

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

DAQONE WILLIAMS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

APPENDIX

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INDEX TO APPENDICES

APPENDIX A	OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT (01/31/2019)A1
APPENDIX B	JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION (03/29/2018)A11
APPENDIX C	TRANSCRIPTS OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION (05/07/2018)A18

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

File Name: 19a0055n.06

No. 18-1375

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

DAQONE LENTELL WILLIAMS,

Defendant-Appellant.

**ON APPEAL FROM THE UNITED
STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF
MICHIGAN**

BEFORE: CLAY, McKEAGUE, and WHITE, Circuit Judges.

CLAY, Circuit Judge. Defendant Daqone Williams appeals his designation as a career-offender and the sentence imposed by the district court after Williams pleaded guilty to one count of Distribution of a Controlled Substance—Cocaine Base, in violation of 21 U.S.C. § 841(a)(1) and 21 U.S.C. § 841(b)(1)(C); three counts of Distribution of a Controlled Substance—Heroin, in violation of 21 U.S.C. § 841(a)(1) and 21 U.S.C. § 841(b)(1)(C); one count of Possession with Intent to Distribute Controlled Substance—Heroin, in violation of 21 U.S.C. § 841(a)(1) and 21 U.S.C. § 841(b)(1)(C); and one count of Possession with Intent to Distribute Controlled Substance—Cocaine Base, in violation of 21 U.S.C. § 841(a)(1) and 21 U.S.C. § 841(b)(1)(B)(iii).

The Court affirms Williams’ career-offender designation and sentence for the reasons set out below.

No. 18-1375, *United States v. Williams*

I. FACTUAL AND PROCEDURAL HISTORY

The government filed a six-count indictment against Williams. Williams pleaded guilty to each count without a written plea agreement.

In anticipation of sentencing, the government filed a Presentence Investigation Report (“PIR”). The PIR calculated Williams’ Total Offense Level as 31. The PIR found that Williams qualified as a “career offender” under the sentencing guidelines because he had three prior “controlled substance offenses” as defined in U.S.S.G. § 4B1.2: (1) a 2006 conviction in Michigan for “Delivery/Manufacturing Narcotic or Cocaine, Less than 50 Grams,” in violation of M.C.L. § 333.7401(2)(a)(iv); (2) a 2007 conviction in Michigan for “Controlled Substance—Delivery/Manufacture Marijuana,” in violation of M.C.L. § 333.7401(2)(d)(iii); and (3) a 2010 conviction in Michigan for “Controlled Substance—Delivery/Manufacture Marijuana,” also in violation of M.C.L. § 333.7401(2)(d)(iii). Based on Williams’ status as a career offender, the PIR calculated his Criminal History Category as VI. The PIR stated that based on a Total Offense Level of 31 and a Criminal History Category of VI, Williams’ guideline range was 188 to 235 months’ imprisonment.

Williams filed objections to the PIR’s classifying him as a career offender. Williams argued that the statute under which he was previously convicted for his two predicate marijuana offenses, M.C.L. § 333.7401(2)(d)(iii), is “overbroad” and that the *Shepard* documents provided by the government failed to remedy this overbreadth.¹ Williams reiterated his objection to the PIR’s career-offender classification at sentencing. After overruling Williams’ objection, the district court granted Williams’ motion for a variance and imposed a sentence of 140 months.

This appeal followed.

¹ Williams does not challenge the PIR’s conclusion that his 2006 cocaine conviction constituted a predicate offense.

II. DISCUSSION

A. WILLIAMS WAS PROPERLY CLASSIFIED AS A CAREER OFFENDER

1. Standard of Review

“A district court’s determination that a prior offense qualifies either as a crime of violence or as a controlled substance offense is a legal determination, which we review *de novo*.” *United States v. Evans*, 699 F.3d 858, 862 (6th Cir. 2012) (citing *United States v. Catalan*, 499 F.3d 604, 606 (6th Cir. 2007)).

2. Relevant Legal Principles

The Sentencing Guidelines classify a defendant as a “career offender” if

(1) the defendant was at least eighteen years old at the time the defendant committed the instant offense of conviction; (2) the instant offense of conviction is a felony that is either a crime of violence or a controlled substance offense; and (3) the defendant has at least two prior felony convictions of either a crime of violence or a controlled substance offense.

U.S.S.G. § 4B1.1(a). The Sentencing Guidelines define the term “controlled substance offense” as “an offense . . . 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). “The term ‘controlled substance’ means a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V . . .” 21 U.S.C. § 802(6). Marijuana is a Schedule I controlled substance. 21 U.S.C. § 812.

“To determine whether a given law is a controlled substance offense within the meaning of USSG § 4B1.2(b), we apply the two-step ‘categorical approach.’” *United States v. Pittman*, 736 F. App’x 551, 554 (6th Cir. 2018) (citing *Mathis v. United States*, — U.S. —, 136 S. Ct. 2243, 2248–49 (2016)). This Court first asks “if the statute is divisible—that is, if it ‘lists elements in the

No. 18-1375, *United States v. Williams*

alternative such that the statute comprises multiple, alternative versions of the crime.” *Id.* (quoting *United States v. House*, 872 F.3d 748, 753 (6th Cir. 2017)). If the statute is divisible, “we employ the ‘modified categorical approach’ and consult ‘a limited class of documents . . . to determine which alternative formed the basis of the defendant’s prior conviction.’” *Id.* (alteration in original) (quoting *House*, 872 F.3d at 753). In the second step, the Court determines “whether the offense, as described either by the entirety of an indivisible statute or by the relevant alternative of a divisible statute, matches § 4B1.2(b)’s definition of a ‘controlled substance offense.’” *Id.* (quoting *House*, 872 F.3d at 753–54.)

3. Analysis

The Michigan controlled substance statute provides that “a person shall not manufacture, create, deliver, or possess with intent to manufacture, create, or deliver a controlled substance, a prescription form, or a counterfeit prescription form.” M.C.L. § 333.7401(1).² This Court has repeatedly held that M.C.L. § 333.7401 is divisible. *See House*, 872 F.3d at 753–54; *Pittman*, 736 F. App’x at 554; *United States v. Tibbs*, 685 F. App’x 456, 462–64 (6th Cir. 2017). Accordingly, this Court must identify the particular subsection that Williams was convicted of violating. *See Pittman*, 736 F. App’x at 554. As this Court recently recognized, “Michigan courts frequently note that the specific substance a defendant is charged with possessing or delivering is one of the elements of a § 333.7401 violation.” *Id.* at 555.

The district court did not err by applying a career-offender enhancement based on Williams’ two prior felony marijuana convictions. In 2007 and 2010, Williams was convicted of violating M.C.L. § 333.7401(2)(d)(iii) (amended Dec. 21, 2010). Both Felony Complaints and

² The statute contained the same provision during the period when Williams was convicted of his prior marijuana offenses. *See, e.g., People v. Abramczyk*, No. 253449, 2005 WL 2517052, at *1 (Mich. Ct. App. Oct. 11, 2005); *People v. Brown*, 755 N.W.2d 664, 673 (Mich. Ct. App. 2008).

No. 18-1375, *United States v. Williams*

Felony Informations state that Williams “did possess with intent to deliver the controlled substance marijuana,” abbreviated as “CONT SUBS-DELY/MFG” marijuana, and the Judgments of Sentence for both convictions specify that Williams pleaded guilty to the crime of “CONT SUBS-DELY/MFG MARIJUANA.” (*See* R. 23-1 at PageID #74–76 (2007); *id.* at PageID #77–79 (2010).) Furthermore, while § 333.7401 involves several types of drug offenses, subsection § 333.7401(2)(d)(iii) applies only to marijuana. *See* M.C.L. § 333.7401(2)(d)(iii).³ Accordingly, there is no doubt that Williams’ 2007 and 2010 convictions were for possession with intent to deliver or manufacture marijuana rather than for other conduct that § 333.7401 prohibits.

MCL § 333.7401(2)(d)(iii) falls squarely within the Guidelines definition of a controlled substance offense. Therefore, the district court did not err by finding that Williams’ prior felony marijuana convictions qualified as predicate offenses for purposes of his career offender enhancement. *See House*, 872 F.3d at 753–54; *Tibbs*, 685 F. App’x 462–64.

Williams argues that district court erred by concluding that his prior marijuana convictions qualified as predicate offenses because the government failed to offer documents to “eliminate the statutory overbreadth [in § 333.7401] to make clear the nature of [his] prior marijuana convictions.” (Def. Br. at 11.) This argument lacks merit. For both of his prior marijuana convictions, the government provided the Felony Complaints, the Felony Informations and the Judgments of Sentence. These documents leave no doubt about the nature of Williams’ prior § 333.7401 convictions; they definitively establish that Williams pleaded guilty to possession with the intent to deliver marijuana in violation of § 333.7401(2)(d)(iii).

³ M.C.L. § 333.7401(2)(d)(iii) was amended after Williams’ convictions to apply to substances beyond marijuana. Our holding today only addresses the version of the statute in effect prior to December 21, 2010.

No. 18-1375, *United States v. Williams*

Williams also argues that the district court improperly relied on the charging documents because he did not admit to or adopt the allegations in the Felony Complaints. But, as this Court has repeatedly stated, “a sentencing court may look to the ‘charging document, written plea agreement, transcript of plea colloquy, and any explicit factual finding by the trial judge to which the defendant assented.’” *United States v. Robinson*, 333 F. App’x 33, 35 (6th Cir. 2009) (internal quotation mark omitted) (quoting *States v. Montanez*, 442 F.3d 485, 489 (6th Cir. 2006)). Thus, the district court did not err by consulting the charging documents. *Id.*

Williams cites *United States v. King*, 853 F.3d 267 (6th Cir. 2017) to support his argument that the district court impermissibly consulted the charging documents. But *King* actually undermines Williams’ argument. In *King*, this Court held that a district court may consult “charging documents” when determining whether a prior conviction qualifies as a predicate offense under the Armed Career Criminal Act. *Id.* at 276 (citing *Shepard v. United States*, 544 U.S. 13, 26 (2005)). In fact, in *King*, this Court *explicitly* looked to the indictments to determine whether they sufficiently explicated the nature of the relevant predicate offenses. *Id.*

While this Court held in *King* that sentencing courts may not consider “superfluous facts” in charging documents that the defendant did not necessarily plead guilty to, absent other corroborating evidence that the defendant affirmed the accuracy of those facts, this Court also stated that “[i]nsofar as a sentencing court’s task is to identify which *elements* underlie a prior conviction, the terms of the charging document will always be appropriate to consider: a conviction necessarily means the elements” *Id.* at 277 (emphasis in original). The only question in this case is whether Williams’ previous convictions under § 333.7401(2)(d)(iii) qualify as predicate offenses. The Court need not look beyond the charging documents—which contain the elements of the offenses and clearly indicate that Williams’ prior offenses were for marijuana—to answer

No. 18-1375, *United States v. Williams*

this question in the affirmative. Accordingly, the district court did not err by considering the charging documents in finding that Williams' two prior marijuana convictions under § 333.7401(2)(d)(iii) qualified as predicate offenses. *See generally, United States v. Brown*, 727 F. App'x 126, 129 (6th Cir. 2018); *House*, 872 F.3d at 753–54; *Tibbs*, 685 F. App'x 462–64.

For the above-stated reasons, the trial court did not err by finding that Williams' two prior felony marijuana convictions qualified as predicate offenses under U.S.S.G. § 4B1.1(a).

B. WILLIAMS' SENTENCE IS SUBSTANTIVELY REASONABLE

1. Standard of Review

When reviewing the substantive reasonableness of the district court's sentencing decision, this Court applies a deferential abuse-of-discretion standard. *United States v. Solano-Rosales*, 781 F.3d 345, 355–56 (6th Cir. 2015). The defendant bears the burden to prove substantive unreasonableness. *United States v. Green*, 729 F. App'x 416, 421 (6th Cir. 2018) (citing *United States v. Woodard*, 638 F.3d 506, 510 (6th Cir. 2011)).

2. Analysis

Williams argues that his below-guidelines sentence is substantively unreasonable because it exceeds the average sentence given to career offenders whose predicate acts involved non-violent drug offenses. Williams also contends that his sentence is substantively unreasonable because two of his prior convictions involved marijuana, which is now legal in some form in many states. Williams also relies heavily on a 2016 report from the United States Sentencing Commission that recommends, among other reforms, that Congress amend the career offender classification to “differentiate between offenders with different types of criminal records” and reserve career-offender status for offenders who have committed crimes of violence. *U.S.*

No. 18-1375, *United States v. Williams*

Sentencing Comm'n, Report to Congress: Career Offender Sentencing Enhancements (2016).

Williams' arguments lack merit.

When determining what sentence to impose, § 3553(a) requires the sentencing court to consider the following factors, among others inapplicable here:

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) the need for the sentence imposed—
 - (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
 - (B) to afford adequate deterrence to criminal conduct;
 - (C) to protect the public from further crimes of the defendant; and
 - ...
- (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.

18 U.S.C. § 3553(a).

“A sentence is substantively reasonable if it is ‘proportionate to the seriousness of the circumstances of the offense and offender, and sufficient but not greater than necessary, to comply with the purposes of [18 U.S.C.] § 3553(a).’” *Solano-Rosales*, 781 F.3d at 356 (quoting *United States v. Vowell*, 516 F.3d 503, 512 (6th Cir. 2008)). “In contrast, a sentence is ‘substantively unreasonable when the district court selects a sentence arbitrarily, bases the sentence on impermissible factors, fails to consider relevant sentencing factors, or gives an unreasonable amount of weight to any pertinent factor.’” *United States v. Sexton*, 889 F.3d 262, 265 (6th Cir. 2018) (quoting *United States v. Robinson*, 813 F.3d 251, 264 (6th Cir. 2016)). “We presume the reasonableness of a within-guidelines sentence.” *Green*, 729 F. App’x at 421 (citing *United States v. Vonner*, 516 F.3d 382, 389 (6th Cir. 2008) (en banc)). “[A]nd a defendant’s burden to

No. 18-1375, *United States v. Williams*

demonstrate that a below-guidelines sentence is unreasonable is even more demanding.” *United States v. Carter*, 651 F. App’x 474, 476 (6th Cir. 2016) (citing *United States v. Curry*, 536 F.3d 571, 573 (6th Cir. 2008)).

Williams has failed to satisfy his heavy burden to show that his below-guidelines sentence is substantively unreasonable. Prior to imposing sentence, the district court analyzed the applicable sentencing factors. The district court noted that Williams’ current conviction involved distribution of heroin and crack cocaine. The district court reviewed Williams’ employment history and found that Williams has “never held a job” and is a “professional drug dealer” who “showed no desire to be employed.” (R. 33 at PageID #217.) The district judge court also considered Williams’ family history, noting that Williams’ mother suffers from bipolar disorder and that Williams has three children but is behind on child support payments. The sentencing judge discussed Williams’ criminal history and found that Williams “presents a risk to society” because he “deals drugs for money[,]” because “he’s beaten up people[,]” and because “[h]e violates his bond.” (*Id.* at PageID #220.) However, despite the sentencing judge’s concerns, he still granted Williams’ motion for a downward variance because two of Williams’ prior convictions “were [for] marijuana” and because he “want[ed] to give Mr. Williams a chance.” (*Id.* at PageID #220–21.) The district court sentenced Williams to 140 months’ imprisonment, 48 months lower than the low-end of the guideline range. We find no error in the district court’s approach.

Additionally, the sentencing judge did not err by failing to consider the recommendations in the Sentencing Commission’s 2016 report. This Court has repeatedly held that “while sentencing judges may certainly consider arguments based on research compiled by the Commission pursuant to its mission, the recommendations are not law at this point.” *Pittman*, 736 F. App’x at 556 (quoting *United States v. Blackman*, 678 F. App’x 400, 401 (6th Cir. 2017)).

No. 18-1375, *United States v. Williams*

Further, Williams did not make this argument to the district court. “We cannot find that the sentencing court abused its discretion by failing to consider an argument that Defendant did not raise, particularly where, as here, the court would have been obligated only to consider—not to accept—the argument.” *United States v. Embry*, 728 F. App’x 544, 548 (6th Cir. 2018) (citations omitted).

For these reasons, the Court concludes that Williams’ below-guidelines sentence is substantively reasonable.

III. CONCLUSION

The Court **AFFIRMS** the decision of the district court.

United States District Court

Western District of Michigan

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

-vs-

Case Number: 1:17:CR:140

DAQONE LENTELL WILLIAMS

USM Number: 21750-040

Scott Graham

Defendant's Attorney

THE DEFENDANT:

- ☒ pleaded guilty to Counts 1, 2, 3, 4, 5, and 6 of the Indictment.
- ☐ pleaded nolo contendere to Count(s) ____, which was accepted by the court.
- ☐ was found guilty on Count(s) ____ after a plea of not guilty.

The defendant is adjudicated guilty of these offense(s):

<u>Title & Section</u>	<u>Offense Ended</u>	<u>Count No.</u>
21 U.S.C. § 841(a)(1) and (b)(1)(C)	May 23, 2017	One
21 U.S.C. § 841(a)(1) and (b)(1)(C)	May 23, 2017	Two-Four
21 U.S.C. § 841(a)(1) and (b)(1)(C)	May 23, 2017	Five
21 U.S.C. § 841(a)(1) and (b)(1)(B)(iii)	May 23, 2017	Six

Nature of Offense

Count One: Distribution of Controlled Substances - Cocaine Base

Counts Two-Four: Distribution of Controlled Substances - Heroin

Count Five: Possession with Intent to Distribute Controlled Substances - Heroin

Count Six: Possession with Intent to Distribute Controlled Substances - Cocaine Base

The defendant is sentenced as provided in the following pages of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

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

Date of Imposition of Sentence: March 28, 2018

DATED: March 29, 2018

/s/ Gordon J. Quist
GORDON J. QUIST
UNITED STATES DISTRICT JUDGE

AO 245B (MIWD Rev. 12/16)- Judgment in a Criminal Case

Judgment – Page 2

Defendant: DAQONE LENTELL WILLIAMS

Case Number: 1:17:CR:140

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **one hundred forty (140) months on each of Counts One through Six, served concurrently.**

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

Defendant participate in the 500 Hour Residential Drug Treatment Program.

Defendant be afforded educational and vocational training.

Defendant be placed in a facility in the State of Illinois.

☒ 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 2:00 P.M. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

United States Marshal

By: _____
Deputy United States Marshal

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **four (4) years on each of Counts One through Six, to run concurrently.**

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the Court.
 - ☐ The above drug testing condition is suspended, based on the Court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
5. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
6. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

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

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the Court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the Court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the Court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with the law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

AO 245B (MIWD Rev. 12/16)- Judgment in a Criminal Case

Judgment – Page 5

Defendant: DAQONE LENTELL WILLIAMS

Case Number: 1:17:CR:140

SPECIAL CONDITIONS OF SUPERVISION

1. You must participate in a program of testing and treatment for substance abuse, as directed by the probation officer, and follow the rules and regulations of that program until such time as you are released from the program by the probation officer, and must pay at least a portion of the cost according to your ability, as determined by the probation officer.
2. You must participate in a cognitive behavioral treatment program, as directed by the probation officer, and follow the rules and regulations of that program until such time as you are released from the program by the probation officer and must pay at least a portion of the cost according to your ability, as determined by the probation officer.
3. You must provide the probation officer with access to any requested financial information and authorize the release of any financial information. The probation office will share financial information with the U.S. Attorney's Office.
4. You must not work in any type of employment or occupation without the prior approval of the probation officer.

CRIMINAL MONETARY PENALTIES¹

The defendant must pay the total criminal monetary penalties under the Schedule of Payments on the following pages.

<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
\$600.00 (\$100 on each Count)	waived	-0-

- ☐ The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.
- ☐ The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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- ☐ Restitution amount ordered pursuant to plea agreement: \$
- ☐ The defendant must pay interest on restitution and/or a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options in the Schedule of Payments may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☐ The Court determined that the defendant does not have the ability to pay interest and it is ordered that:
- ☐ the interest requirement is waived for the fine.
 - ☐ the interest requirement is waived for the restitution.
 - ☐ the interest requirement for the fine is modified as follows:
 - ☐ the interest requirement for the restitution is modified as follows:

¹ Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

AO 245B (MIWD Rev. 12/16)- Judgment in a Criminal Case

Judgment – Page 7

Defendant: DAQONE LENTELL WILLIAMS

Case Number: 1:17:CR:140

SCHEDULE OF PAYMENTS

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

- A ☒ Lump sum payment of **\$600.00** due immediately.
☐ not later than _____, or
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F, below; or
- B ☐ Payment to begin immediately (may be combined with C, D, or F, below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment, or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the Clerk of the Court, 399 Federal Building, 110 Michigan N.W., Grand Rapids, MI 49503, unless otherwise directed by the court, the probation officer, or the United States Attorney.

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

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Joint and Several Amount, and corresponding payee, if appropriate:

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

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

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA

v.

File No. 1:17-cr-140-01

DAQONE LENTELL WILLIAMS,

Defendant.

Plea

Before

THE HONORABLE GORDON J. QUIST
United States District Judge
November 2, 2017

APPEARANCES

For the Government: Ms. B. Rene Shekmer
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TABLE OF CONTENTS

WITNESS:

PAGE

None

EXHIBITS:

IDENTIFIED

None

1 Grand Rapids, Michigan

2 Thursday, November 2, 2017 - 10:30 a.m.

3 THE COURT: Good morning. Please be seated.

4 Okay, the case pending right now is United States of
5 America against, how do you pronounce that? Daqone Lentell
6 Williams?

7 MR. WILLIAMS: Yes, your Honor.

8 THE COURT: Is the first name pronounced
9 correctly?

10 MR. WILLIAMS: Yes, your Honor.

11 THE COURT: Okay. Time set for a plea, if
12 Mr. Williams decides to plead. Can I have the appearance
13 of counsel, please?

14 MS. SHEKMER: Good morning, your Honor. Rene
15 Shekmer on behalf of the Government.

16 THE COURT: Just -- you can remain seated for
17 this. In fact it helps me here.

18 MR. GRAHAM: Good morning, your Honor. Scott
19 Graham on behalf of Mr. Williams.

20 THE COURT: Okay. Why don't both you and your
21 client stand up there, Mr. Graham.

22 Mr. Williams, I've been informed that you wish
23 to plead guilty to six counts of an indictment pending
24 against you for drug dealing. I'm going to ask you a
25 series of questions. Your answers to my questions must be

1 under oath, and if you are to deliberately lie in response
2 to anything I ask, you can face further criminal charges
3 for perjury. Do you understand that, sir?

4 MR. WILLIAMS: Yes, your Honor.

5 THE COURT: Can you move that in front of him,
6 Mr. Graham? Thank you.

7 Okay, swear him in, please.

8 THE CLERK: Please raise your right hand.

9 Do you solemnly swear or affirm that the
10 testimony you are about to give in the case now before the
11 Court will be the truth, the whole truth, and nothing but
12 the truth, so help you God?

13 MR. WILLIAMS: Yes.

14 DAQONE LENTELL WILLIAMS,
15 sworn by the courtroom clerk at 10:30 a.m.,
16 testified upon his oath as follows.

17 THE CLERK: Thank you.

18 THE COURT: How old are you, Mr. Williams?

19 MR. WILLIAMS: Thirty, your Honor.

20 THE COURT: And what is your current address?

21 MR. WILLIAMS: 1634 Oak Street, Niles, Michigan.

22 THE COURT: Okay. How far did you get in your
23 education?

24 MR. WILLIAMS: Tenth grade.

25 THE COURT: Twelfth grade, you said?

1 MR. WILLIAMS: Tenth.

2 THE COURT: Tenth grade?

3 MR. WILLIAMS: Yes.

4 THE COURT: All right. Did you have any
5 education outside of the tenth grade, like GED or anything
6 like that?

7 MR. WILLIAMS: Yes, your Honor. I have my GED.

8 THE COURT: In the past -- you don't have to
9 bend over. You can just stand right up there.

10 MR. WILLIAMS: Okay.

11 THE COURT: In the past 24 hours have you had
12 any pill, drug, or medicine of any kind?

13 MR. WILLIAMS: No, your Honor.

14 THE COURT: Have you ever been hospitalized or
15 treated for any psychiatric problem by either a doctor or
16 psychiatrist or anybody else?

17 MR. WILLIAMS: No, your Honor.

18 THE COURT: Have you had any -- well,
19 Mr. Graham, have you been able to communicate with your
20 client cogently?

21 MR. GRAHAM: Yes, your Honor.

22 THE COURT: All right. Have you had any
23 alcoholic beverage or drug in the past 24 hours?

24 MR. WILLIAMS: No, your Honor.

25 THE COURT: Is your mind clear as you stand here

1 today?

2 MR. WILLIAMS: Yes, your Honor.

3 THE COURT: Have you discussed pleading guilty
4 with your lawyer, Mr. Graham?

5 MR. WILLIAMS: Yes, your Honor.

6 THE COURT: Do you think you need more time to
7 talk to Mr. Graham before you make a decision and inform me
8 of your decision?

9 MR. WILLIAMS: No, your Honor.

10 THE COURT: Are you privately retained or court
11 appointed?

12 MR. GRAHAM: Court-appointed, your Honor.

13 THE COURT: Okay. Have you received a copy of
14 the indictment pending against you, Mr. Williams?

15 MR. WILLIAMS: Yes, your Honor.

16 THE COURT: Mr. Graham, have you received it?

17 MR. GRAHAM: I have, your Honor.

18 THE COURT: Have you gone over it together?

19 MR. GRAHAM: We have.

20 THE COURT: Have you investigated the facts set
21 forth, or the allegations set forth in the indictment?

22 MR. GRAHAM: Yes, your Honor.

23 THE COURT: Do you think you need more time to
24 talk to your client?

25 MR. GRAHAM: No, your Honor.

1 THE COURT: Okay. Ms. Shekmer, would you read
2 the indictment to us, please? It's very short, even though
3 there are six counts.

4 MS. SHEKMER: Your Honor, Count One charges
5 distribution of a controlled substance, specifically
6 cocaine base. And it reads, "On or about May 9th, 2017, in
7 Berrien County in the Western District of Michigan,
8 Southern Division, the defendant, Daqone Lentell Williams,
9 did knowingly and intentionally distribute a quantity of a
10 mixture and substance containing a detectable amount of
11 cocaine base, a Schedule II controlled substance, in
12 violation of federal law," and the citations are there.

13 Count Two also charges distribution of a
14 controlled substance, only this time it is heroin. And it
15 reads, "On or about May 9th, 2017, in Berrien County in the
16 Western District of Michigan, Southern Division, the
17 defendant, Daqone Lentell Williams, did knowingly and
18 intentionally distribute a quantity of a mixture and
19 substance containing a detectable amount of heroin, a
20 Schedule I controlled substance, in violation of federal
21 law."

22 Count Three charges distribution of controlled
23 substance, heroin, and it reads, "On or about May 10, 2017,
24 in Berrien County in the Western District of Michigan,
25 Southern Division, the defendant, Daqone Lentell Williams,

1 did knowingly and intentionally distribute a quantity of a
2 mixture and substance containing a detectable amount of
3 heroin, a Schedule I controlled substance, in violation of
4 federal law."

5 Count Four also charges distribution of a
6 controlled substance, specifically heroin, and it reads,
7 "On or about May 17, 2017, in Berrien County in the Western
8 District of Michigan, Southern Division, the defendant,
9 Daqone Lentell Williams, did knowingly and intentionally
10 distribute a quantity of a mixture and substance containing
11 a detectable amount of heroin, a Schedule I controlled
12 substance, in violation of federal law."

13 Count Five charges possession with intent to
14 distribute a controlled substance, the substance being
15 heroin. It reads, "On or about May 23rd, 2017, in Berrien
16 County in the Western District of Michigan, Southern
17 Division, the defendant, Daqone Lentell Williams, did
18 knowingly and intentionally possess with intent to
19 distribute a quantity of a mixture and substance containing
20 a detectable amount of heroin, a Schedule I controlled
21 substance, in violation of federal law."

22 And Count Six also charges possession with
23 intent to distribute a controlled substance, however this
24 time the controlled substance is cocaine base. And it
25 reads, "On or about May 23rd, 2017, in Berrien County in

1 the Western District of Michigan, Southern Division, the
2 defendant, Daqone Lentell Williams, did knowingly and
3 intentionally possess with intent to distribute 28 grams or
4 more of a mixture and substance containing a detectable
5 amount of cocaine base, a Schedule II controlled substance,
6 in violation of federal law."

7 THE COURT: Thank you. Regarding Counts One
8 through Four, they are pretty much the same elements,
9 although they are different times of either distribution or
10 possession with intent to distribute in Count Four. Counts
11 One, Two, and Three would require the government to prove
12 beyond a reasonable doubt that on or about May 9, 2017, you
13 did knowingly and intentionally distribute a quantity of a
14 mixture containing cocaine base. The key words here are
15 "knowingly and intentionally." In other words, you must
16 have intended and you must have known that you were
17 distributing the specific drug, cocaine base or heroin, as
18 described in those specific counts.

19 In other words, if you were an Uber driver and
20 you happened to drive somebody to a drug dealing place and
21 you didn't know a drug deal was going down, you would not
22 be guilty of this offense. Do you understand that?

23 MR. WILLIAMS: Yes, your Honor.

24 THE COURT: I should say those offenses. Count
25 Four is that you had in your possession on May 17, 2017,

1 heroin, and you knew it was heroin, and you intended to
2 distribute the quantity of heroin in Berrien County on that
3 date. And it just says a detectable amount. So in other
4 words you didn't -- you didn't give it to anybody, but you
5 possessed it intending to give it to somebody, to deliver
6 it to somebody. Do you understand that charge?

7 MR. WILLIAMS: Yes, your Honor.

8 THE COURT: And then Count Five is the same as
9 Count Four with a significant change or a significant
10 difference that it says you did knowingly and intentionally
11 possess with intent to distribute a quantity or mixture of
12 a substance containing heroin, and the difference is in
13 Count Six that there's a quantity set forth, and that
14 quantity is 28 grams or more of cocaine base. And as far
15 as Count Six goes, the quantity is different, and that's
16 the significant difference between Count Six and the other
17 counts.

18 I want to tell you what the penalties for those
19 offenses are now. Listen carefully. For each, Count One
20 through Four, there's a potential penalty of up to 20 years
21 in prison, a fine of up to a million dollars, three years
22 of supervised release, up to life of supervised release,
23 plus a special assessment of a hundred dollars. Let me
24 tell you about supervised release.

25 Supervised release is a status something like

1 parole.

2 Ms. Shekmer, did I make a mistake?

3 MS. SHEKMER: Your Honor, I just wanted --
4 Counts One through Four are all distribution charges.

5 THE COURT: All right.

6 MS. SHEKMER: And you had indicated One through
7 Three were distribution.

8 THE COURT: Okay.

9 MS. SHEKMER: And then Four, beginning there,
10 was possession with intent, but it's really --

11 THE COURT: I thought I corrected that later,
12 but you got me, okay.

13 MS. SHEKMER: Only Four and Five are --

14 THE COURT: Okay.

15 MS. SHEKMER: -- possession with intent.

16 THE COURT: Are possession with intent, right.

17 MS. SHEKMER: Thank you.

18 THE COURT: Yup. Well, okay. I'll just
19 continue here. So you possess it, but I'm going through
20 the penalties now. Up to three years in prison, not less
21 than three years in prison on supervised release. I'd say
22 up to life in prison. Supervised release is the status.
23 We don't have parole in the federal system, so after you
24 serve your time you are put into a status called
25 "supervised release," and you're under the direction and

1 control of the probation officers and you have to abide by
2 certain rules and regulations.

3 For example, you can't do drugs, you can't do
4 booze often times, but not always, you can't hang around
5 with people who are known gang bangers or anything like
6 that. You have to pretty well follow their rules. And if
7 you were to get let's say five years of supervised release
8 and you were just perfect for four years, but in the fifth
9 year you screwed up by dealing or something like that, or
10 getting drunk, getting into a fight, you could go back to
11 prison. And it wouldn't be necessarily just for the year
12 you had left on supervised release. It could be for five
13 years, the original term of supervised release. Do you
14 understand that?

15 MR. WILLIAMS: Yes, sir.

16 THE COURT: And I'm not saying that you'll get
17 five years of supervised release. You might get more, you
18 might get less, but I'm just using that as an example. The
19 Count Five we've already gone over also carries a 20 years
20 in prison, a million dollars, up to -- three years to life,
21 supervised release, a special assessment of a hundred
22 dollars. Count Six is different in the penalty phase.
23 There is a minimum penalty of five years in prison and up
24 to 40 years. In other words the other counts are all 20
25 years, but Count Five -- Count Six, I should say, I

1 misspoke, is five years to 40 years, and the supervised
2 release that I've just described to you is not less than
3 four years and up to life, and a special assessment of a
4 hundred dollars.

5 Now let me tell you I sat on the Court of
6 Appeals in the Ninth Circuit and this issue came up in a
7 similar situation. Under the law, each one of those counts
8 can be added together to determine a sentence. And this
9 particular, I did the math coming out here, they can be
10 cumulative. In other words it is theoretically possible
11 that you could be sentenced up to 20 years on each Counts
12 One through Five, plus 40 years on Count Six. So you're up
13 to about 140 years there. And in any event, you are
14 looking at a mandatory minimum sentence of at least 60
15 months because Count Six carries a mandatory minimum.

16 The presentence report will come up with a
17 recommended sentence. I don't have to follow that report,
18 but it will have a whole bunch of facts and circumstances
19 about you and about the offenses. And you and your lawyer
20 will have the opportunity to see that, and I might tell you
21 that again before the sentencing and make objections, try
22 to work them out with the probation officer who wrote the
23 report, and his office or her office, and then come to me
24 with any objections you have to the report. I will rule on
25 the objections, and then I come up with a conclusion

1 regarding what the sentencing guidelines would be.

2 I'm sure Mr. Graham told you, Mr. Graham is a
3 very experienced, good lawyer, told you that the guidelines
4 are not binding on me. He can make any argument he wants,
5 although I can't go under mandatory minimum, and I can't go
6 over maximums, but I can add all those maximums up. Not
7 only that, the presentence report will come up with factors
8 that are not in these specific charges in the indictment.
9 In other words, they might find other drug dealing and then
10 add that into the quantity, because a lot of the sentencing
11 that we do in federal court regarding drug cases is
12 quantity driven, in other words how much did you deal. So
13 big dealers can get a lot more time than minor dealers, or
14 if you're a leader of a drug dealing group, you can get
15 more time than if you're not a leader. There are a whole
16 bunch of factors that we look at. It would take me a
17 couple hours to go through them all, but I'm sure -- have
18 you gone over those with him, Mr. Graham?

19 MR. GRAHAM: Yes, your Honor.

20 THE COURT: Is that correct?

21 MR. WILLIAMS: Yes.

22 THE COURT: All right, so you've got an idea
23 then of what I'm talking about. Let me tell you your
24 rights. You haven't pled yet and you're free to change
25 your mind.

1 You are presumed innocent of the charges. You
2 have the right to be represented by your lawyer at every
3 stage of the proceedings, and if necessary, you cannot
4 afford a lawyer, one will be appointed for you. Mr. Graham
5 is court-appointed. You have the right to persist in a
6 plea of not guilty; the right to be tried in open court by
7 a jury; the assistance of Mr. Graham or your lawyer during
8 the course of the trial; the right to confront and
9 cross-examine witnesses against you; the right to call
10 witnesses and produce evidence in your defense; and the
11 right to use this Court's subpoena power to get your
12 witnesses and evidence here. Do you understand all of that
13 so far?

14 MR. WILLIAMS: Yes, your Honor.

15 THE COURT: You can testify at your own trial if
16 you want to, but you cannot be compelled to be a witness at
17 your own trial. If you go to trial but don't testify, I'll
18 tell the jury they cannot hold your refusal to testify
19 against you when they go to their deliberations and reach
20 their conclusions. Do you understand that?

21 MR. WILLIAMS: Yes, your Honor.

22 THE COURT: If you plead guilty and I accept
23 your plea, there's no trial of any kind, so by pleading
24 guilty here you are giving up your right to a trial.
25 Furthermore, you cannot file an appeal on the question of

1 whether you did or did not commit the crime. The only
2 thing you could appeal would be whether or not I followed
3 the law in imposing sentence upon you and whether it's an
4 appropriate or not appropriate sentence. Do you understand
5 that?

6 MR. WILLIAMS: Yes, your Honor.

7 THE COURT: In order to satisfy myself that you
8 are guilty, I have to ask you questions about what you did.
9 You'll have to answer my questions under oath and
10 acknowledge your guilt. By doing this you are giving up
11 your right not to incriminate yourself because you will in
12 fact be confessing to a crime. Do you understand that,
13 sir?

14 MR. WILLIAMS: Yes, your Honor.

15 THE COURT: And you have the right to request
16 that you be tried by me without a jury, and if everyone
17 agrees, you can be tried by me without a jury.

18 Ms. Shekmer, were there any plea agreements in
19 this case?

20 MS. SHEKMER: Your Honor, there is no plea
21 agreement, but I would sort of like to place the posture of
22 the case as it stands now on the record. We, defense
23 counsel and I, both believe that the defendant is going to
24 be found to be a career offender under the guidelines. In
25 addition to that, the defendant could be enhanced with the

1 statutory enhancement under 851. That has not been done
2 to-date. He is pleading guilty today. Once he pleads
3 guilty, the government can no longer enhance his sentence
4 under 851. So what I'm putting on the record --

5 THE COURT: What would the enhancement add to
6 it? It would jump him way up there, I know.

7 MS. SHEKMER: Really he would go from five to 40
8 on Count Six to 10 to life, and it would raise his
9 guidelines.

10 THE COURT: Right. Substantially, doesn't it,
11 Mr. Graham?

12 MR. GRAHAM: Yes, your Honor.

13 THE COURT: Yeah. Okay. Go ahead.

14 MS. SHEKMER: So this is not a formal agreement,
15 but he did come in to plead guilty in order to avoid any
16 enhancement. The government had not filed one yet, as we
17 didn't have all the paperwork together.

18 THE COURT: Okay.

19 MS. SHEKMER: But we do believe that he is a
20 career offender.

21 THE COURT: Okay. Is that the only agreement
22 between the parties, Mr. Graham? Or that's not even an
23 agreement, really. It's really an understanding of how
24 things are going to work out. They won't file the
25 enhancement if he pleads today, basically.

1 MR. GRAHAM: That's correct, your Honor. And
2 that's kind of why we're in the unusual posture of pleading
3 to all six counts, as you know normally we wouldn't
4 probably plead to all of them. But it's kind of making the
5 best of a bad situation to avoid the 851 enhancement.

6 THE COURT: Okay. Do you understand all of
7 that, Mr. Williams?

8 MR. WILLIAMS: Yes, your Honor.

9 THE COURT: What will happen, Mr. Williams, is
10 when we take a look at the presentence report will be a
11 quantity, and I can't make any promise to you, but
12 generally what happens is that all the quantities that you
13 have in each one of these deals, and perhaps other
14 quantities, because you might have people that are
15 cooperating with the government by giving information about
16 you and about others, I don't know anything about that, but
17 that oftentimes happens, and all those quantities are put
18 together. And the guidelines, which are not binding on me,
19 you know, then recommend a particular sentence, and that
20 will encompass all the guideline -- all of the transactions
21 or possessions intending to have a transaction would
22 encompass.

23 Let me ask this, and I'll probably ask it again.
24 Has the government or anybody else made any promise,
25 assurance, or threat of any kind that is causing you to

1 plead guilty?

2 MR. WILLIAMS: No, your Honor.

3 THE COURT: And I don't mean just to you, but
4 any one of your loved ones. I've had cases, for example,
5 where the person says, "No one threatened me," then you
6 find out they'll write a letter later and say, "Well, they
7 threatened my son" or "They threatened my wife, and that's
8 why I pled guilty." Anything here, to your knowledge, like
9 that that has occurred that is causing you to plead guilty?

10 MR. WILLIAMS: No, your Honor.

11 THE COURT: Okay. I read off some of the
12 penalties, I think, but there are some other penalties.
13 The mandatory special -- restitution, anything like that,
14 it wouldn't be here. If you're on probation or parole in
15 any other court, by pleading guilty here your probation or
16 parole may be revoked and you may be required to serve time
17 in that case, in addition to any sentence imposed in this
18 case. Are you an American citizen?

19 MR. WILLIAMS: Yes, your Honor.

20 THE COURT: All right. Any forfeiture here,
21 Ms. Shekmer?

22 MS. SHEKMER: No, your Honor.

23 THE COURT: I've told you what the guidelines
24 are already, so I won't go over that again, even though
25 it's on my outline at this particular time. There's no

1 parole in the federal system. People say, well, if you
2 give a guy ten years, how much time does he serve? Five
3 years? No. That's across the street. That's in the State
4 system. In this system if you get ten years, then you have
5 the possibility when you're incarcerated to get time off
6 for good behavior, and that's a maximum of 15 years off
7 your sentence for good behavior while you're incarcerated,
8 but there's no such thing as a parole board or anything
9 like that. People serve their time in the federal system.

10 If you or your lawyer think I haven't properly
11 followed the law at the time of sentencing, then you can
12 appeal your sentence to the United States Court of Appeals
13 in Cincinnati and ask them to correct any mistake you think
14 I may have made.

15 Mr. Graham, anything I should discuss with
16 Mr. Williams further?

17 MR. GRAHAM: No, your Honor.

18 THE COURT: Any reason why he should not enter a
19 plea of guilty to the charge?

20 MR. GRAHAM: No, your Honor.

21 THE COURT: Now, Mr. Williams, any question you
22 want to ask me or Mr. Graham? And don't -- you know, don't
23 be embarrassed, you know. The only dumb question, I tell
24 people, is the one you don't ask and that's in your mind.

25 MR. WILLIAMS: No, your Honor.

1 THE COURT: You all set? All right. Are you
2 ready then to plead, Mr. Williams?

3 MR. WILLIAMS: Yes, your Honor.

4 THE COURT: I'm going to go through each count.
5 How do you plead to Count One, distribution of controlled
6 substance. I don't -- here, let me get the indictment out.
7 Okay. Cocaine base on May 9, 2017, guilty or not guilty?

8 MR. WILLIAMS: Guilty, your Honor.

9 THE COURT: Count Two, distribution, May 9,
10 2017, a detectable amount of heroin, guilty or not guilty?

11 MR. WILLIAMS: Guilty, your Honor.

12 THE COURT: Guilty. May 10, 2017, in Berrien
13 County, a detectable amount of heroin, guilty or not
14 guilty?

15 MR. WILLIAMS: Guilty.

16 THE COURT: May 17, 2017, in Berrien County,
17 distribution of a substance containing a detectable amount
18 of heroin, guilty or not guilty?

19 MR. WILLIAMS: Guilty, your Honor.

20 THE COURT: May 23, 2017, in Berrien County,
21 possessing with intent to distribute a quantity or mixture
22 containing heroin. Guilty or not guilty?

23 MR. WILLIAMS: Guilty, your Honor.

24 THE COURT: And Count Six, possession with
25 intent to distribute a detectable amount of cocaine base,

1 28 grams or more. Guilty or not guilty?

2 MR. WILLIAMS: Guilty, your Honor.

3 THE COURT: Some of these you might think are
4 repetitious, but let's go through them. Are you making
5 these pleas of guilty voluntarily and of your own free
6 will?

7 MR. WILLIAMS: Yes, your Honor.

8 THE COURT: Has anyone reported to you any
9 statement that I made regarding either your plea or the
10 sentence that might be imposed? And I don't mean
11 Mr. Graham saying Judge Quist is the worst judge or the
12 best judge or anything like that, but anything that I said
13 that is causing you to plead guilty?

14 MR. WILLIAMS: No, your Honor.

15 THE COURT: Okay. Regarding Count One, what did
16 you do there? Mr. Williams, that's the count that says May
17 9 you knowingly and intentionally distributed a quantity of
18 cocaine base.

19 MR. WILLIAMS: Possessed an intent to deliver,
20 your Honor.

21 THE COURT: Did you deliver?

22 MR. WILLIAMS: Yes, your Honor.

23 THE COURT: Okay. Did you get money for it?

24 MR. WILLIAMS: Yes, your Honor.

25 THE COURT: You want to tell me how much? Not

1 money, how much was the delivery? How many grams or
2 ounces, whatever?

3 MR. WILLIAMS: I don't -- I don't know the exact
4 amount, your Honor.

5 THE COURT: Okay.

6 MS. SHEKMER: Your Honor, if I might. This
7 might be a little easier. Obviously the defendant was
8 dealing drugs and it's hard to remember every single
9 transaction.

10 THE COURT: Yeah, I know. May 9, 2017 though.

11 MS. SHEKMER: Right.

12 THE COURT: I understand.

13 MS. SHEKMER: It might be easier, because I have
14 the facts as --

15 THE COURT: All right.

16 MS. SHEKMER: And these deals --

17 THE COURT: Why don't you go for it.

18 MS. SHEKMER: -- were recorded, so we --

19 THE COURT: Oh.

20 MS. SHEKMER: -- pretty much know exactly what
21 happened. Both Counts One and --

22 THE COURT: Mr. Williams, listen carefully to
23 Ms. Shekmer here.

24 MR. WILLIAMS: Okay.

25 MS. SHEKMER: On both Counts One and Count Two,

1 the deal happened at the exact same time. There was a
2 confidential informant and a police officer that met
3 together with Mr. Williams in Niles, Michigan, and the deal
4 went down there together. So Count One and Count Two, same
5 time, same place, just different drugs to different
6 persons.

7 So the police officer on May 9th purchased
8 two -- .232 grams of heroin for the amount of \$60, and the
9 confidential informant purchased .608 grams of cocaine base
10 for \$50. And the weights I'm giving you, your Honor, are
11 lab weights based upon the laboratory reports.

12 So I would ask the defendant, do you agree that
13 on May 9th, 2017, in Berrien County, specifically in Niles,
14 Michigan, that you sold \$60 worth of heroin to an
15 undercover police officer and \$50 of cocaine base to a
16 confidential informant?

17 MR. WILLIAMS: Yes.

18 THE COURT: All right.

19 MS. SHEKMER: And at the time that you sold both
20 the heroin and the cocaine base, did you know that you were
21 intentionally selling heroin and cocaine base?

22 MR. WILLIAMS: Yes.

23 MS. SHEKMER: Should I move to Count Three?

24 THE COURT: Yes, please.

25 MS. SHEKMER: On May 10th, which was the

1 following day, again, another transaction occurred. This
2 involved the undercover police officer. It occurred at the
3 Rite Aid in Niles, Michigan. Again, it was recorded. And
4 the detective, undercover police officer, handed
5 Mr. Williams \$120 and Mr. Williams handed the detective a
6 bag of heroin. The amount of heroin turned out to be,
7 according to the laboratory, .614 grams of heroin.
8 Mr. Williams, do you recall the May 10th, 2017 deal with
9 the undercover police officer at the Rite Aid in Niles
10 where you sold him heroin?

11 MR. WILLIAMS: Yes.

12 MS. SHEKMER: And at the time that you sold him
13 that heroin, did you knowingly and intentionally sell the
14 heroin?

15 MR. WILLIAMS: Yes.

16 MS. SHEKMER: Count Four occurred on May 17,
17 2017. It was at the Dairy Queen located on Oak Street in
18 Niles, Michigan, and it was \$200 of heroin. The undercover
19 police officer and Mr. Williams met at the Dairy Queen and
20 then Mr. Williams handed the police officer or put into the
21 police officer's car a scrunched-up napkin which contained
22 the heroin, and the police officer gave to Mr. Williams
23 \$200. The heroin was later tested and determined to be .6
24 grams of heroin.

25 Mr. Williams, do you recall having this deal

1 with the undercover police officer on May 17, 2017, where
2 you delivered \$200 worth of heroin to the police officer at
3 the Dairy Queen?

4 MR. WILLIAMS: Yes.

5 MS. SHEKMER: And at the time that you did that,
6 did you do it knowingly and intentionally?

7 MR. WILLIAMS: Yes.

8 MS. SHEKMER: Okay. Then on May 23rd, and this
9 applies to both Counts Five and Count Six. On May 23rd,
10 the police executed a search warrant at 2014 Old US 31 in
11 Niles Township, Berrien County, Michigan, Apartment number
12 6, which was the apartment that Jaquinta Nichols was
13 renting and the defendant was staying there as well.
14 During the course of the execution of the search warrant in
15 the master bedroom they found -- the police found open
16 sandwich bags, digital scale, razor blade, and whitish
17 residue on a mirrored dresser. Also on top of the dresser
18 was Mr. Williams' State of Michigan ID card and \$203.
19 Fifty dollar -- a fifty dollar bill from the \$203 was
20 determined to be part of the buy money from the May 17th,
21 2017 controlled purchase by the undercover police officer
22 from Mr. Williams. Inside the top drawer of the dresser
23 the police also found marijuana, cocaine base, and heroin.
24 So Count Five is for the 4.323 grams of heroin that was
25 found and it's charged as a --

1 THE COURT: It's a four point or point four?

2 MS. SHEKMER: 4.323 of heroin, possession with
3 intent to distribute by Mr. Williams, and then also Count
4 Six is the possession with intent to distribute the cocaine
5 base, which is 94.634 grams of cocaine base.

6 So Mr. Williams, was the cocaine base and the
7 heroin found at Apartment number 6 in Niles Township,
8 Berrien County, Michigan, on May 23rd, 2017, your heroin
9 and your cocaine base?

10 MR. WILLIAMS: Yes.

11 MS. SHEKMER: And did you intend to distribute
12 both the heroin and the cocaine base?

13 MR. WILLIAMS: Yes.

14 MS. SHEKMER: Did you possess them with the
15 intent to distribute knowingly and intentionally?

16 MR. WILLIAMS: Yes.

17 MS. SHEKMER: Thank you. I have no further
18 questions.

19 THE COURT: Okay. Anything you want to ask him,
20 Mr. Graham?

21 MR. GRAHAM: No, your Honor.

22 THE COURT: Have I complied with all the
23 requirements of Rule 11, Ms. Shekmer?

24 MS. SHEKMER: You have, your Honor.

25 THE COURT: Mr. Graham?

1 MR. GRAHAM: Yes, your Honor.

2 THE COURT: Then in the case of United States of
3 America against Daqone Lentell Williams, docket number --
4 okay, 17-cr-140, based upon the information given to me and
5 based upon my observations, I find that Mr. Williams is
6 fully competent and capable of making an informed plea. He
7 is acting knowingly and voluntarily. He fully understands
8 the charge, his rights, and the consequences of his plea.
9 The plea is supported by an independent basis in fact
10 containing each of the essential elements of the offense,
11 and therefore the plea of guilty is accepted.

12 The written presentence report, like I
13 described, will be prepared by the Probation Department to
14 assist the Court in sentencing. You'll be asked to give
15 information for the report and your attorney may be present
16 if you wish. My advice would be have Mr. Graham present
17 during that meeting.

18 You and your attorney have the right to read the
19 presentence report before the sentencing hearing, and both
20 of you will have the opportunity to speak at the sentencing
21 hearing. You're hereby referred to the Probation
22 Department for a presentence investigation report and
23 sentencing is scheduled to occur before me at the date
24 Ms. Tepper will now give us.

25 THE CLERK: March 27 -- excuse me, March 27,

1 2018 at 2 p.m.

2 THE COURT: Okay. I understand that
3 Mr. Williams is currently on bond, however, the statute
4 would indicate he should be detained at this point in time.
5 And in addition to that, did you get the report from the
6 Probation Office regarding --

7 MR. GRAHAM: I did, your Honor. I guess I would
8 note, if I could, for the record that we -- we make the
9 strongest possible denial about that alleged positive test
10 and we've provided all of the, it was KPEP in Kalamazoo,
11 all of the records relating to some medical treatment at
12 the time. And I understand what the statute says about
13 revocation and remand, but Mr. Williams has been a model
14 person to deal with, and I would ask the Court to give
15 consideration to letting him --

16 THE COURT: I'll give consideration to that, and
17 I'll also give consideration, however, to my experience
18 with these things because more often that I -- I have been
19 hit in the mouth too often by letting someone go between
20 now and the time of sentence because they use drugs
21 ofttimes during that three month period. And the law is
22 very clear they can lose acceptance and responsibility, so
23 it has a huge negative effect on many, not just a few, but
24 I think probably more than half of the people we let go at
25 this period of time. So he's remanded to the custody of

1 the United States. Thank you.

2 (At 11:03 a.m., proceedings concluded.)

3 -oo0oo-

CERTIFICATE OF REPORTER

I, Bonnie L. Rozema, CER, do hereby certify that the foregoing transcript consisting of 31 pages, is a complete, true, and accurate transcript of the proceedings and testimony held in this case on November 2, 2017, to the best of my ability from the audio recording.

I do further certify that I prepared the foregoing transcript.

/s/ Bonnie L. Rozema

Bonnie L. Rozema, CER-5571
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Notary Public in and for
Kent County, Michigan
My commission expires:
March 26, 2019
Acting in the County of Kent

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA

v.

File No. 1:17-cr-140-01

DAQONE LENTELL WILLIAMS,

Defendant.

Sentence

Before

THE HONORABLE GORDON J. QUIST
United States District Judge
March 28, 2018

APPEARANCES

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TABLE OF CONTENTS

WITNESS:

PAGE

None

EXHIBITS:

IDENTIFIED

None

1 Grand Rapids, Michigan

2 Wednesday, March 28, 2018 - 11:00 a.m.

3 THE COURT: Good morning. Please be seated.

4 I've got that.

5 Okay. We're here in the case United States of
6 America against Daqone Lentell Williams, docket number --
7 well, I don't know what that 0646 is, but it's
8 1:17-cr-140-01. Time set for consideration of any factual
9 or legal dispute arising out of the presentence report and
10 the imposition of sentence. Can I have the appearance of
11 counsel, please?

12 MS. SHEKMER: Your Honor, Rene Shekmer on behalf
13 of the Government.

14 THE COURT: Thank you. Just remain seated,
15 Mr. Graham.

16 MR. GRAHAM: Good morning, your Honor. Scott
17 Graham of behalf of Mr. Williams, who is also present.

18 THE COURT: Okay, thank you. Has each party
19 been furnished with a copy of the report? Ms. Shekmer?

20 MS. SHEKMER: Yes, your Honor.

21 THE COURT: Mr. Graham?

22 MR. GRAHAM: Yes, your Honor.

23 THE COURT: Have you gone over it with your
24 client, Mr. Williams?

25 MR. GRAHAM: I have.

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

2 MR. WILLIAMS: Yes, your Honor.

3 THE COURT: The report will be made part of the
4 record. The clerk is ordered to place the report under
5 seal. If appeal is taken, counsel on appeal will be
6 permitted access to all parts of the report, including the
7 probation officer's recommendation.

8 Does the Government have any object to anything
9 in the report?

10 MS. SHEKMER: No, your Honor.

11 THE COURT: Mr. Graham, you can say "no" or
12 "yes," I mean when you're sitting, then we'll hear it.

13 MR. GRAHAM: Yes.

14 THE COURT: Okay. Okay, but let me go over it,
15 then we'll hear your objection. The defendant is convicted
16 of the following counts: Distribution of a controlled
17 substance, cocaine base, which is a crime carrying a
18 penalty of up to 20 years in prison and a million dollar
19 fine. Counts Two to Four, distribution of controlled
20 substances, heroin, not more than 20 years imprisonment and
21 a million dollar fine. Count Five possession with intent
22 to distribute controlled substances, heroin again, not more
23 than 20 years, \$1 million fine. And Count Six, possession
24 with intent to distribute controlled substances, cocaine
25 base, five to forty years imprisonment, \$5 million fine.

1 Okay, according to the presentence report, the
2 base offense level is 24, because the quantity involved is
3 345.88 kilograms of marijuana equivalent. Specific offense
4 characteristic, defendant maintained a premises for the
5 purpose of manufacturing or distributing a controlled
6 substance as a plus two for an adjusted offense level
7 subtotal of 26. Paragraph 41, chapter four enhancement.
8 He had two controlled substances offenses, according to the
9 presentence report, subject to objection, and that brings
10 his base offense level, well, his offense level up to 34.
11 He gets three points off for acceptance of responsibility,
12 unless the government backs off of that because he used
13 while he was on bond.

14 Ms. Shekmer, what's the Government's position?

15 MS. SHEKMER: I mean I'm not aware of that.

16 THE COURT: Mr. Graham?

17 MR. GRAHAM: Well, that's a contested issue that
18 we really have never litigated. He doesn't believe that he
19 did. We had a full medical reason and had prescriptions,
20 and we were set to deal with that, but it's never been --
21 never seen the light of day, so we don't think it's
22 appropriate.

23 THE COURT: Well, you understand, however, that
24 it is not unusual to lose those points if you're out on
25 bond and then use the drugs?

1 MR. GRAHAM: No, I -- I understand that
2 completely.

3 MS. SHEKMER: We haven't litigated that.

4 MR. GRAHAM: Yeah, we never -- we've never had a
5 chance to dispute that issue.

6 THE COURT: All right.

7 MR. GRAHAM: We are prepared to do that, so I
8 understand that if, in fact, he did use, no, I understand
9 that.

10 THE COURT: Okay.

11 MR. GRAHAM: Which we don't think he did.

12 THE COURT: All right, so I'll give him the two
13 points. The Government supports the third?

14 MS. SHEKMER: Yes, your Honor.

15 THE COURT: All right.

16 MS. SHEKMER: And just so the record is clear --

17 THE COURT: That brings it down to 31. Criminal
18 history starts on page 10.

19 THE CLERK: Judge?

20 THE COURT: Yes.

21 THE CLERK: Ms. Shekmer wanted to put something
22 else on the record.

23 THE COURT: Ms. Shekmer?

24 MS. SHEKMER: Well, I was just going to
25 reiterate I think what defense counsel is saying is that

1 that allegation of the drug use occurred prior to his plea,
2 but then he pled very shortly thereafter, and his bond was
3 revoked as part of the plea, so we never actually litigated
4 the whole issue of whether he did or didn't use.

5 THE COURT: Okay. Criminal history starts at
6 age 14 with a retail fraud. It's in paragraph 47. There
7 are a number of juvenile offenses here, including escape
8 from a juvenile facility and domestic violence at the age
9 of 16, but none of them garnered points, of course. The
10 adult criminal convictions start in 2004, age 17,
11 possession of marijuana. He got nine months probation, no
12 points. Paragraph 53, February 16, 2006, delivering,
13 manufacturing narcotic or cocaine less than 50 grams.
14 Began a 270 days in jail, two years probation, and three
15 points under the federal guidelines. The conviction was in
16 St. Joseph, Michigan. And then paragraph 54, age 18,
17 attempted police officer assault and resisting. He got 60
18 days, but no points. And then paragraph 55, June 23, 2007,
19 controlled substance delivery, manufacture of marijuana.
20 He got 14 months to four years in prison and three points.
21 And this is one of the matters that we'll hear about later.

22 But the other thing I notice in paragraph 55, he
23 was an absconder from parole when he committed the above
24 offense. That's the marijuana dealing. And then paragraph
25 56, another disputed paragraph. Not as to the facts, but

1 as to the legal conclusion. In 2010, delivery, manufacture
2 of marijuana. Again, he got three points, 18 months to
3 four years in prison. And he was still on parole when he
4 committed the instant offense. Yeah, no, that offense.
5 That was in 2010.

6 And then the other significant offense is
7 paragraph 57, home invasion, second degree, and domestic
8 violence, where he got 29 to 180 months incarceration and
9 three points. And the facts set forth in the presentence
10 report are disturbing, kicking open a door, kicked the
11 front door open. Forcibly removed a phone from the
12 victim's hand. Pushed her onto a couch and punched her.
13 He picked up three points, as I said. Paragraph 58 he gets
14 no points.

15 So he has a total criminal history score of 12,
16 criminal history category of 5. However, if he's a career
17 offender, the criminal history category is 6. With 31 and
18 6 under the presentence report, the guideline range for
19 incarceration is 188 to 235 months. Recommendation of 188
20 months on each count to be served concurrently. Supervised
21 release range is one to five years. Oh, on Counts One to
22 Five, I'm sorry, is three years, and on Count Six it's two
23 to five years. The recommendation is four years to run
24 concurrently. He's not eligible for probation. He's not
25 eligible for a fine under the guidelines. Well, he -- the

1 fine range is 30,000 to \$10 million, but the recommendation
2 is no fine. Restitution's not an issue. And \$100 special
3 assessment on each count, totalling \$600.

4 Okay, am I correct in all that then as far as
5 the presentence report goes? Ms. Shekmer.

6 MS. SHEKMER: Yes.

7 THE COURT: Mr. Graham?

8 MR. GRAHAM: Yes, your Honor.

9 THE COURT: All right, let me hear you then on
10 your objection. And let me forewarn you, because I don't
11 want to -- that I've read the memorandum, and even before I
12 got your memorandum in support of the motion, I read the
13 case the United States against Tibbs, 685 Fed Appendix 456,
14 which is cited in the case that you gave me, United States
15 v House, 872 F. 3d 748, which is, in my judgment, and I
16 think anyone's judgment that would bother to read it, the
17 Tibbs case is directly on-point. Are you aware of the
18 Tibbs case?

19 MR. GRAHAM: Yes. Yes, your Honor.

20 THE COURT: Okay.

21 MR. GRAHAM: Your Honor, in regard to Tibbs, I
22 think -- I think the government cited that case in their --
23 in their response to us. And I've been aware --

24 THE COURT: Well, I never even saw the
25 government's response.

1 MR. GRAHAM: Well, you know what? I'm sorry,
2 the government responded to my objection with --

3 MS. SHEKMER: Your Honor, that is docket number
4 23. Defendant made this objection before the probation
5 officer by filing an object to the presentence report, and
6 the government filed a response to his objection.

7 THE COURT: To the Probation Office?

8 MS. SHEKMER: Well, in court, but it's the
9 government's response to his objection.

10 THE COURT: I never saw it. I don't think it's
11 going to make any difference because I read it myself.

12 MS. SHEKMER: Docket number 23, your Honor.

13 THE COURT: Right.

14 MR. GRAHAM: I don't think it does either, but
15 so, yes, I'm aware of that. Our position, and I don't have
16 a lot to add to what we have in the memo, I understand your
17 point regarding the decision in Tibbs. I -- I guess I'm
18 not as sure that its 100 percent controlling, and I want to
19 make sure I preserve this argument. I think this is a real
20 area of concern among all the courts of review, and in this
21 particular case I've set forth in the memo, you know, all
22 the arguments.

23 THE COURT: And I read the memo.

24 MR. GRAHAM: All the arguments to be made. So
25 if I'm confining my remarks at this stage to the objection

1 to career offender status, I rest on the memo and the
2 arguments that are made, and recognize the point that the
3 court made. I note that the -- as far as making sure that
4 the record is clear, that copies of the respective
5 judgments have been provided. They were provided by
6 Probation, and the government has marked those as exhibits,
7 and I certainly have no objection to those being admitted.

8 THE COURT: All right.

9 MR. GRAHAM: They -- but they demonstrate simply
10 that the convictions occurred, not anything beyond that.
11 And so I -- I believe that he's not a career offender based
12 upon the marijuana convictions. I've also got other
13 arguments regarding whether they overstate the seriousness
14 of career offender status, but I'll wait on those, if
15 that's okay --

16 THE COURT: That's fine.

17 MR. GRAHAM: -- and present those. Thank you.

18 THE COURT: All right. Anything Ms. Shekmer?

19 MS. SHEKMER: Yes. I would simply state that
20 for the record I believe I filed them as attachments to
21 docket number 23, which were the Shepard documents relating
22 to the convictions in question. I've also provided them to
23 the Court as Government's Exhibits 1, 2, and 3 for
24 sentencing today, which are the Shepard documents relating
25 to the --

1 THE COURT: All right, no, I have them here.
2 Let me say that I -- I was with the Ninth Circuit in the
3 month of February for just two days. We had 18 cases, and
4 I bet about six or seven of them were cases involving these
5 kinds of issues because no one understands the Mathis case
6 at all. The best comment you can read about it is,
7 Judge Jonker sent it to me when I was complaining to him
8 about it because I had never read the dissent, Justice
9 Alito's dissent, which is, you ought to read it, it's
10 funny. And it's absolutely true. I thought I was losing
11 my mind that, oh, no, are you kidding me? We fight this
12 all the time. You can't, you know, divisible, not
13 divisible, categorical, semi-categorical wherever they
14 want. I mean it's like trying to figure out someone's
15 secret pass code to get into their computer. But anyway,
16 here we are.

17 MS. SHEKMER: I think I explained this in my
18 response, but I also would just like to note that to the
19 extent that the defendant is arguing that the substance
20 involved was anything other than marijuana, I would note
21 for the record that the statute of conviction which is
22 Michigan -- MCLA 333.7401(2)(d), (d) only prohibits
23 marijuana or a mixture of it. And it was never changed
24 until most recently, and I have the old statute dating back
25 from 2002 that the recent change to the statute occurred

1 effective date April 10, 2017, and in that case 7401(2)(d)
2 was then changed to read, "marihuana, a mixture containing
3 marihuana, or a substance listed in 7212(1)(d)." So to the
4 extent that he's arguing that it could be any other
5 substance other than marijuana and that would affect his
6 argument that it could be a prescription case, because
7 there's no prescription allowed under federal law for
8 marijuana, the government did state for the record that at
9 the time of the convictions for this defendant for these
10 two marijuana drug trafficking offenses, marijuana was the
11 only controlled substance prohibited by 7401(2)(d)(iii),
12 and I have provided the Shepard documents to show that's
13 the statute.

14 THE COURT: Yeah. Yeah, the -- well, okay.
15 Having said that, the domestic violence conviction under
16 the catchall clause was found to be a crime of violence
17 recently by the United States Court of Appeals for the
18 Sixth Circuit. I've got the name of the case here. In
19 fact, I've got in the file, I've got that case. United
20 States v Morris. It came out on March 15, 2018. Are you
21 aware of that case?

22 MS. SHEKMER: Your Honor, is that not required
23 like third degree?

24 THE COURT: Is that what?

25 MS. SHEKMER: Does that not require a degree of

1 offense on the domestic violence?

2 THE COURT: No, it's just domestic violence. I
3 don't know, it's Michigan Law -- Michigan Compiled Law.
4 It's 750.81. Is a crime of violence under the residual
5 clause of the guidelines.

6 MS. PAKIELA: Your Honor, that is the domestic
7 violence third statute which requires a third conviction
8 for domestic violence, making it a --

9 THE COURT: I'm sorry, Ms. Pakiela, talk into
10 the microphone and I can understand you.

11 MS. PAKIELA: Your Honor, that is a domestic
12 violence third statute which --

13 THE COURT: Okay.

14 MS. PAKIELA: -- specifically requires a third
15 conviction making it a felony offense (unintelligible.)

16 THE COURT: Ah, you are --

17 MS. PAKIELA: (Unintelligible.)

18 THE COURT: You are absolutely right. We talked
19 about that yesterday. I didn't know that part of it.
20 Okay, so there you are. Basically, the defendant argues
21 that MCL Section 333.7401 sweeps too broadly and cites one
22 case, United States v House, 872 F.3d 748, Sixth Circuit
23 (2017), to support his position. In the House case the
24 Sixth Circuit held that the career offender status was
25 accurately applied to that defendant and implying the

1 modified categorical approach under the guidelines. In so
2 doing, the court held at Section 333.7401 enumerates
3 several alternative crimes and held that the district court
4 appropriately applied the career offender enhancement.
5 Most importantly for our purposes, the case of the United
6 States v Tibbs, which is not in the Federal Reporters, but
7 is found at 685 Fed Appendix 456 (6th Circuit 2017),
8 addressed the very statute for which Mr. Williams has been
9 convicted and the particular paragraphs, I think 55 and 56,
10 whatever they were. The defendant challenged the career
11 offender status for having violated Section 333.7401(1) and
12 everybody's read it, but talking about the specific
13 subsection of the Sixth Circuit. Said, "Moreover, unlike
14 the criminal statutes in Mathis and Hinkle, 333.7401
15 subsections provide different penalties for the various
16 offenses described. Violations of the statute involving a
17 prescription form or a counterfeit prescription form are
18 punishable by imprisonment for not more than seven years or
19 a fine of not more than \$5,000 or both," citing the
20 statute. "In contrast, violations involving
21 delivery/manufacture are subject to much greater penalty,
22 MCL Section 333.7401(2)(a)(i) through (iv). This is
23 further indication that the statute set forth separate
24 offenses and not alternative means of committing the same
25 offense." They didn't have any Shepard documents in front

1 of them in that particular case. But anyway, that's just
2 part of the ruling that we have.

3 So there we are with the guidelines. Time for
4 allocution, I think, Mr. Graham. And I have read the
5 Shepard documents myself. That was the other requirement I
6 learned out there, by the way, that the judge cannot rely
7 on the presentence report. And its plain error if the
8 judge goes forward, even though there's no objection. The
9 judge has to see the documents of conviction, Ms. Shekmer.
10 Keep that in mind.

11 MS. SHEKMER: I included them as in factulants,
12 your Honor.

13 THE COURT: I have the documents, yes. I didn't
14 know you were going to do that, see.

15 Okay, Mr. Graham, I've read your brief.

16 MR. GRAHAM: Okay. And I would also note that
17 even though he's not required to do so, Mr. Williams is
18 going to make a statement to the Court, so --

19 THE COURT: No, no, I want him to have
20 allocution.

21 MR. GRAHAM: And he will, and I kind of note
22 that because I don't want you to think I'm giving short
23 shrift to certain points that I know he's going to make as
24 well.

25 In this case the real question is what sentence

1 is sufficient, but not greater than necessary, to punish
2 him for these offenses. He certainly recognizes punishment
3 is necessary, is appropriate. I mean there's a 60 month
4 mandatory minimum on one of the counts. I do think, and I
5 know the Court has noted a couple of other points other
6 than drug convictions that the Court is concerned about in
7 his history, but I do think as it relates to drug history
8 and the career offender issue, that marijuana delivery of
9 the lowest amounts under the felony statute are not the
10 same as some of the offenses we see Mr. Williams was
11 dealing drugs to -- to get by.

12 THE COURT: For these crimes. I mean these
13 crimes. It wasn't just marijuana anymore.

14 MR. GRAHAM: No, no, no. I certainly --
15 certainly agree, your Honor. I'm sorry, but he is only
16 bumped up to career offender status because of the
17 marijuana-related convictions. And so otherwise we'd be
18 looking at a guideline range I think it starts at 85 months
19 and goes up to 108, or something like that. It's the
20 career offender that takes him to 188. So I simply don't
21 think that for him that, you know, I think the question
22 becomes, and I know you wrestle with it every day is, you
23 know, what's necessary, again, necessary, but not greater
24 than necessary. And to a large extent, you know, you're in
25 a better position to judge that than I am, but Mr. Williams

1 is a person who --

2 THE COURT: Well, I can't -- number one, I can't
3 read the future. Number two, no one knows what's going to
4 happen.

5 MR. GRAHAM: True.

6 THE COURT: So what is more than necessary, you
7 know? It comes to a lot of experience, but no one can tell
8 what someone going to do ten years from now.

9 MR. GRAHAM: It's the question that I have
10 wrestled with and what the argument I'd make to the Court
11 is this. Mr. Williams certainly requests that he receive
12 the benefit of vocational training in the Bureau of Prisons
13 and asks that he be assigned to or a recommendation be made
14 that he be assigned to a facility in Illinois, such as
15 Greenville or Pekin. And I know you don't have control
16 over that, but my understanding was that a recommendation
17 could be made. Think he requests the residential drug
18 treatment program because it -- I'm just not sure that he's
19 understood the impact of drugs.

20 But the question that I've wrestled with is, if
21 Mr. Williams has vocational training and he's being
22 punished while he gets that vocational training, how long
23 does he need to be warehoused before he's given a chance?
24 And I guess the question is, are we at a point with him
25 where we're just going to -- where we give up on him a

1 little bit and just warehouse him longer, or do we give him
2 training, do we give him punishment, and do we give him a
3 chance to be back with his family.

4 THE COURT: Well, but he doesn't work. He's
5 never had a job. He's got three children that he, you
6 know, he spends time with. The other side of that is what
7 are these children learning? What are they learning from
8 him? Are they learning to be drug dealers? You know as
9 well as I do, and Ms. Shekmer, we read this stuff and drug
10 dealers tend, oftentimes, not everybody, breed other drug
11 dealers. Because I look at some of these presentence
12 investigation reports, Mr. Graham, and say, boy, if I was
13 raised like that guy, people that we sentence, I'm not sure
14 what I would be or what I would do. So --

15 MR. GRAHAM: And I -- and I understand your
16 point. And my point is, and I agree, there's no work
17 history here, and my -- what I'm trying I guess to put
18 forward is the fact that I think an appropriate punishment
19 would be to give him the required prison sentence and
20 vocational training, and then give him a chance. And if --
21 if that doesn't work, you know, he's had a chance. I don't
22 know that he's had vocational training, and, you know, I
23 think, you know, he's -- he's shown me a side that is
24 understanding, much more understanding of his conduct than
25 I think it was before he -- you know, I mean picking up

1 this charge is stepping into the big time, and in some
2 ways. And so I think that he has a much greater
3 understanding, and I think there is real hope for the
4 future. Again, he's going to be -- I know he's going to be
5 punished and punished in ways that I would consider to be,
6 you know, harsh. But training and punishment, I just don't
7 think it has to get up to 188 months for it to be
8 sufficient in order to do that, because that really, I mean
9 and I guess the real question is, is he going to have a
10 chance to be with his -- with his kids before they're
11 adults, and I think that's really kind of the question.
12 Maybe -- maybe it's not appropriate. I think it is
13 appropriate for him to have that chance, and so I'm asking
14 for that chance, along with the vocational training and the
15 RDAP.

16 THE COURT: All right.

17 MR. GRAHAM: And that's kind of my -- my
18 position, so thank you.

19 THE COURT: Okay. Why doesn't he join you up
20 here then, because he wants to talk. Mr. Williams, please
21 stand right up there.

22 MR. WILLIAMS: Your Honor, I'd like to take the
23 time to apologize to the Court for being here today. Let
24 me start by saying I accept full responsibilities for my
25 actions. Not only did I break the law and lost my freedom,

1 but I also caused pain and hurt to my loved ones for being
2 locked up away from them. I wasn't selling drugs to become
3 a drug kingpin. I was a petty drug dealer, your Honor,
4 only selling it to pay my bills and buy my children the
5 things they needed. Do that make it right? Not at all.
6 It's never right to engage in any illegal activity.

7 I also feel bad for the people I sold the drugs
8 to. To be honest, at the time I wasn't thinking about that
9 at all. Now that I'm locked up, I have some time to
10 reflect on the whole situation. I realize I was wrong.
11 There's no other way to look at it. That was someone's
12 mother, dad, sister, brother, aunt, uncle. I know I would
13 be upset if someone sold drugs to my loved ones. If they
14 was addicted to drugs or not, they're still human beings at
15 the end of the day.

16 While I'm incarcerated I plan on getting the
17 treatment I need and obtaining a skill to help me succeed
18 in society. It's not about me. I have children that needs
19 and depends on their dad. The hardest thing in the world
20 is being away from them. I just hope you take into
21 consideration everything in front of you and base your
22 decision off that, your Honor. I'm not asking you to feel
23 sorry for me, but just give me a chance to see my children
24 grow up, be a part of their life, and be a father to them
25 that I never had. I'm just ready to get this process

1 started and focus on taking all the classes I need and
2 getting me a trade. This is definitely going to be the
3 last time I'm away from my loved ones. I'm actually a good
4 person with a good heart, your Honor. I just choose to do
5 stupid things that gets me in trouble. I will not take
6 this time away from home for granted. I will definitely
7 learn from my mistakes. Thank you, your Honor.

8 THE COURT: Thank you. You may be seated.
9 Ms. Shekmer.

10 MS. SHEKMER: Your Honor, the government does
11 not believe that a variance is appropriate in this matter
12 because the defendant has, although he all of a sudden
13 realizes the harm that he's created through his drug
14 trafficking, has by my count served jail and/or prison time
15 on six prior occasions, three of those occasions for drug
16 trafficking offenses, which would indicate that we're now
17 in the fourth offenses, or the fourth set of offenses
18 before the defendant finally realized that what he was
19 doing was leading to prison and was harming the community
20 from which he comes.

21 The fact that he's never had a job would only
22 indicate that he's lived by drug trafficking throughout his
23 entire adult life. Regardless of whether he has
24 convictions for every time he sold drugs, he still was a
25 drug trafficker, and that's how he made his living. In

1 addition to that, your Honor, I would note that, and the
2 Court has already identified this, but he does have some
3 violence in his prior convictions with the home invasion,
4 the domestic violence. Clearly these are the types -- this
5 is the -- this is the type of person that the sentencing
6 commission, as well as the statute, as the Court is well
7 aware, as part of the plea agreement, we didn't file the
8 supp which would have raised him to a ten year to life
9 offenses. However, he was -- he is a career offender, and
10 this is the exact type of person that both congress and the
11 sentencing commission have determined should receive a
12 substantially higher sentence than, say, a first-time
13 offender or a person with perhaps a few offenses, but not
14 having served lengthy prison time. So I don't believe that
15 any variance is justified in this case.

16 THE COURT: Okay, thank you. Well, despite the
17 fact that everyone tries to make this a science, it isn't.
18 Whether it's an art, you can argue about that as well, but
19 basically, it's a matter of judgment based on experience
20 and history, and the history being the defendant's more
21 than mine. But he pled guilty to six counts of drug
22 distribution in Southwest Michigan. The drugs were heroin
23 and cocaine base in this particular case. Cocaine base, of
24 course, is known as "crack cocaine."

25 The presentence writer, Ms. Pakiela, prepared a

1 thorough presentence investigation report and came up with
2 an offense level of 31 and a criminal history category of
3 six. That's based on the career offender status.

4 I've reviewed, once again for the record, the
5 crimes and the state documents showing his convictions. I
6 won't repeat them, but I will add that the offense in
7 paragraph 57 sets forth an assault on a woman, and I
8 mentioned that again -- I mean, I mentioned that. But
9 that's while he was on parole. That offense occurred in
10 2012. He was -- the parole was the State of Michigan. He
11 was sentenced to 188 months, or 180 months up to that for
12 the home invasion and domestic violence by a state court
13 judge.

14 I've already pointed out that his objection to
15 the presentence writer's determination that the crimes
16 committed in paragraphs 55 and 56 are controlled substance
17 offenses under the law of Michigan, and I've cited the case
18 that dealt with that particular issue regarding these
19 particular subsections of the overall statute.

20 It appears that Mr. Williams' mother, who was
21 mentioned pretty much predominantly in the brief filed by
22 the defendant, is bipolar and on medication, and she has
23 health problems. It noted also that she was also the
24 victim of domestic violence.

25 Mr. Williams himself has three children whom he

1 sees from time to time. He's not current on his child
2 support. As I've mentioned earlier, a disturbing thing is
3 that Mr. Williams tested positive for cocaine while on bond
4 in this case. This could have cost him loss of a three
5 point deduction. He might not think that he needs drug
6 treatment program, but I'm happy to hear it from Mr. Graham
7 that he says now that he might benefit from it and maybe
8 thinks he will benefit from it, but I'm saying might,
9 because you never know what's going to happen. It could
10 possibly help.

11 Importantly, as I've said before, he's never
12 held a job. He is a professional drug dealer. Up until he
13 was caught here he showed no desire to be employed. And
14 not only that, it becomes more difficult to become
15 employed, and that's one of the things that supervised
16 release can help him with because they do find jobs for
17 people, especially in this economy. You know, ten years
18 ago we used to complain that there were no jobs available,
19 and now there are no workers available. Everything has
20 changed. Probation office can help him do that, but he has
21 to decide what kind of work he wants. He was enrolled in a
22 vocational program and either dropped out or failed every
23 one of the courses. He got zero credit out of any of those
24 courses that he attended.

25 I'm sorry to say that based on his history,

1 which talks louder than promises and hopes, he presents a
2 risk to society. He deals drugs for money and he's beaten
3 up people. He violates his bond. Now he says he has
4 accepted the idea that he cannot kick the drug habit on his
5 own. He apparently enjoys the drugs. His support has come
6 from selling drugs, and as I mentioned before, that is an
7 occupation that can be passed down to his children. I
8 wouldn't say that being a drug dealer is a role model for
9 any father, and I don't think even drug dealers would say
10 that. But all too often we see this kind of generational
11 learning here in court.

12 The guideline range of custody is 188 to 235
13 months. I will accept Mr. Graham's motion for a downward
14 variance and buy in a little bit to the fact that his prior
15 convictions were marijuana. I think marijuana might -- I
16 think myself marijuana is a very dangerous drug, not just
17 as a gateway to other drugs, but the destruction it can
18 cause to young people who are going to school stoned or
19 skipping school, all for fun, but there we are.

20 And of course the drugs here, heroin, and laced
21 with fentanyl, although that's not this particular case, is
22 deadly. In one week I sentenced two people for delivering
23 small amounts of heroin that, unknown to the guy that was
24 delivering them, were laced with fentanyl, and two deaths
25 (snapping fingers), just like that. In one week I

1 sentenced two guys doing that. You touch that stuff and
2 you can get very, very sick or die.

3 So what do I do? Be my -- because I want to
4 give Mr. Williams a chance. It would be my intent to
5 impose a sentence of 140 months -- well, just a minute. I
6 have a different number down here. Just a minute. Well,
7 here we go.

8 Well, make it 140 months. That's four years off
9 of the 188 that was recommended to me. Why do that? Hope
10 sometimes triumphs over experience, especially when a guy
11 has to spend that much time. Supervised release -- okay,
12 just bear with me -- of four years on each count to run
13 concurrently. Special conditions of supervised release.
14 He'd need a program of treatment for substance abuse
15 because of his problems arising from his substance abuse
16 currently. Provide the probation officer with access to
17 requested financial information, which will help the
18 probation officer determine and verify that he has gainful
19 employment, and will help explain where money came from if
20 defendant suddenly shows wealth from uncertain sources, and
21 it also deprives defendant of a reason for dealing drugs
22 because -- if he can show employment. And there was one
23 other one that's in the presentence report. Participate in
24 a cognitive behavioral program as directed by the probation
25 officer. It gives him the opportunity to understand the

1 reasons for his unlawful behavior and develop means to
2 resist criminal activity. Testing and treatment. Those
3 three special conditions will be in the sentence. No fine.
4 Special assessment of a hundred dollars on each count for a
5 total of \$600, and a fortified.

6 Have I hit everything there, counsel?

7 MS. SHEKMER: You have, your Honor.

8 THE COURT: Mr. Graham?

9 MR. GRAHAM: Your Honor, would you be willing to
10 recommend RDAP and recommend --

11 THE COURT: Yeah, we'll recommend the vocational
12 training, Greenville or Pekin, and the residential drug
13 treatment program. All right. Anything else? Any
14 objection?

15 MR. GRAHAM: No, your Honor.

16 THE COURT: Okay. Respectfully, okay, pursuant
17 to the Sentencing Reformed Act of 1984, it is the judgment
18 of the Court that the defendant, Dagone Lentell Williams,
19 is hereby committed to the custody of Bureau of Prisons for
20 a term of 140 months on each counts one through six, with
21 all terms to be served concurrently. Upon release from
22 imprisonment he should be placed on supervised release for
23 a term of four years on each Count One through Six, with
24 all terms to run concurrently. Within 72 hours of release
25 from the custody of Bureau of Prisons, he shall report in

1 person to the probation office of the district to which he
2 is released. While on supervised release he shall comply
3 with the mandatory and standard conditions of supervision,
4 including DNA collection, drug testing, no firearms,
5 destructive devices, or dangerous weapons, and comply with
6 the following special conditions, which I've already
7 indicated. And I won't read all these, the program of
8 testing and treatment for substance abuse, cognitive
9 behavioral treatment program, and provide the probation
10 officer with access to any requested financial information.
11 It's further ordered the defendant shall pay the United
12 States a special assessment of \$100 on each Count One
13 through Six for a total of \$600, which will be due
14 immediately. He doesn't have the ability to pay a fine,
15 and therefore the fine will be waived.

16 Mr. Williams you have the right to appeal your
17 sentence. If you can't afford a lawyer, one will be
18 appointed for you and furnished with those portions of the
19 sentencing transcript you need for your appeal. But you
20 have to tell Mr. Graham that you want to appeal, and he has
21 to file the document within 14 days of today. That means
22 you can't wait 14 days. That means you have to let him
23 know in about seven days so that he can get the document
24 prepared and appropriately filed. Do you understand that,
25 sir?

1 MR. WILLIAMS: Yes, your Honor.

2 THE COURT: All right. Anything further from
3 the government?

4 MS. SHEKMER: No, thank you, your Honor.

5 THE COURT: Mr. Graham?

6 MR. GRAHAM: None, your Honor, thank you.

7 THE COURT: All right, we're adjourned. Thank
8 you.

9 Oh, and you have the same amount of time to
10 appeal, Ms. Shekmer.

11 (At 11:43 a.m., proceedings concluded.)

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CERTIFICATE OF REPORTER

I, Bonnie L. Rozema, CER, do hereby certify that the foregoing transcript consisting of 31 pages, is a complete, true, and accurate transcript of the proceedings and testimony, to the best of my ability from the audio recording, held in this case on March 28, 2018.

I do further certify that I prepared the foregoing transcript.

/s/ Bonnie L. Rozema

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Notary Public in and for
Kent County, Michigan
My commission expires:
March 26, 2019
Acting in the County of Kent