

# **APPENDIX**

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**PUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 17-4308**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

BRADFORD D VOL ALLEN,

Defendant - Appellant.

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Appeal from the United States District Court for the Western District of North Carolina,  
at Asheville. Max O. Cogburn, Jr., District Judge. (1:15-cr-00064-MOC-DLH-1)

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Argued: September 28, 2018

Decided: November 28, 2018

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Before NIEMEYER and KEENAN, Circuit Judges and Norman K. MOON, Senior  
United States District Judge for the Western District of Virginia, sitting by designation.

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Affirmed by published opinion. Judge Keenan wrote the opinion, in which Judge  
Niemeyer and Judge Moon joined.

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**ARGUED:** Robert Carpenter, DUNGAN, KILBOURNE & STAHL, PA, Asheville,  
North Carolina, for Appellant. Anthony Joseph Enright, OFFICE OF THE UNITED  
STATES ATTORNEY, Charlotte, North Carolina, for Appellee. **ON BRIEF:** R.  
Andrew Murray, United States Attorney, OFFICE OF THE UNITED STATES  
ATTORNEY, Charlotte, North Carolina, for Appellee.

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BARBARA MILANO KEENAN, Circuit Judge:

Bradford D Vol Allen was convicted following his guilty plea to one count of unlawful possession of firearms by a convicted felon, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). On appeal, Allen contends that the district court committed two sentencing errors: 1) in increasing his base offense level due to his prior conviction of a “controlled substance offense” under 21 U.S.C. § 843(b), for using a communication facility to facilitate the crime of possession with intent to distribute cocaine base; and 2) in assigning one criminal history point for a prior North Carolina consolidated judgment. Upon our review, we affirm the district court’s judgment.

I.

In 2016, Allen pleaded guilty to the unlawful possession of firearms by a convicted felon, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). The probation officer prepared a presentence report (PSR), which included two prior convictions relevant to this appeal. First, in 2009, Allen was convicted of using a communication facility to facilitate the crime of possession with intent to distribute cocaine base, in violation of 21 U.S.C. § 843(b) (the Section 843(b) conviction). And second, in 2007, Allen was convicted of two North Carolina misdemeanors, namely, possession of marijuana in an amount less than or equal to one-half ounce, and second-degree trespass. The two misdemeanor convictions were consolidated into one judgment for sentencing under North Carolina law. *See* N.C. Gen. Stat. § 15A-1340.15(b).

The probation officer recommended in the PSR that Allen's base offense level be increased to 24 under the United States Sentencing Guidelines (Guidelines) § 2K2.1(a)(2), based on his two prior felony convictions of "controlled substance offenses," including his Section 843(b) conviction. U.S.S.G. § 2K2.1(a)(2). The probation officer also recommended that one point be added under Guidelines § 4A1.1(c) to Allen's criminal history score based on the North Carolina consolidated judgment.

Allen objected to both recommendations made by the probation officer. First, he argued that the Section 843(b) conviction did not qualify as a "controlled substance offense" for purposes of computing his base offense level. Second, Allen asserted that he should not have been assigned one criminal history point for the North Carolina consolidated judgment due to the allegedly disproportionate effect this point would have on his Guidelines range. Exclusion of this single point in his criminal history would have resulted in a lower Guidelines range.

At sentencing, the district court overruled both objections to the PSR, and adopted the PSR in all respects. After determining that Allen's advisory Guidelines range was a term of imprisonment of between 84 and 105 months, the district court varied downward and imposed a sentence of 77 months' imprisonment. Allen now appeals.

## II.

Allen first argues that his Section 843(b) conviction does not qualify as a "controlled substance offense" for purposes of determining his base offense level under Guidelines § 2K2.1(a). Allen acknowledges that the relevant Guidelines commentary

specifically states that a Section 843(b) conviction is a “controlled substance offense” when the underlying conviction also qualifies as a “controlled substance offense.” Nevertheless, he maintains that under a “categorical approach” analysis, his Section 843(b) conviction does not qualify because its elements sweep more broadly than the Guidelines’ definition of a “controlled substance offense.” Accordingly, Allen contends that the district court erred in increasing his base offense level from 20 to 24 due to his Section 843(b) conviction. We disagree with Allen’s argument, and do not apply a categorical analysis because the relevant commentary is authoritative and controlling.

Our standard of review is well established. We consider de novo the issue whether a prior conviction qualifies under the Guidelines as a “controlled substance offense” for purposes of a sentencing enhancement. *See United States v. McCollum*, 885 F.3d 300, 304 (4th Cir. 2018).

Under Guidelines § 2K2.1(a)(2), a defendant’s base offense level for possession of a firearm by a felon increases to 24 if the defendant committed that offense with a criminal record containing at least two prior felony convictions for a “controlled substance offense” or a “crime of violence.” U.S.S.G. § 2K2.1(a)(2). The term “controlled substance offense” is defined in Guidelines § 4B1.2(b) and is incorporated by reference in the application note to Guidelines § 2K2.1. This term includes any state or federal offense punishable by imprisonment for a term exceeding one year, that

prohibits the manufacture, import, export, distribution, or dispensing of a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense.

U.S.S.G. § 4B1.2(b). Allen’s predicate conviction at issue here, under Section 843(b), states that

[i]t shall be unlawful for any person knowingly or intentionally to use any communication facility in committing or in causing or facilitating the commission of any act or acts constituting a felony under any provision of this subchapter [controlled substance offenses] or subchapter II [drug trafficking offenses].

21 U.S.C. § 843(b). The commentary to Guidelines § 4B1.2 states in Application Note One that a Section 843(b) conviction constitutes a “controlled substance offense” if the underlying felony “committed, caused, or facilitated” by use of a “communication facility” was a “controlled substance offense” (the Section 843(b) commentary). U.S.S.G. § 4B1.2, appl. n.1.

The Section 843(b) commentary, like all Guidelines commentary, is designed to aid the critical tasks of the sentencing court. *See* U.S.S.G. § 1B1.7. The Guidelines necessarily are structured at a level of generality that permits their application to the many varied facts and circumstances presented in the sentencing process. *See generally Stinson v. United States*, 508 U.S. 36, 40-42 (1993). In this context, the commentary puts “flesh on the bones” of the Guidelines.

The issue of the proper weight to be accorded the Guidelines commentary was decided by the Supreme Court in *Stinson*. The Court emphasized that when commentary interprets a guideline provision or explains how a guideline is to be applied, the commentary is controlling. *Id.* at 42-43. In a bright-line holding, the Court stated that the Guidelines commentary is authoritative and controlling unless it 1) “violates the

Constitution or a federal statute;” 2) “is inconsistent with” the Guidelines; or 3) constitutes a “plainly erroneous reading” of the Guidelines. *Id.* at 37-38.

Generally, the commentary will be held inconsistent with the Guidelines when following the commentary would violate the dictates of the relevant Guidelines. *Id.* at 43. Conversely, when the commentary “interprets or explains” the Guidelines, that commentary will be deemed consistent with the Guidelines. *Id.* at 38, 44 (“commentary explains the guidelines and provides concrete guidance as to how even unambiguous guidelines are to be applied in practice”); *see, e.g., United States v. Paneto*, 661 F.3d 709, 717-18 (1st Cir. 2011) (holding that the commentary clarified the term “in connection with” under Guidelines § 2K2.1); *United States v. Johnson*, 605 F.3d 82, 83-84 (D.C. Cir. 2010) (relying on commentary placing a “law enforcement officer” within a sentencing enhancement covering public officials serving in a “sensitive position”); *United States v. Morris*, 562 F.3d 1131, 1135-36 (10th Cir. 2009) (holding that the commentary clarified the term “another felony” under Guidelines § 2K2.1).

Courts regularly apply the commentary in determining whether a prior conviction qualifies as a predicate offense for purposes of a sentencing enhancement. Although this Court has not addressed the particular Section 843(b) commentary at issue in this case, we previously have addressed another part of Application Note One that clarified Guidelines § 4B1.2. *United States v. Walton*, 56 F.3d 551, 555-56 (4th Cir. 1995). In *Walton*, we considered the question whether a defendant’s Section 843(b) conviction qualified as a “controlled substance offense” within the meaning of that Guidelines term as it was defined at that time. *Id.*



Our discussion in *Walton* addressed an earlier version of Application Note One that did not include the Section 843(b) commentary. *Id.* Instead, we focused on the Guidelines commentary to the definition of a “controlled substance offense,” which stated in Application Note One that “offenses of aiding and abetting” a “controlled substance offense” are considered “controlled substance offenses” for purposes of computing a defendant’s Guidelines range (the aiding and abetting commentary). U.S.S.G. § 4B1.2, appl. n.1 (2003). We held that the aiding and abetting commentary clarified that a “controlled substance offense” included any prior conviction that aided or abetted a “controlled substance offense.” *Walton*, 56 F.3d at 555. Underlying our rationale was the long-standing rule that an aider and abettor to a crime generally is punishable under federal law as a principal. *See* 18 U.S.C. § 2; *see also Rosemond v. United States*, 572 U.S. 65, 70 (2014) (stating that the rule that “a person who . . . ‘aids, abets’ . . . ‘is punishable as a principal’” is based on a “centuries-old view of culpability” (citations omitted)). Accordingly, we held in *Walton* that the defendant’s Section 843(b) conviction was a valid predicate offense in the computation of a career offender enhancement, *see* U.S.S.G. § 4B1.1, because the defendant used a telephone to aid the commission of his underlying “controlled substance offense,” namely, distribution of cocaine. *Walton*, 56 F.3d at 555-56.

The Section 843(b) commentary before us also is dispositive here. This commentary states that a Section 843(b) conviction is a “controlled substance offense” if the “underlying offense” is a “controlled substance offense.” U.S.S.G. § 4B1.2, appl. n.1. Thus, this particular provision serves an explanatory function by describing one way in

which a “controlled substance offense” may be committed, namely, by using a communication facility. *Cf. Stinson*, 508 U.S. at 44. This language is not inconsistent with the dictates of Guidelines § 2K2.1, which provides that a defendant be assigned a base offense level of 24 if he has committed at least a part of the present offense after having been convicted of two felony offenses of a “crime of violence” or a “controlled substance offense.” *Cf. Stinson*, 508 U.S. at 43; U.S.S.G. §§ 2K2.1, 4B1.2, appl. n.1. And Allen does not argue that the Section 843(b) commentary violates the Constitution or a federal statute, or that the Section 843(b) commentary is a plainly erroneous reading of the Guidelines. *See Stinson*, 508 U.S. at 38.

The history of the amendment codifying the Section 843(b) commentary further supports the conclusion that this commentary is controlling. Before the inclusion of this commentary, we were one of three federal courts of appeal holding that a Section 843(b) conviction is a “controlled substance offense” for purposes of the career offender enhancement in Guidelines § 4B1.1.<sup>1</sup> *Walton*, 56 F.3d at 555-56; *see United States v. Mueller*, 112 F.3d 277, 281-83 (7th Cir. 1997); *United States v. Vea-Gonzalez*, 999 F.2d 1326, 1328-31 (9th Cir. 1993). The United States Sentencing Commission (the

<sup>1</sup> Since the ratification of the Section 843(b) commentary, the Third Circuit has held that a Section 843(b) conviction is a “controlled substance offense” for purposes of determining career offender status under Guidelines § 4B1.1. *United States v. Williams*, 176 F.3d 714, 715-18 (3d Cir. 1999) (noting that Application Note One was ratified after the defendant was sentenced but would have controlled its analysis); *see also United States v. Jimenez*, 533 F.3d 1110, 1112-13 (9th Cir. 2008) (concluding that a Section 843(b) conviction is a “drug trafficking offense” for purposes of Guidelines § 2L1.2, which contains a nearly identical definition of “controlled substance offense” as that found in Guidelines § 4B1.2).

Commission), which promulgates the Guidelines, stated that the Commission's intention in amending Application Note One in 1997 to include the Section 843(b) commentary was to codify these several circuit court decisions. U.S.S.G. App. C, Amend. No. 568, effective Nov. 1, 1997 (citing *Vea-Gonzalez*, 999 F.2d at 1326).

We now apply the Section 843(b) commentary, which is incorporated by reference into Guidelines § 2K2.1, consistent with the Commission's intent. *See id.* Accordingly, we hold that the inclusion of Section 843(b) in Application Note One as a "controlled substance offense," when the underlying offense also is a "controlled substance offense," is authoritative and controlling.

Having determined that the Section 843(b) commentary is controlling in our review of Allen's base offense level, we next consider whether the felony offense underlying his Section 843(b) conviction qualifies as a "controlled substance offense." U.S.S.G. § 4B1.2, appl. n.1. The relevant Guidelines provision defines a "controlled substance offense" as including the "possession of a controlled substance . . . with intent to . . . distribute." U.S.S.G. § 4B1.2(b). Allen's 2009 judgment of conviction shows that he used a communication facility to facilitate the underlying offense of possession with intent to distribute cocaine base, which plainly is a "controlled substance offense." 21 U.S.C. § 812 (listing cocaine as a schedule II controlled substance); *cf.* U.S.S.G. § 4B1.2(b). We therefore hold that Allen's Section 843(b) conviction is a "controlled substance offense" that served as a valid predicate offense for enhancing his base offense level under Guidelines § 2K2.1(a)(2).

III.

Allen next argues that the district court erred in adding one point to his criminal history score based on his North Carolina consolidated judgment. According to Allen, because one of the two offenses comprising his North Carolina consolidated judgment cannot be used in assigning a criminal history point, that judgment should not have been counted in computing his criminal history score. We disagree with Allen's argument.<sup>2</sup>

On a challenge to a district court's application of the Guidelines, we review questions of law de novo and findings of fact for clear error. *United States v. Thompson*, 874 F.3d 412, 414 (4th Cir. 2017). Subject to certain exceptions, misdemeanor offenses generally are assigned one or more criminal history points. U.S.S.G. § 4A1.2(c). However, one of the misdemeanor offenses included in Allen's North Carolina consolidated judgment, the trespass offense, falls within the category of misdemeanor offenses that may not be assigned a criminal history point. U.S.S.G. § 4A1.2(c)(1). The other misdemeanor offense included in his consolidated judgment, possession of

<sup>2</sup> We also disagree with Allen's alternative argument that the district court should have granted him a downward departure, because Allen's criminal history category substantially overrepresented the seriousness of his criminal history. See U.S.S.G. § 4A1.3(b). "A district court's decision not to depart from the Sentencing Guidelines is not reviewable unless the court mistakenly believed that it lacked authority to depart." *United States v. Allen*, 491 F.3d 178, 193 (4th Cir. 2007); see also *United States v. Brewer*, 520 F.3d 367, 371 (4th Cir. 2008) (stating that the First, Third, Sixth, Eighth, Tenth, and Eleventh Circuits decline to review sentencing decisions denying downward departures). Because nothing in the record suggests that the district court mistakenly thought that it lacked authority to grant a downward departure, we do not further address this argument. *Allen*, 491 F.3d at 193.

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marijuana, is not subject to exclusion under Guidelines § 4A1.2(c) and, thus, may be assigned one point in computing his criminal history.

Based on these distinctions in the counting of misdemeanor convictions under Guidelines § 4A1.2(c), we hold that the district court properly added one criminal history point for the North Carolina consolidated judgment. The misdemeanor marijuana possession offense independently would have been assessed a criminal history point, and the fact that the consolidated judgment also included a non-qualifying offense does not change that result. Accordingly, because the misdemeanor trespass offense had no effect on the computation of Allen's criminal history, the district court did not err in assigning a criminal history point for the misdemeanor possession of marijuana conviction.

#### IV.

For these reasons, we affirm the district court's judgment.

*AFFIRMED*

FILED: November 28, 2018

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 17-4308  
(1:15-cr-00064-MOC-DLH-1)

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UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

BRADFORD D VOL ALLEN

Defendant - Appellant

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J U D G M E N T

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In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

**UNITED STATES DISTRICT COURT**  
Western District of North Carolina

**UNITED STATES OF AMERICA**

**V.**

**BRADFORD D VOL ALLEN**

) **JUDGMENT IN A CRIMINAL CASE**  
) (For Offenses Committed On or After November 1, 1987)  
)  
)  
) Case Number: DNCW115CR000064-001  
) USM Number: 22458-058  
)  
) Jason Randolph Hayes  
) Defendant's Attorney

**THE DEFENDANT:**

- ☒ Pled guilty to count 1.  
☐ Pled nolo contendere to count(s) which was accepted by the court.  
☐ Was found guilty on count(s) after a plea of not guilty.

**ACCORDINGLY**, the court has adjudicated that the defendant is guilty of the following offense:

Title and Section	Nature of Offense	Date Offense Concluded	Counts
18 U.S.C. §§ 922(g)(1) and 924(a)(2)	Possession of Firearms by a Convicted Felon	5/26/2015	1

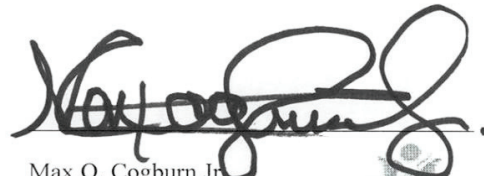
The Defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984, United States v. Booker, 125 S.Ct. 738 (2005), and 18 U.S.C. § 3553(a).

- ☐ The defendant has been found not guilty on count(s).  
☐ Count(s) (is)(are) dismissed on the motion of the United States.

**IT IS ORDERED** that the Defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay monetary penalties, the defendant shall notify the court and United States attorney of any material change in the defendant's economic circumstances.

Date of Imposition of Sentence: 5/4/2017

Signed: May 15, 2017

  
Max O. Cogburn Jr.  
United States District Judge

Defendant: Bradford D Vol Allen  
Case Number: DNCW115CR000064-001

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### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of SEVENTY-SEVEN (77) MONTHS.

- ☒ The Court makes the following recommendations to the Bureau of Prisons:
1. Participation in any available educational and vocational opportunities.
  2. Participation in the Federal Inmate Financial Responsibility Program.
  3. Participation in any available mental health treatment programs as may be recommended by a Mental Health Professional.
  4. Participation in any available substance abuse treatment program and if eligible, receive benefits of 18:3621(e)(2).
  5. Defendant shall support all dependents from prison earnings.
  6. Placed in a facility as close to Asheville, NC as possible, consistent with the needs of BOP.
- ☒ The Defendant is remanded to the custody of the United States Marshal.
- ☐ The Defendant shall surrender to the United States Marshal for this District:
- ☐ As notified by the United States Marshal.
  - ☐ At \_ on \_.
- ☐ The Defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
- ☐ As notified by the United States Marshal.
  - ☐ Before 2 p.m. on \_.
  - ☐ As notified by the Probation Office.

### RETURN

I have executed this Judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

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

By: \_\_\_\_\_  
Deputy Marshal



Defendant: Bradford D Vol Allen  
Case Number: DNCW115CR000064-001

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## **SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of TWO (2) YEARS.

☐ The condition for mandatory drug testing is suspended based on the court's determination that the defendant poses a low risk of future substance abuse.

## **CONDITIONS OF SUPERVISION**

The defendant shall comply with the mandatory conditions that have been adopted by this court.

1. The defendant shall not commit another federal, state, or local crime.
2. The defendant shall not unlawfully possess a controlled substance.
3. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court (unless omitted by the Court).
4. The defendant shall cooperate in the collection of DNA as directed by the probation officer (unless omitted by the Court).

The defendant shall comply with the standard conditions that have been adopted by this court and any additional conditions ordered.

1. The defendant shall report to the probation office in the federal judicial district where he/she is authorized to reside within 72 hours of release from imprisonment, unless the probation officer instructs the defendant to report to a different probation office or within a different time frame.
2. The defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer.
3. The defendant shall not leave the federal judicial district where he/she is authorized to reside without first getting permission from the Court or probation officer.
4. The defendant shall answer truthfully the questions asked by the probation officer.
5. The defendant shall live at a place approved by the probation officer. The probation officer shall be notified in advance of any change in living arrangements (such as location and the people with whom the defendant lives).
6. The defendant shall allow the probation officer to visit him/her at any time at his/her home or elsewhere, and shall permit the probation officer to take any items prohibited by the conditions of his/her supervision that the probation officer observes.
7. The defendant shall work full time (at least 30 hours per week) at lawful employment, unless excused by the probation officer. The defendant shall notify the probation officer within 72 hours of any change regarding employment.
8. The defendant shall not communicate or interact with any persons engaged in criminal activity, and shall not communicate or interact with any person convicted of a felony unless granted permission to do so by the probation officer.
9. The defendant shall notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer.
10. The defendant shall not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. The defendant shall not act or make any agreement with a law enforcement agency to act as a confidential informant without the permission of the Court.
12. If the probation officer determines that the defendant poses a risk to another person (including an organization), the probation officer may require the defendant to notify the person about the risk. The probation officer may contact the person and make such notifications or confirm that the defendant has notified the person about the risk.
13. The defendant shall refrain from excessive use of alcohol and shall not unlawfully purchase, possess, use, distribute or administer any narcotic or controlled substance or any psychoactive substances (including, but not limited to, synthetic marijuana, bath salts) that impair a person's physical or mental functioning, whether or not intended for human consumption, or any paraphernalia related to such substances, except as duly prescribed by a licensed medical practitioner.
14. The defendant shall participate in a program of testing for substance abuse if directed to do so by the probation officer. The defendant shall refrain from obstructing or attempting to obstruct or tamper, in any fashion, with the efficiency and accuracy of the testing. If warranted, the defendant shall participate in a substance abuse treatment program and follow the rules and regulations of that program. The probation officer will supervise the defendant's participation in the program (including, but not limited to, provider, location, modality, duration, intensity) (unless omitted by the Court).
15. The defendant shall not go to, or remain at any place where he/she knows controlled substances are illegally sold, used, distributed, or administered without first obtaining the permission of the probation officer.
16. The defendant shall submit his/her person, property, house, residence, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), or other electronic communications or data storage devices or media, or office, to a search conducted by a United States Probation Officer and such other law enforcement personnel as the probation officer may deem advisable, without a warrant. The defendant shall warn any other occupants that such premises may be subject to searches pursuant to this condition.
17. The defendant shall pay any financial obligation imposed by this judgment remaining unpaid as of the commencement of the sentence of probation or the term of supervised release in accordance with the schedule of payments of this judgment. The defendant shall notify the court of any changes in economic circumstances that might affect the ability to pay this financial obligation.
18. The defendant shall provide access to any financial information as requested by the probation officer and shall authorize the release of any financial information. The probation officer may share financial information with the U.S. Attorney's Office.
19. The defendant shall not seek any extension of credit (including, but not limited to, credit card account, bank loan, personal loan) unless authorized to do so in advance by the probation officer.
20. The defendant shall support all dependents including any dependent child, or any person the defendant has been court ordered to support.
21. The defendant shall participate in transitional support services (including cognitive behavioral treatment programs) and follow the rules and regulations of such program. The probation officer will supervise the defendant's participation in the program (including, but not limited to, provider, location, modality, duration, intensity). Such programs may include group sessions led by a counselor or participation in a program administered by the probation officer.
22. The defendant shall follow the instructions of the probation officer related to the conditions of supervision.

Defendant: Bradford D Vol Allen  
Case Number: DNCW115CR000064-001

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ADDITIONAL CONDITIONS:

23. Throughout the period of supervision the probation officer shall monitor the defendant's economic circumstances and shall report to the court, with recommendations as warranted, any material changes that affect the defendant's ability to pay any court ordered penalties.
24. The defendant shall participate in a mental health evaluation and treatment program and follow the rules and regulations of that program. The probation officer, in consultation with the treatment provider, will supervise the defendant's participation in the program (including, but not limited to provider, location, modality, duration, and intensity). The defendant shall take all mental health medications as prescribed by a licensed health care practitioner.

Defendant: Bradford D Vol Allen  
Case Number: DNCW115CR000064-001

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### CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the Schedule of Payments.

ASSESSMENT	FINE	RESTITUTION
\$100.00	\$0.00	\$0.00

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

### FINE

The defendant shall pay interest on any fine or restitution of more than \$2,500.00, unless the fine or restitution is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the Schedule of Payments may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

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

☒ The interest requirement is waived.

☐ The interest requirement is modified as follows:

### COURT APPOINTED COUNSEL FEES

☐ The defendant shall pay court appointed counsel fees.

☐ The defendant shall pay \$0.00 towards court appointed fees.

Defendant: Bradford D Vol Allen  
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### SCHEDULE OF PAYMENTS

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

- A ☐ Lump sum payment of \$0.00 due immediately, balance due  
    ☐ Not later than \_\_\_\_\_  
    ☐ In accordance ☐ (C), ☐ (D) below; or
- B ☒ Payment to begin immediately (may be combined with ☐ (C), ☒ (D) below); or
- C ☐ Payment in equal Monthly (E.g. weekly, monthly, quarterly) installments of \$50.00 to commence 60 (E.g. 30 or 60) days after the date of this judgment; or
- D ☒ Payment in equal Monthly (E.g. weekly, monthly, quarterly) installments of \$50.00 to commence 60 (E.g. 30 or 60) days after release from imprisonment to a term of supervision. In the event the entire amount of criminal monetary penalties imposed is not paid prior to the commencement of supervision, the U.S. Probation Officer shall pursue collection of the amount due, and may request the court to establish or modify a payment schedule if appropriate 18 U.S.C. § 3572.

Special instructions regarding the payment of criminal monetary penalties:

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court costs:
- ☒ The defendant shall forfeit the defendant's interest in the property to the United States as set forth in the Consent Order [Doc. 26] entered 3/30/2016.

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalty payments are to be made to the United States District Court Clerk, 401 West Trade Street, Room 210, Charlotte, NC 28202, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program. All criminal monetary penalty payments are to be made as directed by the court.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Defendant: Bradford D Vol Allen  
Case Number: DNCW115CR000064-001

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STATEMENT OF ACKNOWLEDGMENT

I understand that my term of supervision is for a period of \_\_\_\_\_ months, commencing on \_\_\_\_\_.

Upon a finding of a violation of probation or supervised release, I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

I understand that revocation of probation and supervised release is mandatory for possession of a controlled substance, possession of a firearm and/or refusal to comply with drug testing.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

(Signed) \_\_\_\_\_ Date: \_\_\_\_\_  
Defendant

(Signed) \_\_\_\_\_ Date: \_\_\_\_\_  
U.S. Probation Office/Designated Witness

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION

**FILED**  
ASHEVILLE, NC

APR -7 2009

U.S. DISTRICT COURT  
WESTERN DISTRICT OF NC

UNITED STATES OF AMERICA	)	DOCKET NO.: 1: 09 CR 23
	)	
v.	)	
	)	
(1) BRADFORD D'VOL ALLEN	)	
(2) FRANK EUGENE CALDWELL	)	
(3) TAURUS MORENZO CAVE	)	BILL OF INDICTMENT
(4) TROY LAMONT CLEMENT	)	
(5) KENNETH LEE GARDNER	)	
(6) PHILLIP EUGENE HILL	)	
(7) RICHARD ROBINSON	)	
(8) VIRGIL ANTONIO LANGFORD	)	
(9) GROVER ANDREW PRITCHARD JR.	)	
(10) PERRY ROGER SHIPPY	)	
<hr/>		Violations:
		21 USC § 841
		21 USC § 846
		21 USC § 843

THE GRAND JURY CHARGES:

COUNT ONE

From in or around January 2008 and continuing until the present, in Buncombe County which is within the Western District of North Carolina, and elsewhere,

- (1) BRADFORD D'VOL ALLEN
- (2) FRANK EUGENE CALDWELL
- (3) TAURUS MORENZO CAVE
- (4) TROY LAMONT CLEMENT
- (5) KENNETH LEE GARDNER
- (6) PHILLIP EUGENE HILL
- (7) RICHARD ROBINSON
- (8) VIRGIL ANTONIO LANGFORD
- (9) GROVER ANDREW PRITCHARD JR.
- (10) PERRY ROGER SHIPPY

did knowingly and intentionally combine, conspire, confederate and agree with each other, Kenneth Lee FOSTER, Dennis Lamar BRUTON and others, both known and unknown to the

Grand Jury, to possess with intent to distribute a quantity of cocaine base, commonly known as crack cocaine, a Schedule II controlled substance.

1. Said conspiracy involved 50 or more grams of cocaine base.

In violation of Title 21, United States Code, Sections 846 and 841(a)(1).

COUNT TWO

The Grand Jury re-alleges and hereby incorporates COUNT ONE by reference.

From in or around September 2008 and continuing until on or about February 25, 2009, in Buncombe County, which is within the Western District of North Carolina, and elsewhere,

- (1) BRADFORD D'VOL ALLEN
- (2) FRANK EUGENE CALDWELL
- (4) TROY LAMONT CLEMENT
- (5) KENNETH LEE GARDNER
- (6) PHILLIP EUGENE HILL
- (7) RICHARD ROBINSON
- (8) VIRGIL ANTONIO LANGFORD
- (9) GROVER ANDREW PRITCHARD JR.
- (10) PERRY ROGER SHIPPY

did knowingly and intentionally use a communication facility in committing and in causing and facilitating the commission of the acts alleged in COUNT ONE.

In violation of Title 21, United States Code, Section 843(b).

**A TRUE BILL:**

GRAND JURY FOREMAN

EDWARD RYAN  
ACTING UNITED STATES ATTORNEY

JILL WESTMORELAND ROSE  
ASSISTANT U.S. ATTORNEY



UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION

FILED  
ASHEVILLE, N.C.  
JUN 24 2009  
U.S. DISTRICT COURT  
W. DIST. OF N.C.

UNITED STATES OF AMERICA

v.

BRADFORD D'VOL ALLEN

) DOCKET NO. 1:09 CR 23 /1  
)  
)  
)  
)  
)

**PLEA AGREEMENT**

NOW COMES the United States of America, by and through Edward R. Ryan, Acting United States Attorney for the Western District of North Carolina, and the defendant, BRADFORD D'VOL ALLEN, in person and through counsel, WILLIAM E. LOOSE, and respectfully inform the Court that they have reached an agreement pursuant to Federal Rule of Criminal Procedure 11. References to the United States herein shall mean the United States Attorney for the Western District of North Carolina.

**I. Plea**

1. The defendant agrees to enter a voluntary plea of guilty to Count TWO as set forth in the Bill of Indictment, and admits to being in fact guilty as charged in this Count. If the Court finds the defendant's plea to be voluntary and knowingly made, and accepts the plea, then the United States will move at the appropriate time to dismiss Count ONE as to this defendant in the Bill of Indictment.
2. The defendant agrees that the Court may consider any such dismissed count and all pertinent information as "relevant conduct," *United States Sentencing Guidelines [U.S.S.G.] § 1B1.3*. The Court may also consider any dismissed count as a "conviction" for purposes of 28 U.S.C. §§ 1918 (costs of prosecutions, including fines and forfeitures), 920 (court costs, including fees for interpreters), as well as for purposes of forfeiture and restitution.

**II. Sentence**

3. Count TWO: The defendant is aware that the statutory sentence for Count TWO is not more than 4 years imprisonment, and / or a \$250,000 fine, or both such fine and imprisonment.
4. The defendant understands that supervised release is a term of supervision that runs consecutively to any sentence of incarceration and that if the Court imposes a term of supervised release, the United States Probation Office will supervise the defendant during that term and will require that the defendant make regular reports and visits to its office. The defendant understands that a violation of the conditions of supervised release may subject the defendant to an additional period of incarceration up to the maximum term of years imposed as supervised release.



If applicable, the defendant understands that this case is governed by Title 18, United States Code, Sections 3143(a)(2) and 3145(c). These provisions provide that a judicial officer shall order that a person who has been found guilty of an offense of this kind be detained unless there are statutory justifications why such person's detention would not be appropriate.

5. The defendant is aware that the Court will consider the advisory *United States Sentencing Guidelines* [U.S.S.G.] in determining the appropriate sentence and that the sentence will be without parole. The defendant is further aware that the Court has not yet determined the sentence, that any estimate from any source, including defense counsel, of the likely sentence is a prediction rather than a promise, and that the Court has the final discretion to impose any sentence up to the statutory maximum for each count. The defendant further understands that no recommendations or agreements by the United States are binding upon the Court. Knowing these facts, the defendant understands and acknowledges that the defendant may not withdraw the plea as a result of the sentence imposed.

6. With regard to the *United States Sentencing Guidelines*, the defendant and the United States, pursuant to Fed. R. Crim P. 11(c)(1)(B), agree that, although not binding on the probation office or the court, they will jointly recommend that the court make the following findings and conclusions as to the sentence to be imposed:

a. The amount of cocaine base that was known to or reasonably foreseeable by the defendant was in excess of 5 grams but less than 20 grams.

b. Provided that the defendant clearly demonstrates acceptance of responsibility for the defendant's offense, as well as all relevant conduct, the United States will recommend a two-level reduction in offense level pursuant to U.S.S.G. § 3E1.1(a).

c. Provided that the defendant has timely provided information to the United States concerning the defendant's involvement in the offense charged, or has timely notified authorities of an intention to plead guilty and the defendant's adjusted offense level is 16 or greater, the United States will make a motion requesting an additional one-level reduction pursuant to U.S.S.G. § 3E1.1(b).

d. The United States, however, will not be required to make this recommendation / motion if the defendant: (1) fails or refuses to make a full, accurate and complete disclosure to the probation office of the circumstances surrounding the relevant offense conduct; (2) is found to have misrepresented facts to the United States prior to entering into this plea agreement; or (3) commits any misconduct after entering into this plea agreement, including but not limited to committing a state or federal offense, violating any term of release, or making false statements or misrepresentations to any United States entity or official. Furthermore, the defendant understands that any reduction in offense level is ultimately for the Court's determination.

e. Notwithstanding any recommendations in the Plea Agreement as to the offense level, if the Probation Office determines from the defendant's criminal history that U.S.S.G. §4B1.1 (Career Offender) or U.S.S.G. §4B1.4 (Armed Career Criminal) applies, such provision may be used in determining the sentence. Should a statutory minimum sentence apply, the Court shall impose a sentence no lower than that statutory minimum.

7. The defendant agrees to pay full restitution, regardless of the resulting loss amount, which restitution will be included in the Court's Order of Judgment. The defendant agrees that such restitution will include all victims directly or indirectly harmed by the defendant's "relevant conduct," including conduct pertaining to any dismissed counts or uncharged conduct, as defined by U.S.S.G. § 1B1.3, regardless of whether such conduct constitutes an "offense" under 18 U.S.C. §§ 3663 or 3663A. The defendant consents to a civil judgment in state or federal court concerning a claim filed by a "victim" as defined in 18 U.S.C. §§ 3663(a)(2) and 3663A(a)(2). The defendant understands that with a Judgment and Commitment Order that requires the payment of restitution, a lien will be filed on the defendant's property. Defendant also understands that the defendant's obligation to make restitution shall last for twenty years after the entry of the judgment, release from imprisonment, or until the defendant's death. 18 U.S.C. § 3613.

For the preparation of the defendant's Presentence Report, the defendant agrees to cooperate fully with and make a full disclosure of all current and projected assets and property to the United States Probation Office. If the defendant is ordered to serve a term of supervised release or probation, the defendant agrees to make a full disclosure of the defendant's assets and property to the United States Probation Office prior to the termination of the defendant's supervised release or probation. If the defendant should fail to make the aforementioned full disclosures, then the United States will be relieved of its obligations under the Plea Agreement, but the defendant will not be allowed to withdraw the defendant's guilty plea.

8. The parties agree that the Court shall set the amount of fine and shall consider the Fine Table in U.S.S.G. § 5E1.2 as advisory.

9. If more than \$500.00 in restitution, fines, and/or assessment is owed to the United States United States, a lien will be filed. The defendant understands that if a lien is filed against the defendant's property, the defendant's obligation to pay restitution shall last for twenty years after any imprisonment ordered or until the defendant's death. 18 U.S.C. § 3613. The parties agree and stipulate that the United States will submit this debt to the Treasury for inclusion in the Treasury Offset Program. Under this program, any federal payment the defendant would normally receive may be offset and applied to this debt.

10. The parties stipulate that, pursuant to 21 U.S.C. §§ 862 and 862(a), the defendant will be ineligible for all federal benefits for five years after the date of sentencing. If the Court determines that this conviction is the second federal or state offense for distributing controlled substances, the defendant will be ineligible for all federal benefits for ten years after the sentencing. If the Court determines that this conviction is the third or subsequent such offense, the defendant will



be permanently ineligible for all federal benefits.

11. The defendant hereby agrees to pay the total amount required for assessment to the Clerk, United States District Court, before 5:00 p.m. on the date of pleading guilty. The defendant further agrees to participate in the Inmate Financial Responsibility Program to the extent necessary to fulfill all financial obligations due and owing under this agreement and the law.

12. If applicable, the defendant agrees to reimburse the United States for the cost of court-appointed counsel and agrees that the Court may include such reimbursement in the Order of Judgment.

### **III. Procedure**

13. The defendant agrees that a duly-qualified federal Magistrate Judge may conduct the hearing required by Fed. R. Crim. P. 11.

14. With the Court's permission, the factual basis, as required by Fed. R. Crim. P. 11(b)(3), will be deferred until the time of sentencing. The defendant stipulates that there is a factual basis for the plea of guilty and that the Court may use the offense conduct set out in the Presentence Report, except any facts to which the defendant has objected, to establish a factual basis for the defendant's plea. If requested by the United States, the defendant shall sign a Factual Resume, which will be filed separately.

### **IV. Waivers**

15. The defendant understands and agrees that if the defendant should fail to specifically perform or to fulfill completely each and every one of the defendant's obligations under this Plea Agreement, then the United States will be relieved of its obligations under the agreement, but the defendant will not be allowed to withdraw the guilty plea.

16. The defendant is aware that the law provides certain limited rights to withdraw a plea of guilty. The defendant has discussed these rights with defense counsel and knowingly and expressly waives any right to withdraw the plea once the Magistrate Judge has accepted it.

17. The defendant acknowledges that Federal Rule of Criminal Procedure 11(f) and Federal Rule of Evidence 408 and 410 are rules which ordinarily limit the admissibility of statements made by a defendant in the course of plea discussions (including this plea agreement) or plea proceedings if a guilty plea is later withdrawn. The defendant knowingly and voluntarily waives the rights which arise under these Rules. As a result of this waiver, the defendant understands and agrees that any statements which are made in the course of the defendant's guilty plea (including this plea agreement -- in part or in its entirety, at the sole discretion of the United States) or in connection with this plea agreement will be admissible against the defendant for any purpose in any criminal or civil proceeding if the defendant fails to enter or attempts to withdraw the defendant's guilty plea. In addition, the defendant's statements will be admissible against the defendant in any post-

conviction proceeding if the defendant challenges the voluntary nature of the guilty plea.

18. The defendant understands and agrees that by pleading guilty, the defendant is expressly waiving the following rights:

- a. to be tried by a jury;
- b. to be assisted by an attorney at trial;
- c. to confront and cross-examine witnesses; and,
- d. not to be compelled to incriminate him or herself.

19. Defendant and defendant's counsel warrant that they have discussed: (1) defendant's rights pursuant to 18 U.S.C. § 3742, 28 U.S.C. § 2255, and similar authorities to contest a conviction and/or sentence through an appeal or post-conviction after entering into a plea agreement; (2) whether or not there are potential issues which might be relevant to an appeal or post-conviction action; and (3) the possible impact of any such issue on the desirability to the defendant of entering into this plea agreement.

20. Defendant, in exchange for the concessions made by the United States in this plea agreement, waives all such rights to contest the conviction except for: (1) claims of ineffective assistance of counsel, ~~or~~ (2) prosecutorial misconduct. Defendant also understands that 18 U.S.C. § 3742 affords a defendant the right to appeal the sentence imposed and Defendant knowingly and expressly waives all rights conferred by 18 U.S.C. § 3742 or otherwise to appeal whatever sentence is imposed with the two exceptions set forth above.

*or, (3) the enhanced 8 year penalty under 21 USC 843(d).*

21. Also, in exchange for the concessions made by the United States, defendant agrees that the United States preserves all its rights and duties with respect to appeal as set forth in 18 U.S.C. § 3742(b), while the defendant waives all rights to appeal or collaterally attack the sentence of conviction with the two exceptions set forth above. This agreement does not limit the United States in its comments in or responses to any post-conviction matters.

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WEN  
BO*

22. The defendant waives all rights, whether asserted directly or by a representative, to request or to receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a.

23. The defendant also understands that Title 18, United States Code, Section 3600 affords a defendant the right to request DNA testing of evidence after conviction. Nonetheless, the defendant knowingly waives that right. The defendant further understands that this waiver applies to DNA testing of any items of evidence in this case that could be subjected to DNA testing, and that the waiver forecloses any opportunity to have evidence submitted for DNA testing in this case or in any post-conviction proceeding for any purpose, including to support a claim of innocence to the charges admitted in this plea agreement.



#### V. Assistance to United States

24. If requested by the United States, but only if so requested, the defendant agrees to cooperate with the United States, including but not limited to the following:

a. The defendant will provide truthful information about the subject charges and about any other criminal activity within the defendant's knowledge to any United States agent or agency that the United States designates.

b. The defendant will testify truthfully in any trial, hearing, or grand jury proceeding, including, but not limited to, testimony against any co-defendants, as the United States designates.

c. The defendant will be reasonably available for debriefing and pre-trial conferences as the United States may require.

d. The defendant will provide to the United States all documents, records, writings, or materials of any kind in the defendant's possession or under the defendant's care, custody, or control relating directly or indirectly to all areas of inquiry and investigation.

e. The defendant will truthfully disclose all monies, negotiable instruments, securities, or other things of value that are proceeds of or have been involved in, or have been used or intended to be used to facilitate a violation of state or federal law. The defendant further agrees to voluntarily forfeit said property to the United States.

f. In the event that the defendant's cooperation includes testifying, the defendant hereby waives payment of any witness fees or expenses to which the defendant may be otherwise entitled pursuant to 28 U.S.C. § 1821.

g. The defendant understands that the United States desires only truthful and accurate information and testimony and, in fact, that knowingly giving false information or testimony can be prosecuted as an additional criminal offense.

Further, if the defendant knowingly gives false testimony, the United States will be relieved of its obligations under the Plea Agreement, except that the defendant's plea of guilty and the resulting guilty verdict will stand.

h. The defendant will not violate any federal, state, or local law, or any order of any court, including any conditions of pretrial, pre-sentence, or post-sentence release.

i. Nothing in this agreement places any obligation on the United States to seek the defendant's cooperation or assistance.

j. The United States agrees that nothing that the defendant discloses pursuant

to the Plea Agreement will be used against the defendant in any other criminal proceeding, subject to the following exceptions:

1. the United States or any other jurisdiction may use any and all information regarding crimes of violence;

2. the United States or any other jurisdiction may use any and all information in a prosecution for any crime committed by the defendant after the effective date of this plea agreement;

3. the United States may use any and all information as necessary in a prosecution for false statements, perjury, obstruction of justice, or in any proceeding for impeachment, rebuttal, or countering a defense (whether presented through opening statements, cross-examination, or otherwise);

4. if the defendant withdraws or attempts to withdraw the defendant's plea of guilty, the United States may use any and all disclosures in any subsequent trials or criminal proceedings;

5. if the defendant violates any of the terms of the Plea Agreement, including the obligation to provide truthful information, then the United States may use any and all disclosures in subsequent trials or criminal proceedings; and,

6. the United States may make indirect use of any information that the defendant provides, including investigative leads or other witnesses.

k. The defendant's obligation under this section is a continuing one, and will continue after sentencing until all investigations and/or prosecutions to which the defendant's cooperation may be relevant have been completed. This provision is a material condition of the Plea Agreement filed with the Court in this matter and of all benefits that accrue to the defendant pursuant to the Plea Agreement.

l. The defendant fully understands that any breach of the Plea Agreement, including but not limited to withholding information, misleading the United States or any law enforcement officer, or failing to testify truthfully at any trial, grand jury, or other judicial proceeding, will allow the United States, in its sole discretion, to withdraw from its obligations under the Plea Agreement. In such event, the United States will be free to proceed on any properly-filed pending, superseding, or additional charges, including any charges dismissed pursuant to the Plea Agreement.

25. When and if the defendant assists the United States as described above:

a. The United States, in its sole discretion, will determine whether said assistance has been substantial.

b. Upon a determination that the defendant has rendered substantial assistance, the United States may make a motion pursuant to U.S.S.G. § 5K1.1 for imposition of a sentence below the applicable Sentencing Guidelines or pursuant to Federal Rule of Criminal Procedure 35(b) for a reduction in the defendant's term of imprisonment. The United States may also, within its sole discretion, move the Court pursuant to 18 U.S.C. § 3553(e) and/or Federal Rule of Criminal Procedure 35(b) to impose a sentence below any applicable statutory mandatory minimum. The defendant recognizes that, even if the United States makes a recommendation pursuant to U.S.S.G. § 5K1.1, the Court cannot depart below the statutory minimum unless the United States also includes a specific recommendation pursuant to 18 U.S.C. § 3553(e).

c. Regardless of the nature and extent of any substantial assistance that the defendant renders, the United States will not move for a reduction in sentence and may seek an increased sentence if the defendant knowingly furnishes materially false information.

d. Any determination that the defendant has failed to provide substantial assistance or has knowingly provided false information is within the sole discretion of the United States, and the defendant waives all objections and rights of appeal or collateral attack of such a determination.

e. The defendant understands that if the United States makes a motion for reduction of sentence, the motion is not binding on the District Court. The Court will determine in its discretion whether to grant or deny such motion and the extent of the reduction.

## **VI. Forfeiture**

26 The defendant forfeits and otherwise waives any ownership right in all items seized during the investigation of the acts alleged in the Bill of Indictment including, but not limited to, all assets specifically listed in the Bill of Indictment and all assets listed in any separate list or consent order signed by the defendant.

27. If the United States discovers that the defendant has not fully disclosed all assets as required herein, the United States, in its sole discretion, may withdraw from its obligations under this Plea Agreement. However, the defendant's guilty plea will stand. Alternatively, the United States may seek forfeiture of any subsequently-discovered assets, in which case the defendant agrees that such assets are governed by this Plea Agreement just as if they had been properly disclosed.

28. For purposes of any order of forfeiture herein, the defendant warrants that the defendant has or had a possessory interest or other legal interest in each item or property, except as specifically stated in an exhibit attached hereto. If applicable, defendant consents to the use of the property to pay restitution to the victims listed herein or as found by the Court.



29. By this agreement, the defendant agrees to take whatever steps are necessary to pass clear title to the United States. These steps include, but are not limited to, surrender of title, signing a consent order or decree, stipulating facts regarding the basis for forfeiture, and signing any documents necessary to transfer title. Defendant hereby further consents to the immediate entry of an interlocutory order of sale covering any assets which, in the United States's sole discretion, are subject to depreciation or which will or may cause storage or similar expenses to be incurred by any federal, state, or local United States entity.

30. The defendant stipulates that all funds in accounts at financial institutions, as listed herein or in any document signed by defendant pursuant to this plea agreement, are criminal proceeds. Defendant agrees to direct each such financial institution to turn over all funds and records regarding those accounts and to surrender them to the United States.

31. The defendant agrees to identify all assets that have been acquired either directly or indirectly through the unlawful activities of any co-defendants or co-conspirators. The defendant further agrees to assist the United States in the recovery of all such assets and to prevent the disbursement of any moneys and sale of any property or assets identified, if such disbursements or sales are within the defendant's direct or indirect control. The defendant further agrees not to encumber or transfer any real estate after the defendant's signing of this plea agreement.

32. Defendant has surrendered or will surrender the forfeited property under defendant's control to the United States Marshal or other agent of the United States. To the extent that any of this property was not included in a notice of forfeiture, defendant waives all rights under Fed. R. Crim. P. 32.2(a). If any of this property is not otherwise subject to forfeiture, defendant agrees to its forfeiture as substitute property under 21 U.S.C. § 853(p), as made applicable by 18 U.S.C. § 982(b)(1) or any other statute.

33. Defendant understands and agrees that the United States may commence an administrative action and/or a separate civil action for forfeiture of this property. For purposes of any such action, defendant waives all claims to the property; stipulates to probable cause for its forfeiture as proceeds of and/or property used to facilitate one or more violations of as charged in the Bill of Indictment; and agrees to its forfeiture to the United States for disposition according to law. If defendant submitted any claim(s) in a related administrative forfeiture proceeding, defendant hereby withdraws all such claims, regardless of whether the subject property is listed in the indictment or other document filed herein, and consents to the entry of an administrative declaration of forfeiture as to all such property. Defendant consents to the assignment of any related civil forfeiture case to the District Judge or Magistrate Judge assigned to any part of this criminal case. Defendant waives further notice in any proceedings necessary to obtain a civil judgment of forfeiture and consents to the Magistrate Judge conducting all proceedings necessary for any civil forfeiture of the property, including entry of judgment, pursuant to 28 U.S.C. §636(c). Defendant waives all rights to compliance by the United States with any applicable deadlines under 18 U.S.C. § 983(a).

34. If and when requested to do so by the United States, defendant agrees to ask any nominee holder of the property to execute a form waiving all rights to the property and consenting



to forfeiture and/or use of the property for restitution.

### VII. Conclusion


35. This agreement is effective and binding once signed by the defendant, the defendant's attorney, and an attorney for the United States. The defendant agrees to entry of this plea agreement at the date and time scheduled by the Court. The defendant understands that if the defendant breaches this Plea Agreement, including by attempting to withdraw the guilty plea, or violates any federal, state or local law, or any order of any court, including any condition of pre-trial or pre-sentence, or post-sentence release, the United States will be relieved of its obligations under this Plea Agreement, but the defendant will not be allowed to withdraw the defendant's guilty plea. The United States will be free to proceed on any properly-filed dismissed, pending, superseding, or additional charges.

36. There are no agreements, representations, or understandings between the parties in this case, other than those explicitly set forth in this Plea Agreement, or as noticed to the Court during the plea colloquy and contained in writing in a separate document signed by all parties.

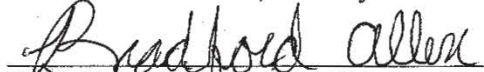
SO AGREED:

  
JILL WESTMORELAND ROSE, Assistant United States Attorney

DATED: 6.24.09

  
WILLIAM E. LOOSE, Attorney for Defendant

DATED: 6-24-09

  
BRADFORD D'VOL ALLEN, Defendant

DATED: 6/24/09

**United States District Court  
For The Western District of North Carolina**

UNITED STATES OF AMERICA

V.

BRADFORD D'VOL ALLEN

**JUDGMENT IN A CRIMINAL CASE**

(For Offenses Committed On or After November 1, 1987)

Case Number: DNCW109CR000023-001

USM Number: 22458-058

William E. Loose

Defendant's Attorney

THE DEFENDANT:

- ☒ pleaded guilty to count(s) 2.  
☐ Pled nolo contendere to count(s) which was accepted by the court.  
☐ Was found guilty on count(s) after a plea of not guilty.

**ACCORDINGLY**, the court has adjudicated that the defendant is guilty of the following offense(s):

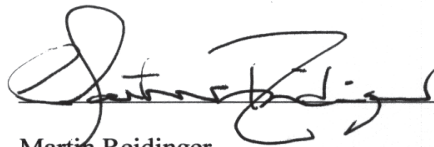
<u>Title and Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Counts</u>
21:843(b)	Use a Communication Facility to Facilitate the Possession with Intent to Distribute Cocaine Base	2/25/09	2

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984, United States v. Booker, 125 S.Ct. 738 (2005), and 18 U.S.C. § 3553(a).

- ☐ The defendant has been found not guilty on count(s) .  
☒ Count(s) 1 (is)(are) dismissed on the motion of the United States.

**IT IS ORDERED** that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay monetary penalties, the defendant shall notify the court and United States attorney of any material change in the defendant's economic circumstances.

Date of Imposition of Sentence: 3/17/10

  
Martin Reidinger  
United States District Judge



Date: March 29, 2010

Defendant: BRADFORD D'VOL ALLEN  
Case Number: DNCW109CR000023-001

Judgment-Page 2 of 6

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 48 Months.

X The Court makes the following recommendations to the Bureau of Prisons:

- Participate in any available substance abuse treatment programs while incarcerated and if eligible receive benefit of 18 U.S.C. §3621(e)(2).
- Participate in any educational and vocational opportunities while incarcerated.
- Support all dependants from prison earnings while incarcerated, as outlined in the Presentence Report.
- Participate in the Federal Inmate Financial Responsibility Program while incarcerated.

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

   The defendant shall surrender to the United States Marshal for this district:

- At        On       .
- As notified by the United States Marshal.

   The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

- Before 2 pm on       .
- As notified by the United States Marshal.
- As notified by the Probation or Pretrial Services Office.

**RETURN**

I have executed this Judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ To \_\_\_\_\_

At \_\_\_\_\_, with a certified copy of this Judgment.

United States Marshal

By

Deputy Marshal

Defendant: BRADFORD D'VOL ALLEN  
Case Number: DNCW 109CR000023-001

Judgment-Page 3 of 6

### **SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of 1 Year.

— The condition for mandatory drug testing is suspended based on the court's determination that the defendant poses a low risk of future substance abuse.

### **STANDARD CONDITIONS OF SUPERVISION**

The defendant shall comply with the standard conditions that have been adopted by this court and any additional conditions ordered.

1. The defendant shall not commit another federal, state, or local crime.
2. The defendant shall refrain from possessing a firearm, destructive device, or other dangerous weapon.
3. The defendant shall pay any financial obligation imposed by this judgment remaining unpaid as of the commencement of the sentence of probation or the term of supervised release on a schedule to be established by the court.
4. The defendant shall provide access to any personal or business financial information as requested by the probation officer.
5. The defendant shall not acquire any new lines of credit unless authorized to do so in advance by the probation officer.
6. The defendant shall not leave the Western District of North Carolina without the permission of the Court or probation officer.
7. The defendant shall report in person to the probation officer as directed by the Court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
8. A defendant on supervised release shall report in person to the probation officer in the district to which he or she is released within 72 hours of release from custody of the Bureau of Prisons.
9. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
10. The defendant shall support his or her dependents and meet other family responsibilities.
11. The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other activities authorized by the probation officer.
12. The defendant shall notify the probation officer within 72 hours of any change in residence or employment.
13. The defendant shall refrain from excessive use of alcohol and shall not unlawfully purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as duly prescribed by a licensed physician.
14. The defendant shall participate in a program of testing and treatment or both for substance abuse if directed to do so by the probation officer, until such time as the defendant is released from the program by the probation officer; provided, however, that defendant shall submit to a drug test within 15 days of release on probation or supervised release and at least two periodic drug tests thereafter for use of any controlled substance, subject to the provisions of 18:3563(a)(5) or 18:3583(d), respectively.
15. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
16. The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
17. The defendant shall submit his person, residence, office or vehicle to a search, from time to time, conducted by any U.S. Probation Officer and such other law enforcement personnel as the probation officer may deem advisable, without a warrant; and failure to submit to such a search may be grounds for revocation of probation or supervised release. The defendant shall warn other residents or occupants that such premises or vehicle may be subject to searches pursuant to this condition.
18. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed by the probation officer.
19. The defendant shall notify the probation officer within 72 hours of defendant's being arrested or questioned by a law enforcement officer.
20. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the Court.
21. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
22. If the instant offense was committed on or after 4/24/96, the defendant shall notify the probation officer of any material changes in defendant's economic circumstances which may affect the defendant's ability to pay any monetary penalty.
23. If home confinement (home detention, home incarceration or curfew) is included you may be required to pay all or part of the cost of the electronic monitoring or other location verification system program based upon your ability to pay as determined by the probation officer.
24. The defendant shall cooperate in the collection of DNA as directed by the probation officer.

### **ADDITIONAL CONDITIONS:**

25. Throughout the period of supervision the probation officer shall monitor the defendant's economic circumstances and shall report to the court, with recommendations as warranted, any material changes that affect the defendant's ability to pay any court ordered penalties.

Defendant: BRADFORD D'VOL ALLEN  
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**CRIMINAL MONETARY PENALTIES**

The defendant shall pay the following total criminal monetary penalties in accordance with the Schedule of Payments.

ASSESSMENT	FINE	RESTITUTION
\$100.00	\$0.00	\$0.00

**FINE**

The defendant shall pay interest on any fine or restitution of more than \$2,500.00, unless the fine or restitution is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the Schedule of Payments may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

- ☒ The court has determined that the defendant does not have the ability to pay interest and it is ordered that:
- ☒ The interest requirement is waived.
- ☐ The interest requirement is modified as follows:

**COURT APPOINTED COUNSEL FEES**

- ☒ The defendant shall pay court appointed counsel fees.
- ☐ The defendant shall pay \$\_\_\_\_\_ Towards court appointed fees.

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**SCHEDULE OF PAYMENTS**

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

- A ☐ Lump sum payment of \$ \_\_\_\_\_ Due immediately, balance due  
\_\_\_\_ Not later than \_\_\_\_\_, or  
\_\_\_\_ In accordance ☐ (C), ☐ (D) below; or
- B ☒ Payment to begin immediately (may be combined with ☐ (C), ☒ (D) below); or
- C ☐ Payment in equal \_\_\_\_\_ (E.g. weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ To commence \_\_\_\_\_  
(E.g. 30 or 60 days) after the date of this judgment; or
- D ☒ Payment in equal Monthly (E.g. weekly, monthly, quarterly) installments of \$ 50.00 To commence 60  
(E.g. 30 or 60 days) after release from imprisonment to a term of supervision. In the event the entire amount of criminal monetary penalties imposed is not paid prior to the commencement of supervision, the U.S. Probation Officer shall pursue collection of the amount due, and may request the court to establish or modify a payment schedule if appropriate 18 U.S.C. § 3572.

Special instructions regarding the payment of criminal monetary penalties:

- ☐ The defendant shall pay the cost of prosecution.  
☐ The defendant shall pay the following court costs:  
☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalty payments are to be made to the United States District Court Clerk, 309 U.S. Courthouse, 100 Otis Street, Asheville, NC, 28801, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program. All criminal monetary penalty payments are to be made as directed by the court.

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

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest, (7) penalties, and (8) costs, including cost of prosecution and court costs.

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STATEMENT OF ACKNOWLEDGMENT

I understand that my term of supervision is for a period of \_\_\_\_\_ months, commencing on \_\_\_\_\_ .

Upon a finding of a violation of probation or supervised release, I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

I understand that revocation of probation and supervised release is mandatory for possession of a controlled substance, possession of a firearm and/or ammunition, and/or refusal to comply with drug testing.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

(Signed) \_\_\_\_\_ Date: \_\_\_\_\_  
Defendant

(Signed) \_\_\_\_\_ Date: \_\_\_\_\_  
U.S. Probation Office/Designated Witness