Level (Opening)

Felony

Terminated Counts	**Disposition**
None	

Highest Offense Level (Terminated)

None

Complaints	**Disposition**
None	

Plaintiff

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Designation: Assistant US Attorney

Date Filed	#	Docket Text
05/30/2013	1	INDICTMENT filed as to Emerie Nelson Tims (1) count(s) 1, 2, Edward Nolan Norwood (2) count(s) 1, 2. Offense occurred in LA. (ja) (Entered: 06/05/2013)
05/30/2013	2	EX PARTE APPLICATION to Seal Indictment and Arrest Warrants Filed by Plaintiff USA as to Defendant Emerie Nelson Tims, Edward Nolan Norwood(ja) (Entered: 06/05/2013)
05/30/2013	3	ORDER by Magistrate Judge Stephen J. Hillman granting 2 Ex Parte Application to Seal Indictment and Arrest Warrants as to Emerie Nelson Tims (1), Edward Nolan Norwood (2) (ja) (Entered: 06/05/2013)
05/30/2013	5	CASE SUMMARY filed by AUSA Christopher K Pelham as to Defendant Edward Nolan Norwood; defendant's Year of Birth: 1979 (ja) (Entered: 06/05/2013)
05/30/2013	6	MEMORANDUM filed by Plaintiff USA as to Defendant Emerie Nelson Tims, Edward Nolan Norwood in regards to the following Magistrate Judges: Jacqueline Chooljian, Patrick J. Walsh, Sheri Pym, Michael Wilner, Jean Rosenbluth (ja) (Entered: 06/05/2013)
05/30/2013	7	MEMORANDUM filed by Plaintiff USA as to Defendant Emerie Nelson Tims, Edward Nolan Norwood. This criminal action, being filed on 5/30/13, was not pending in the U. S. Attorneys Office before the date on which Judge Michael W. Fitzgerald began receiving criminal matters. (ja) (Entered: 06/05/2013)
05/30/2013	9	NOTICE OF REQUEST FOR DETENTION filed by Plaintiff USA as to Defendant Edward Nolan Norwood (ja) (Entered: 06/05/2013)
09/06/2013	20	INFORMATION TO ESTABLISH PRIOR CONVICTION filed as to Defendant Edward Nolan Norwood (Pelham, Christopher) (Entered: 09/06/2013)
09/19/2013	25	NOTICE OF APPEARANCE OR REASSIGNMENT of AUSA Aaron McCree Lewis on behalf of Plaintiff USA. Filed by Plaintiff USA. (Lewis, Aaron) (Entered: 09/19/2013)
01/16/2014	47	STIPULATION to Continue Trial from October 22, 2013 to January 28, 2014 filed by Plaintiff USA as to Defendant Emerie Nelson Tims, Edward Nolan Norwood (Attachments: # 1 Proposed Order)(Lewis, Aaron) (Entered: 01/16/2014)
01/16/2014	48	Second STIPULATION to Continue Trial from January 28, 2014 to August 5, 2014 filed by Plaintiff USA as to Defendant Emerie Nelson Tims, Edward Nolan Norwood (Attachments: # 1 Proposed Order)(Lewis, Aaron) (Entered: 01/16/2014)

01/21/2014	49	ORDER AND FINDINGS REGARDING EXCLUDABLE TIME PERIODS PURSUANT TO SPEEDY TRIAL ACT by Judge Audrey B. Collins as to Defendants Emerie Nelson Tims, Edward Nolan Norwood: THEREFORE, FOR GOOD CAUSE SHOWN: The time period of October 11, 2013, to January 28, 2014, inclusive, is excluded in computing the time within which the trial must commence. (bm) (Entered: 01/21/2014)
01/21/2014	50	ORDER CONTINUING TRIAL DATE AND FINDINGS REGARDING EXCLUDABLE TIME PERIODS PURSUANT TO SPEEDY TRIAL ACT by Judge Audrey B. Collins as to Defendant Emerie Nelson Tims, Edward Nolan Norwood: THEREFORE, FOR GOOD CAUSE SHOWN: The trial in this matter is continued from January 28, 2014, to August 5, 2014. A pretrial conference is set for 1:30 P.M. on July 28, 2014. The time period of January 28, 2014, to August 5, 2014, inclusive, is excluded in computing the time within which the trial must commence. (bm) (Entered: 01/21/2014)
07/18/2014	51	STIPULATION to Continue Trial from August 5, 2014 to December 9, 2014 filed by Plaintiff USA as to Defendant Emerie Nelson Tims, Edward Nolan Norwood (Attachments: # 1 Proposed Order)(Lewis, Aaron) (Entered: 07/18/2014)
07/21/2014	52	ORDER CONTINUING TRIAL DATE AND FINDINGS REGARDING EXCLUDABLE TIME PERIODS PURSUANT TO SPEEDY TRIAL ACT by Judge Audrey B. Collins as to Defendant Emerie Nelson Tims, Edward Nolan Norwood, re Stipulation to Continue 51 . The trial in this matter is continued from August 5, 2014, to December 9, 2014 at 8:30 a.m. A status conference/pretrial conference is set for 1:30 P.M. on November 24, 2014. The time period of August 5, 2014, to December 9, 2014, inclusive, is excluded in computing the time within which the trial must commence, pursuant to 18 U.S.C. 3161(h)(7)(A), (h)(7)(B)(i), and (B)(iv). (bp) (Entered: 07/21/2014)
08/01/2014	53	NOTICE OF REASSIGNMENT OF CASE due to Unavailability of Judicial Officer filed. The previously assigned District Judge is no longer available. Pursuant to directive of the Chief District Judge and in accordance with the rules of this Court, the case has been returned to the Clerk for reassignment. This case, as to Defendant Emerie Nelson Tims, Edward Nolan Norwood, has been reassigned to Judge James V. Selna for all further proceedings. Case number will now read CR13-00388 JVS. (at) (Entered: 08/01/2014)
10/01/2014	58	NOTICE OF APPEARANCE OR REASSIGNMENT of AUSA Scott D Tenley on behalf of Plaintiff USA. Filed by Plaintiff USA. (Tenley, Scott) (Entered: 10/01/2014)
11/06/2014	60	ORDER TO CONTINUE Trial by Judge James V. Selna: as to Defendant Emerie Nelson Tims, Edward Nolan Norwood. Jury Trial continued to 3/3/2015 08:30 AM before Judge James V. Selna. Pretrial Conference continued to 2/23/2015 01:30 PM before Judge James V. Selna. The time period of December 9, 2014 to March 3, 2015, inclusive, is excluded in computing the time within which the trial must commence, pursuant to Speedy Trial Act. (dg) (Entered: 11/07/2014)
01/14/2015	63	APPLICATION for Writ of Habeas Corpus ad Prosequendum Filed by Plaintiff USA as to Defendant Edward Nolan Norwood Lodged proposed order. (tba) (Entered: 01/16/2015)
01/14/2015	64	ORDER by Magistrate Judge Suzanne H. Segal: granting 63 APPLICATION for Writ of Habeas Corpus ad prosequendum as to Edward Nolan Norwood as to Edward Nolan Norwood (2) (Attachments: # 1 writ) (tba) (Entered: 01/16/2015)
01/14/2015	65	Writ of Habeas Corpus ad Prosequendum Issued as to Edward Nolan Norwood CDC # AV5738 (tba) (Entered: 01/16/2015)
01/23/2015	69	IN CAMERA AND UNDER SEAL Re: Ex Parte Application. (lwag) (Entered:

		01/23/2015)
01/23/2015	70	IN CAMERA AND UNDER SEAL Re: Order by Judge James V. Selna. (lwag) (Entered: 01/23/2015)
01/23/2015	71	IN CAMERA AND UNDER SEAL Re: Ex Parte Application. (lwag) (Entered: 01/23/2015)
01/23/2015	72	IN CAMERA AND UNDER SEAL Re: Order by Judge James V. Selna. (lwag) (Entered: 01/23/2015)
02/09/2015	75	ORDER by Judge James V. Selna as to Defendant Emerie Nelson Tims, Edward Nolan Norwood: Continuing Trial Date and Findings regarding Excludable Time Periods Pursuant to Speedy Trial Act. Jury Trial continued to 5/12/2015 08:30 AM before Judge James V. Selna. Pretrial Status Conference continued to 5/4/2015 09:00 AM before Judge James V. Selna. The time period of March 3, 2015 to May 12, 2015 is excludable. (mt) (Entered: 02/09/2015)
02/26/2015	76	REPORT COMMENCING CRIMINAL ACTION as to Defendant Edward Nolan Norwood; defendant's Year of Birth: 1978; date of arrest: 2/26/2015 (ja) (Entered: 03/03/2015)
02/26/2015	77	MINUTES OF ARREST ON INDICTMENT HEARING held before Magistrate Judge Charles F. Eick as to Defendant Edward Nolan Norwood. Defendant states true name as charged. Attorney: David S McLane for Edward Nolan Norwood, Appointed, present. Defendant remanded to the custody of the USM. Detention Hearing set for 2/27/2015 01:30 PM before Magistrate Judge Charles F. Eick. Court Reporter: Rosalyn Adams. (ja) (Entered: 03/03/2015)
02/26/2015	78	NOTICE OF REQUEST FOR DETENTION filed by Plaintiff USA as to Defendant Edward Nolan Norwood (ja) (Entered: 03/03/2015)
02/26/2015	79	STATEMENT OF CONSTITUTIONAL RIGHTS filed by Defendant Edward Nolan Norwood (ja) (Entered: 03/03/2015)
02/26/2015	80	MINUTES OF POST-INDICTMENT ARRAIGNMENT: held before Magistrate Judge Charles F. Eick as to Defendant Edward Nolan Norwood (2) Count 1,2. Defendant arraigned, states true name: As charged. Defendant entered not guilty plea to all counts as charged. Attorney: David S. McClane, Appointed present. Case assigned to Judge James V. Selna. Jury Trial set for 4/21/2015 08:30 AM before Judge James V. Selna. Status Conference set for 4/13/2015 09:00 AM before Judge James V. Selna. Court Reporter: Rosalyn Adams. (tba) (Entered: 03/03/2015)
02/26/2015	83	FINANCIAL AFFIDAVIT filed as to Defendant Edward Nolan Norwood. (Not for Public View pursuant to the E-Government Act of 2002) (ja) (Entered: 03/03/2015)
02/26/2015	94	ORDER OF TEMPORARY DETENTION Pending Hearing Pursuant to Bail Reform Act by Magistrate Judge Charles F. Eick as to Defendant Edward Nolan Norwood. Pending hearing, the defendant shall be held in custody by the U. S. Marshal and produced for the hearing. Late docketing due to Clerks Office error (mhe) (Entered: 08/20/2015)
02/27/2015	81	MINUTES OF Detention Hearing held before Magistrate Judge Charles F. Eick as to Defendant Edward Nolan Norwood. The Court Orders the defendant permanently detained. Court Reporter: Laura Elias. (ja) (Entered: 03/03/2015)
02/27/2015	82	ORDER OF DETENTION by Magistrate Judge Charles F. Eick as to Defendant Edward Nolan Norwood (ja) (Entered: 03/03/2015)
04/08/2015	85	STIPULATION to Continue Trial Date from April 21, 2015 to August 18, 2015 filed by

		Plaintiff USA as to Defendant Emerie Nelson Tims, Edward Nolan Norwood (Attachments: # 1 Proposed Order Continuing Trial Date and Findings Regarding Excludable Time Periods Pursuant to Speedy Trial Act)(Tenley, Scott) (Entered: 04/08/2015)
04/09/2015	86	ORDER by Judge James V. Selna as to Defendant Emerie Nelson Tims, Edward Nolan Norwood. Continuing Trial Date and Findings Regarding Excludable Time Periods Pursuant to Speedy Trial Act. Jury Trial continued to 8/18/2015 at 08:30 AM before Judge James V. Selna. Pretrial Status Conference continued to 8/10/2015 at 09:00 AM before Judge James V. Selna. The time period of May 12, 2015 to August 18, 2015, inclusive, as to defendant Tims, and April 21, 2015 to August 18, 2015, inclusive, as to defendant Norwood, is excluded in computing the time within which the trial must commence, pursuant to 18 U.S.C. §§ 3161(h)(7)(A), (h)(7)(B)(i), and (B)(iv). (lbe) (Entered: 04/09/2015)
07/01/2015	88	EX PARTE APPLICATION for an Order Requiring Probation Office to Prepare a Pre-Plea Report. Filed by Defendant Edward Nolan Norwood. (Attachments: # 1 Proposed Order re: pre-plea report) (McLane, David) (Entered: 07/01/2015)
07/02/2015	89	ORDER by Judge James V. Selna: Granting 88 EX PARTE APPLICATION for Preparation of a Pre-Plea Criminal History Report as to Edward Nolan Norwood (2). See Order for details. (dg) (Entered: 07/02/2015)
07/15/2015	91	STIPULATION to Continue Trial Date from August 8, 2015 to December 8, 2015 filed by Plaintiff USA as to Defendant Edward Nolan Norwood (Attachments: # 1 Proposed Order Continuing Trial Date and Findings Regarding Excludable Time Periods Pursuant To Speedy Trial Act)(Tenley, Scott) (Entered: 07/15/2015)
07/16/2015	93	ORDER CONTINUING TRIAL DATE AND FINDINGS REGARDING EXCLUDABLE TIME PERIODS PURSUANT TO SPEEDY TRIAL ACT by Judge James V. Selna as to Defendant Edward Nolan Norwood. Jury Trial continued to 12/8/2015 at 08:30 AM before Judge James V. Selna. Pretrial Status Conference continued to 11/30/2015 at 09:00 AM before Judge James V. Selna. (See order for further details) (lbe) (Entered: 07/16/2015)
11/02/2015	99	NOTICE OF MOTION AND MOTION to Dismiss Counts Dismiss Information Filed by Defendant Edward Nolan Norwood. Motion set for hearing on 11/30/2015 at 09:00 AM before Judge James V. Selna. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C) (McLane, David) (Entered: 11/02/2015)
11/02/2015	100	NOTICE OF MOTION AND MOTION to Change Venue to Western Division from Southern Division Filed by Defendant Edward Nolan Norwood. Motion set for hearing on 11/30/2015 at 09:00 AM before Judge James V. Selna. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J) (McLane, David) (Entered: 11/02/2015)
11/02/2015	101	NOTICE OF MOTION AND MOTION in Limine to Exclude Prior Convictions and Other Bad Acts Filed by Defendant Edward Nolan Norwood Motion set for hearing on 11/30/2015 at 09:00 AM before Judge James V. Selna.(McLane, David) (Entered: 11/02/2015)
11/03/2015	102	NOTICE OF MOTION AND MOTION in Limine to Admit Evidence of Defendant's Other Acts Filed by Plaintiff USA as to Defendant Edward Nolan Norwood Motion set for hearing on 11/30/2015 at 09:00 AM before Judge James V. Selna.(Tenley, Scott) (Entered: 11/03/2015)
11/08/2015	103	OPPOSITION to MOTION in Limine to Exclude Prior Convictions and Other Bad Acts 101 filed by Plaintiff USA as to Defendant Edward Nolan Norwood. (Tenley, Scott)

		(Entered: 11/08/2015)
11/08/2015	104	OPPOSITION to NOTICE OF MOTION AND MOTION to Dismiss Counts Dismiss Information 99 filed by Plaintiff USA as to Defendant Edward Nolan Norwood. (Tenley, Scott) (Entered: 11/08/2015)
11/09/2015	105	OPPOSITION to NOTICE OF MOTION AND MOTION to Change Venue to Western Division from Southern Division 100 filed by Plaintiff USA as to Defendant Edward Nolan Norwood. (Tenley, Scott) (Entered: 11/09/2015)
11/14/2015	106	PROPOSED VOIR DIRE QUESTIONS filed by Plaintiff USA as to Defendant Edward Nolan Norwood (Tenley, Scott) (Entered: 11/14/2015)
11/16/2015	107	REPLY In Support of NOTICE OF MOTION AND MOTION to Dismiss Counts Dismiss Information 99 filed by Defendant Edward Nolan Norwood. (Attachments: # 1 Exhibit D, # 2 Exhibit E)(McLane, David) (Entered: 11/16/2015)
11/16/2015	108	REPLY In Support Of NOTICE OF MOTION AND MOTION to Change Venue to Western Division from Southern Division 100 filed by Defendant Edward Nolan Norwood. (Attachments: # 1 Declaration of David S. McLane)(McLane, David) (Entered: 11/16/2015)
11/16/2015	109	OPPOSITION to MOTION in Limine to Admit Evidence of Defendant's Other Acts 102 filed by Defendant Edward Nolan Norwood. (McLane, David) (Entered: 11/16/2015)
11/16/2015	110	REPLY In Support Of MOTION in Limine to Exclude Prior Convictions and Other Bad Acts 101 filed by Defendant Edward Nolan Norwood. (McLane, David) (Entered: 11/16/2015)
11/22/2015	111	REPLY in support of MOTION in Limine to Admit Evidence of Defendant's Other Acts 102 filed by Plaintiff USA as to Defendant Norwood. (Tenley, Scott) (Entered: 11/22/2015)
11/24/2015	112	MINUTES (IN CHAMBERS) by Judge James V. Selna: Order Taking Under Submission 99 MOTION to Dismiss Counts as to Edward Nolan Norwood (2); 100 MOTION for Change of Venue as to Edward Nolan Norwood (2); 101 Motion in Limine to Exclude as to Edward Nolan Norwood (2); 102 Motion in Limine to Admit as to Edward Nolan Norwood (2) and Vacating the Pretrial Status Conference. See document for further details. (dg) (Entered: 11/24/2015)
11/30/2015	113	MINUTES (IN CHAMBERS) by Judge James V. Selna: Order Transferring Matter; Denying as Moot Defendant's Motion to Change Venue; and Continuing Trial as to Edward Nolan Norwood (2) re 100 . In view of the foregoing, Norwood's motion for a change of venue is denied as moot. The Court continues the trial in this matter to January 19, 2016, and transfers this matter to the Honorable R. Gary Klausner for trial on that date.(see document for further details) (mba) (Entered: 11/30/2015)
12/01/2015	116	ORDER TRANSFERRING CRIMINAL ACTION pursuant to General Order 14-03. ORDER case, as to Defendant Edward Nolan Norwood, transferred from Judge James V. Selna to the calendar of Judge R. Gary Klausner for all further proceedings. The case number will now reflect the initials of the transferee Judge CR13-00388 RGK-2. Signed by Judge James V. Selna. Accepted by Judge R. Gary Klausner. (mg) (Entered: 12/01/2015)
12/14/2015	117	NOTICE OF MOTION AND MOTION in Limine to Exclude Proposed Expert Testimony of Special Agent Paris Re: "Drug Trafficking Conspiracies" Filed by Plaintiff Edward Nolan Norwood as to Defendant Emerie Nelson Tims, Edward Nolan Norwood Motion set for hearing on 1/11/2016 at 01:30 PM before Judge R. Gary Klausner.(LaHue, Kevin) (Entered: 12/14/2015)

12/14/2015	118	NOTICE OF MOTION AND MOTION in Limine to Exclude Recorded Hearsay Statements Filed by Defendant Edward Nolan Norwood Motion set for hearing on 1/11/2016 at 01:30 PM before Judge R. Gary Klausner. (Attachments: # 1 Exhibit Exhibit 1 - Transcript)(LaHue, Kevin) (Entered: 12/14/2015)
12/14/2015	119	NOTICE OF MOTION AND MOTION to AMEND NOTICE OF MOTION AND MOTION to Dismiss Counts Dismiss Information 99 , MOTION in Limine to Exclude Prior Convictions and Other Bad Acts 101 Filed by Defendant Edward Nolan Norwood. Motion set for hearing on 1/11/2016 at 01:30 PM before Judge R. Gary Klausner. (LaHue, Kevin) (Entered: 12/14/2015)
12/14/2015	120	NOTICE OF APPEARANCE OR REASSIGNMENT of AUSA Julian Lucien Andre on behalf of Plaintiff USA. Filed by Plaintiff USA. (Andre, Julian) (Entered: 12/14/2015)
12/15/2015	121	NOTICE OF APPEARANCE OR REASSIGNMENT of AUSA Ashwin Janakiram on behalf of Plaintiff USA. Filed by Plaintiff USA. (Attorney Ashwin Janakiram added to party USA(pty:pla))(Janakiram, Ashwin) (Entered: 12/15/2015)
12/21/2015	124	OPPOSITION to MOTION in Limine to Exclude Proposed Expert Testimony of Special Agent Paris Re: "Drug Trafficking Conspiracies" 117 (Janakiram, Ashwin) (Entered: 12/21/2015)
12/21/2015	125	OPPOSITION to MOTION in Limine to Exclude Recorded Hearsay Statements 118 (Janakiram, Ashwin) (Entered: 12/21/2015)
12/28/2015	126	REPLY MOTION in Limine to Exclude Proposed Expert Testimony of Special Agent Paris Re: "Drug Trafficking Conspiracies" 117 filed by Defendant Norwood. (LaHue, Kevin) (Entered: 12/28/2015)
12/28/2015	127	REPLY support MOTION in Limine to Exclude Recorded Hearsay Statements 118 filed by Defendant Norwood. (LaHue, Kevin) (Entered: 12/28/2015)
01/07/2016	135	STIPULATION for Order Protective Order Governing Informant Discovery filed by Plaintiff USA as to Defendant Edward Nolan Norwood (Attachments: # 1 Proposed Order Protective Governing Informant Discovery)(Janakiram, Ashwin) (Entered: 01/07/2016)
01/08/2016	136	SCHEDULING NOTICE TO ALL PARTIES AND ORDER by Judge R. Gary Klausner as to Defendant Edward Nolan Norwood. Defendant's Motion in Limine to Exclude Proposed Expert Testimony of SA Paris Re Drug Trafficking Conspiracies 117 ; Defendant's Motion in Limine to Excluded Recorded Hearsay Statements 118 ; and Defendant's Motion to Re-Notice and Re-Calendar Motion to Dismiss 851 Information and Motion in Limine No. 1 to Exclude Prior Convictions and Prior Bad Acts 119 , calendared for hearing on January 11, 2016, have been taken under submission and off the motion calendar. No appearances by counsel are necessary. The Court will issue a ruling after full consideration of properly submitted pleadings. IT IS SO ORDERED. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY.(sw) TEXT ONLY ENTRY (Entered: 01/08/2016)
01/08/2016	137	PROTECTIVE ORDER GOVERNING INFORMANT DISCOVERY by Judge R. Gary Klausner as to Defendant Edward Nolan Norwood, re: Stipulation for Order 135 . See Order For Specifics. (bp) (Entered: 01/08/2016)
01/12/2016	139	NOTICE of Manual Filing of In-Camera Submission of Statements of Potential Witnesses filed by Plaintiff USA as to Defendant Edward Nolan Norwood (Andre, Julian) (Entered: 01/12/2016)
01/12/2016	140	PROPOSED JURY VERDICT filed by Plaintiff USA as to Defendant Edward Nolan

		Norwood (Andre, Julian) (Entered: 01/12/2016)
01/12/2016	141	PROPOSED JURY INSTRUCTIONS (Annotated set) filed by Plaintiff USA as to Defendant Edward Nolan Norwood (Andre, Julian) (Entered: 01/12/2016)
01/13/2016	142	TRIAL MEMORANDUM filed by Plaintiff USA as to Defendant Edward Nolan Norwood (Andre, Julian) (Entered: 01/13/2016)
01/14/2016	144	PROPOSED VOIR DIRE QUESTIONS filed by Defendant Edward Nolan Norwood (McLane, David) (Entered: 01/14/2016)
01/14/2016	145	PROPOSED JURY INSTRUCTIONS (Annotated set) filed by Defendant Edward Nolan Norwood (McLane, David) (Entered: 01/14/2016)
01/14/2016	146	PROPOSED JURY INSTRUCTIONS (Objections to Government Jury Instructions set) filed by Defendant Edward Nolan Norwood (McLane, David) (Entered: 01/14/2016)
01/14/2016	147	NOTICE OF MOTION AND MOTION in Limine to Exclude Proposed Opinion/Interpretation Testimony of Law Enforcement, Expert, and Confidential Informant Witnesses Re: Recorded Conversations Filed by Plaintiff Edward Nolan Norwood as to Defendant Emerie Nelson Tims, Edward Nolan Norwood Motion set for hearing on 1/19/2016 at 08:30 AM before Judge R. Gary Klausner. (Attachments: # 1 Exhibit Exhibit A Jan 11 2016 Letter)(LaHue, Kevin) (Entered: 01/14/2016)
01/15/2016	148	MINUTES (IN CHAMBERS) Order re: Defendant's Motions to Dismiss Information (DE 99, 119) by Judge R. Gary Klausner: The Court DISMISSES the September 6, 2013 Information filed pursuant to 21 U.S.C. 851 (the "Information"). See Criminal Minutes For Specifics. (bp) (Entered: 01/15/2016)
01/15/2016	149	MINUTES (IN CHAMBERS) Order re: Defendant's Motions in Limine (DE 99, 101, 117, 118, 119,) and Government's Motion in Limine (DE 102) by Judge R. Gary Klausner: I. Defendants Motion to Exclude Evidence of Prior Convictions (DE 101)A. For Impeachment Purposes (609)GRANTED as to the misdemeanor convictions.DENIED as to the felony convictions for robbery and possession of a firearm.B. For Substantive Purposes (404(b))GRANTED as to the convictions for robbery and possession of a firearm.DENIED as to the 2007 conviction for possession of crack cocaine.II. Governments Motion to Admit Evidence of Defendants Other Bad Acts (DE 102)GRANTED.III. Defendants Motion to Exclude Proposed Expert Testimony (DE 117)GRANTED as to any expert testimony opining that:1. Drug traffickers do not allow unknowing participants to be present during transactions2. It is not uncommon for one drug trafficker to enlist another drug trafficker in completing a transaction IV. Defendants Motion to Exclude Recorded Hearsay Statements (DE 118)GRANTED. (bp) (Entered: 01/15/2016)
01/18/2016	150	EXHIBIT LIST filed by Plaintiff USA as to Defendant Edward Nolan Norwood (Andre, Julian) (Entered: 01/18/2016)
01/18/2016	151	WITNESS LIST filed by Plaintiff USA as to Defendant Edward Nolan Norwood (Andre, Julian) (Entered: 01/18/2016)
01/18/2016	152	OPPOSITION to MOTION in Limine to Exclude Proposed Opinion/Interpretation Testimony of Law Enforcement, Expert, and Confidential Informant Witnesses Re: Recorded Conversations 147 filed by Plaintiff USA as to Defendant Edward Nolan Norwood. (Andre, Julian) (Entered: 01/18/2016)
01/19/2016	153	MINUTES OF Change of Plea Hearing held before Judge R. Gary Klausner as to Defendant Edward Nolan Norwood. Defendant moves to change plea to the Indictment. Defendant sworn. Defendant enters new and different plea of GUILTY to Counts 1 and 2. The Court questions the defendant regarding plea of GUILTY and FINDS that a factual

		basis has been laid and further FINDS the plea is knowledgeable and voluntarily made. The Court ORDERS he plea accepted and entered. The Court refers the defendant to the Probation Office for investigation and report and the matter is continued to April 18, 2016 at 10:00 a.m. for sentencing. The Probation Officer is hereby directed to disclose the Presentence Report on or before March 14, 2016. Court Reporter: Sandra MacNeil. (bp) (Entered: 01/19/2016)
04/06/2016	180	STIPULATION to Continue Sentencing from 4/18/2016 to 6/6/2016 filed by Defendant Edward Nolan Norwood (Attachments: # 1 Proposed Order continue sentencing) (McLane, David) (Entered: 04/06/2016)
04/07/2016	187	ORDER RE: DEFENDANT and GOVERNMENT REQUEST AND STIPULATION TO CONTINUE SENTENCING TO JUNE 6, 2016 AT 1:30 P.M. by Judge R. Gary Klausner as to Defendant Edward Nolan Norwood, re Stipulation to Continue 180 . GOOD CAUSE APPEARING THEREFORE, based on the request of the parties and the stipulation in support of the request for a continuance of the sentencing of Edward Nolan Norwood, it is hereby ordered that the sentencing be continued from April 18, 2016 to June 6, 2016 at 1:30 p.m. (bp) (Entered: 04/07/2016)
05/23/2016	191	POSITION WITH RESPECT TO SENTENCING FACTORS filed by Plaintiff USA as to Defendant Edward Nolan Norwood (Andre, Julian) (Entered: 05/23/2016)
05/23/2016	192	POSITION WITH RESPECT TO PRESENTENCE REPORT filed by Defendant Edward Nolan Norwood (Attachments: # 1 Exhibit A-J)(McLane, David) (Entered: 05/23/2016)
06/06/2016	194	MINUTES OF SENTENCING Hearing held before Judge R. Gary Klausner. It is the judgment of the Court that the defendant, Edward Nolan Norwood, is hereby committed on Counts One and Two of the Indictment to the custody of the Bureau of Prisons for term of SEVENTY-TWO (72) MONTHS. This term consists of 72 months on each of Count One and Two of the Indictment, to be served concurrently. The Bureau of Prisons shall determine the defendant's eligibility for the RDAP drug treatment program. Supervised release for a term of FIVE (5) YEARS. Defendant advised of right of appeal. Court Reporter: Sandra MacNeil. (bp) (Entered: 06/07/2016)
06/07/2016	195	TRANSCRIPT filed as to Defendant Emerie Nelson Tims, Edward Nolan Norwood for proceedings held on 7-16-15 11:09 a.m. Court Reporter/Electronic Court Recorder: Sharon Seffens, phone number sseffens@earthlink.net. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Electronic Court Recorder before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Notice of Intent to Redact due within 7 days of this date. Redaction Request due 6/28/2016. Redacted Transcript Deadline set for 7/8/2016. Release of Transcript Restriction set for 9/6/2016.(Seffens, Sharon) (Entered: 06/07/2016)
06/07/2016	196	TRANSCRIPT filed as to Defendant Emerie Nelson Tims, Edward Nolan Norwood for proceedings held on 4-4-16 10:21 a.m. Court Reporter/Electronic Court Recorder: Sharon Seffens, phone number sseffens@earthlink.net. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Electronic Court Recorder before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Notice of Intent to Redact due within 7 days of this date. Redaction Request due 6/28/2016. Redacted Transcript Deadline set for 7/8/2016. Release of Transcript Restriction set for 9/6/2016.(Seffens, Sharon) (Entered: 06/07/2016)
06/07/2016	197	NOTICE OF FILING TRANSCRIPT filed as to Defendant Emerie Nelson Tims, Edward Nolan Norwood for proceedings 7-16-15 11:09 a.m., 4-4-16 10:21 a.m re Transcript 196 ,

		195 THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY.(Seffens, Sharon) TEXT ONLY ENTRY (Entered: 06/07/2016)
06/08/2016	198	JUDGMENT AND COMMITMENT by Judge R. Gary Klausner. It is the judgment of the Court that the defendant, Edward Nolan Norwood, is hereby committed on Counts One and Two of the Indictment to the custody of the Bureau of Prisons for term of SEVENTY-TWO (72) MONTHS. This term consists of 72 months on each of Count One and Two of the Indictment, to be served concurrently. The Bureau of Prisons shall determine the defendant's eligibility for the RDAP drug treatment program. Supervised release for a term of FIVE (5) YEARS. (bp) (Entered: 06/09/2016)
06/13/2016	200	NOTICE OF APPEAL to Appellate Court filed by Defendant Edward Nolan Norwood re Judgment and Commitment,, 198 . Filing fee WAIVED. (McLane, David) (Entered: 06/13/2016)
06/14/2016	201	NOTIFICATION by Circuit Court of Appellate Docket Number 16-50215 as to Defendant Edward Nolan Norwood, 9th Circuit regarding Notice of Appeal to USCA - Final Judgment 200 . (mat) (Entered: 06/15/2016)
06/21/2016	204	TRANSCRIPT filed as to Defendant Emerie Nelson Tims, Edward Nolan Norwood for proceedings held on 1-30-15 10:19 a.m. Court Reporter/Electronic Court Recorder: Sharon Seffens, phone number sseffens@earthlink.net. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Electronic Court Recorder before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Notice of Intent to Redact due within 7 days of this date. Redaction Request due 7/12/2016. Redacted Transcript Deadline set for 7/22/2016. Release of Transcript Restriction set for 9/19/2016.(Seffens, Sharon) (Entered: 06/21/2016)
06/21/2016	205	NOTICE OF FILING TRANSCRIPT filed as to Defendant Emerie Nelson Tims, Edward Nolan Norwood for proceedings 1-30-15 10:19 a.m re Transcript 204 THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY.(Seffens, Sharon) TEXT ONLY ENTRY (Entered: 06/21/2016)
07/01/2016	207	DESIGNATION OF RECORD ON APPEAL filed by Defendant Edward Nolan Norwood re Notice of Appeal to USCA - Final Judgment 200 (LaHue, Kevin) (Entered: 07/01/2016)
07/11/2016	208	NOTICE OF APPEAL to Appellate Court filed by Plaintiff USA as to Defendant Edward Nolan Norwood re Judgment and Commitment,, 198 , Order on Motion to Dismiss Counts (less than all counts),, Order on Motion to Amend/Correct, 148 . Filing fee WAIVED. (Andre, Julian) (Entered: 07/11/2016)
07/12/2016	209	NOTIFICATION by Circuit Court of Appellate Docket Number 16-50249 as to Defendant Edward Nolan Norwood, 9th Circuit regarding Notice of Appeal to USCA - Final Judgment, 208 . (mat) (Entered: 07/12/2016)
08/30/2016	210	TRANSCRIPT filed as to Defendant Edward Nolan Norwood for proceedings held on JUNE 6, 2016, 1:36 P.M. Court Reporter/Electronic Court Recorder: SANDRA MACNEIL, phone number 213-894-5949; MACNEILSANDY@GMAIL.COM. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Electronic Court Recorder before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Notice of Intent to Redact due within 7 days of this date. Redaction Request due 9/20/2016. Redacted Transcript Deadline set for 9/30/2016. Release of Transcript Restriction set for 11/28/2016. (MacNeil, Sandra) (Entered: 08/30/2016)
08/30/2016	211	NOTICE OF FILING TRANSCRIPT filed as to Defendant Edward Nolan Norwood for

		proceedings JUNE 6, 2016, 1:36 P.M. re Transcript 210 THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY.(MacNeil, Sandra) TEXT ONLY ENTRY (Entered: 08/30/2016)
10/07/2016	212	TRANSCRIPT ORDER as to Defendant Emerie Nelson Tims, Edward Nolan Norwood DCN number: S10003 for Court Reporter. Order for: Criminal Non Appeal. Category: Ordinary. Transcript preparation will not begin until payment has been satisfied with the court reporter.(Janakiram, Ashwin) (Entered: 10/07/2016)
10/18/2016	213	TRANSCRIPT filed as to Defendant Edward Nolan Norwood for proceedings held on JANUARY 19, 2016, 9:01 A.M. Court Reporter/Electronic Court Recorder: SANDRA MACNEIL, phone number 213-894-5949; MACNEILSANDY@GMAIL.COM. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Electronic Court Recorder before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Notice of Intent to Redact due within 7 days of this date. Redaction Request due 11/8/2016. Redacted Transcript Deadline set for 11/18/2016. Release of Transcript Restriction set for 1/17/2017. (MacNeil, Sandra) (Entered: 10/18/2016)
10/18/2016	214	NOTICE OF FILING TRANSCRIPT filed as to Defendant Edward Nolan Norwood for proceedings JANUARY 19, 2016, 9:01 A.M. re Transcript 213 THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY.(MacNeil, Sandra) TEXT ONLY ENTRY (Entered: 10/18/2016)
02/10/2017	215	ORDER of USCA filed as to Defendant Edward Nolan Norwood, CCA #16-50215, 16-50249. Briefing of appeal numbers 16-50215 and 16-50249 is stayed pendingdisposition of Edward Nolan Norwoods motion to dismiss appeal 16-50249.Norwoods motion to dismiss will be addressed and the briefing schedule will bereset by separate order. (car) (Entered: 02/10/2017)
05/14/2018	218	MEMORANDUM of USCA filed as to Defendant Edward Nolan Norwood, CCA #16-50215. The Order is Affirmed in part, Reversed in part, and REMANDED with instructions. Order received in this district on 9th. (bp) (Entered: 05/15/2018)
07/10/2018	219	ORDER of USCA filed as to Defendant Emerie Nelson Tims, Edward Nolan Norwood, CCA #16-50215 and 16-50249. The Government is directed to file a response to Appellant/Appellee Norwoods corrected petition for panel rehearing and petition for rehearing en banc filed on May 25, 2018. (mat) (Entered: 07/11/2018)
07/26/2018	220	ORDER of USCA filed as to Defendant Edward Nolan Norwood, CCA #16-50215 and 16-50249. The Government's unopposed motion for an extension of time to file a response to Appellant/Appellee Norwood's corrected petition for panel rehearing and petition for rehearing en banc is GRANTED. The response is now due on August 7, 2018. (mat) (Entered: 07/26/2018)
08/30/2018	221	MANDATE of the 9th CCA filed as to Defendant Edward Nolan Norwood re Notice of Appeal to USCA 208 , and Notice of Appeal 200 , CCA #16-50215 and 16-50249. The judgment of the 9th Circuit Court, entered May 14, 2018, takes effect this date. This constitutes the formal mandate of the 9th CCA issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure. [See USCA MEMORANDUM 218 , We (9th CCA) affirm the calculation of Norwoods criminal history points and reverse the dismissal of the governments 851 information. Because we are not convinced that Norwoods plea was knowingly and intelligently made, we remand with instructions to the district court to allow Norwood to withdraw his guilty plea. AFFIRMED in part, REVERSED in part, and REMANDED with instructions. AFFIRMED in part, REVERSED in part, and REMANDED with instructions.](mat) (Entered: 09/05/2018)

09/12/2018	222	SCHEDULING NOTICE TO ALL PARTIES AND ORDER by Judge R. Gary Klausner. The Court has reviewed the Mandate issued by the Ninth Circuit Court of Appeals on August 30, 2018 221 . A Status Conference has been placed on calendar for 10/22/2018 at 10:00 am. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (sw) TEXT ONLY ENTRY (Entered: 09/12/2018)
10/19/2018	223	STIPULATION to Continue Status Conference from 10/22/2018 to 12/03/2018 filed by Defendant Edward Nolan Norwood (Attachments: # 1 Proposed Order continue status conference)(McLane, David) (Entered: 10/19/2018)
10/19/2018	224	ORDER RE: DEFENDANT and GOVERNMENT REQUEST AND STIPULATION TO CONTINUE STATUS CONFERENCE FROM OCTOBER 22, 2018 TO DECEMBER 3, 2018 by Judge R. Gary Klausner as to Defendant Edward Nolan Norwood, re: Stipulation to Continue 223 . It is hereby ordered that the status conference be continued from October 22, 2018 to December 3, 2018 at 10:00 a.m. (bp) (Entered: 10/19/2018)

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11/16/2018 16:43:09			
PACER Login:	kevinlahue:4382453:0	**Client Code:**	
Description:	Docket Report	**Search Criteria:**	2:13-cr-00388-RGK End date: 11/16/2018
Billable Pages:	13	**Cost:**	1.30

A P P E N D I X 5

MINUTE ORDER
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE PRINTED: 07/29/15

CASE NO. BA311513

THE PEOPLE OF THE STATE OF CALIFORNIA
VS.
DEFENDANT 01: EDWARD NOLAN NORWOOD

INFORMATION FILED ON 11/27/06.

COUNT 01: 11350 H&S FEL

ON 07/28/15 AT 830 AM IN CENTRAL DISTRICT DEPT 650

CASE CALLED FOR PROPOSITION 47 APPLICATION HRG

PARTIES: RAND S. RUBIN (JUDGE) LORRAINE VALDEZ (CLERK)
PATRICIA MCNEAL (REP) DENNIS POEY (DA)

DEFENDANT IS NOT PRESENT IN COURT, AND NOT REPRESENTED BY COUNSEL

COURT ORDERS INFORMATION DEEMED AMENDED TO ALLEGE COUNT 01 AS A MISDEMEANOR PURSUANT TO PENAL CODE SECTION 1170.18 ET SEQ. AND COUNT SHALL PROCEED AS MISDEMEANOR.

COURT ORDERS AND FINDINGS:

-THE COURT FINDS THAT THE DEFENDANT IS ELIGIBLE AND SUITABLE TO

HAVE COUNT 01 REDUCED TO A MISDEMEANOR. ACCORDINGLY, THE COURT ORDERS COUNT 01 A MISDEMEANOR PURSUANT TO PROPOSITION 47.

DEFENDANT'S PETITION PURSUANT TO PROPOSITION 47 IS GRANTED WITH NO OBJECTION FROM THE PEOPLE.

NEXT SCHEDULED EVENT:
PROCEEDINGS TERMINATED

Ex. B-1