NO. _____

IN THE
SUPREME COURT
OF THE
UNITED STATES OF AMERICA

MARTIN PAUL DE-LA-ROSA,
Petitioner

v.

UNITED STATES OF AMERICA,
Respondent

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

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Martin Paul De-La-Rosa

QUESTION PRESENTED FOR REVIEW

The Court of Appeals erred by not requiring the District Court to correctly apply the Federal Sentencing Guidelines. Specifically, the sentencing court 1) incorrectly calculated the amount of methamphetamine (actual) under Section 2D1.1(c) of the Federal Sentencing Guidelines and 2) incorrectly calculated the Defendant's criminal history points under Sections 4A1.1 & 4A1.2 of the Federal Sentencing Guidelines.

Does a sentencing court have to get its math correct when calculating the applicable federal sentencing guidelines?

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OPINION BELOW

The opinion from the Honorable Fifth Circuit Court of Appeals was issued on February 6, 2019, was not selected for publication in the Federal Reporter, and is attached hereto as Appendix A.

The criminal judgment from the Honorable United States District Court for the Western District of Texas was pronounced on October 6, 2017, signed on October 6, 2017, and is attached hereto as Appendix B.

JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254. The date on which the United States Court of Appeals decided this case was February 6, 2019 and no petition for rehearing was filed with said court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 2D1.1(c) note B of the 2016 Federal Sentencing Guidelines provides that the term "methamphetamine (actual)" refer to the weight of the controlled

substance, itself, contained in the mixture or substance. For example, a mixture weighing 10 grams containing methamphetamine at 50% purity contains 5 grams of methamphetamine (actual). In the case of a mixture or substance containing …methamphetamine, use the offense level determined by the entire weight of the mixture or substance, or the offense level determined by the weight of the…methamphetamine (actual), whichever is greater.

Section §4A1.2(e) of the 2016 Federal Sentencing Guidelines entitled "Applicable Time Period" provides that:

(1) Any prior sentence of imprisonment exceeding one year and one month that was imposed within fifteen years of the defendant's commencement of the instant offense is counted. Also count any prior sentence of imprisonment exceeding one year and one month, whenever imposed, that resulted in the defendant being incarcerated during any part of such fifteen-year period.

(2) Any other prior sentence that was imposed within ten years of the defendant's commencement of the instant offense is counted.

(3) Any prior sentence not within the time periods specified above is not counted.

(4) The applicable time period for certain sentences resulting from offenses committed prior to age eighteen is governed by § 4A1.2(d)(2).

Section 4A1.1 of the 2016 Federal Sentencing Guidelines entitled "Criminal History Category" provides that:

The total points from subsections (a) through (e) determine the criminal history category in the Sentencing Table in Chapter Five, Part A.

(a) Add 3 points for each prior sentence of imprisonment exceeding one year and one month.

(b) Add 2 points for each prior sentence of imprisonment of at least sixty days not counted in (a).

(c) Add 1 point for each prior sentence not counted in (a) or (b), up to a total of 4 points for this subsection.

(d) Add 2 points if the defendant committed the instant offense while under any criminal justice sentence, including probation, parole, supervised release, imprisonment, work release, or escape status.

(e) Add 1 point for each prior sentence resulting from a conviction of a crime of violence that did not receive any points under (a), (b), or (c) above because such sentence was treated as a single sentence, up to a total of 3 points for this subsection.

STATEMENT OF THE CASE

This case involves the incorrect application of the Federal Sentencing Guidelines. The sentencing court incorrectly calculated: 1) the quantity of methamphetamine (actual) that was attributable to the De-La-Rosa by not applying

the purity rate (calculated 88 ounces instead of 84.92 ounces), and 2) De-La-Rosa's criminal history points because one point was incorrectly added for a misdemeanor sentence of less than 60 days that was over ten years old (calculated 8 points instead of 7 points). The Court of Appeals affirmed the sentencing court's judgment because the corrections would not have changed the applicable guideline range and category.

Specifically, this case is an appeal from a prosecution under 21 U.S.C. 846 {21 U.S.C. 841(a)(1) & (b)(1)(A)} for conspiracy to possess with the intent to distribute and distribution of methamphetamine, a schedule II controlled substance. The indictment was filed in this case on December 13, 2016. (ROA.16) De-La-Rosa pled guilty on May 7, 2017. (ROA.111)

The Presentence Report (PSR) was prepared on August 3, 2017 (ROA.198) and disclosed to De-La-Rosa on August 14, 2017 (ROA.229). In the "Defendant's Role" section of the PSR, De-La-Rosa was held responsible "from October to December 2016" for 2.9 kg. of methamphetamine (actual) by applying a purity rate of 96.5% to a quantity of 3061.75 grams or 108 ounces (ROA.211-212).

The PSR also calculated a total criminal history score of 8 for De-La-Rosa (ROA.219), which included one point for a conviction on 9/14/2006 for possession of marihuana under 2 ounces for which De-La-Rosa received a 45-day jail sentence (ROA.216).

De-La-Rosa timely filed several objections that, in sum, challenged the

amount of methamphetamine (actual) for which he was responsible. (ROA.191, 230-234) But, there was no objection made as to the incorrect addition of the one criminal history point for the 2006 possession of marihuana conviction.

At the sentencing hearing on October 6, 2017, the District Court received testimony from the Government's case agent that the amount of substance attributable to De-La-Rosa was approximately 88 ounces and had a purity rate of 95 to 96 percent. (ROA.184, 187) This testimony was substantively unchallenged, and the District Court used that testimony as the basis for denying De-La-Rosa's objections, adopting the PSR, and applying the federal sentencing guidelines. (ROA.191) Specifically, the District Court stated:

> So, first -- taking the objections first. I understand the gist of your objections to be the basis for the finding of a -- an amount of methamphetamine that would justify a level 36 score. And I'm satisfied by the testimony of the Government Agent, based on a careful review of the phone calls as well as comparing that to information that he received from other sources, that was consistent; that even if I were not to accept 2.9 number within the Presentence Investigation Report, I'm certainly satisfied that it's using -- if we were to use a number that I do have confidence in, of 88 ounces, then that still keeps us within the range of 36, which over 1.5 kilograms of methamphetamine. And so, because I find that information to be credible and reliable, I will overrule the three objections regarding the amount of methamphetamine. (ROA.191-192)

However, the District Court failed to reduce the 88 ounces by the applicable purity rate, which based upon the Court's adoption of the PSR would have

presumably been 96.5%.[1] No objection was made in the District Court to this failure.

Based upon a base offense level of 36 with a total offense level of 35 and a total of 8 criminal history points with a criminal history category of IV, the applicable guideline rage was 235 to 293 months. (ROA.191-193, 226) De-La-Rosa was sentenced to 235 months of incarceration, five years supervised release, no fine, and a $100 special assessment. (ROA.195) Notice of appeal was given on 10/20/2017. (ROA.99)

REASONS FOR GRANTING THE PETITION

This Honorable Court should grant this petition because the Fifth Circuit Court of Appeals has decided an important question of federal law in a way that conflicts with the relevant decisions of this Court or has so far departed from the accepted and usual course of judicial proceedings, and sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power. Rule 10 of the Rules of the United States Supreme Court.

Summary

In sum, this Court has ruled that a sentencing court must accurately calculate the federal sentencing guidelines and an incorrect calculation should generally be reversed for correction so the public can have confidence in judicial proceedings.

[1] The Purity Rate was unchallenged by De-La-Rosa at trial and there is no basis by which a challenge is first being raise on appeal herein

Here, the sentencing court calculated the federal sentencing guidelines incorrectly, but, the Fifth Circuit affirmed the sentencing court because the incorrect calculation did not result in a change of the applicable federal sentencing guideline range; i.e., De-La-Rosa failed to demonstrate a reasonable probability that, but for the sentencing court's error, he would have received a lower sentence, *citing* United States v. Davis, 602 F.3d 643, 647 (5th Cir. 2010). Opinion pg. 2.

Does a sentencing court have to get its (federal sentencing guideline) math correct?

Analysis

The Guidelines' central role in sentencing means that an error related to the Guidelines can be particularly serious. A district court that improperly calculates a defendant's Guidelines range, for example, has committed a significant procedural error. Molina-Martinez v. United States, 136 S.Ct. 1338, 1346 (2016) *citing* Gall v. United States, 128 S.Ct. 586 (2007). The Guidelines are not only the starting point for most federal sentencing proceedings but also the lodestar. Molina-Martinez ,136 S.Ct. at 1346.

When a defendant is sentenced under an incorrect Guidelines range whether or not the defendant's ultimate sentence falls within the correct range – the error itself can, and most often will, be sufficient to show a reasonable probability of a different outcome absent the error. In other words, an error resulting in a higher

range than the Guidelines provide usually establishes a reasonable probability that a defendant will serve a prison sentence that is more than necessary to fulfill the purposes of incarceration under 18 U.S.C. 3553(a). To a prisoner, this prospect of additional time behind bars is not some theoretical or mathematical concept. Any amount of actual jail time is significant and has exceptionally severe consequences for the incarcerated individual and for society which bears the direct and indirect costs of incarceration. The possibility of additional jail time thus warrant serious consideration in a determination whether to exercise discretion under Rule 52(b). It is crucial in maintaining public perception of fairness and integrity in the justice system that courts exhibit regard for the fundamental rights and respect for prisoners as people. Rosales-Mireles v. United States, 136 S.Ct. 1897, 1907 (2018).

The risk of unnecessary deprivation of liberty particularly undermines the fairness, integrity, or public reputation of judicial proceedings in the context of a plain Guidelines error because of the role the district court plays in calculating the range and the relative ease of correcting the error. Unlike cases where trial strategies in retrospect, might be criticized for leading to a harsher sentence, Guidelines miscalculations ultimately result from judicial error. That was especially so here where the district court's error in imposing Rosales' sentence was based upon a mistake made in the presentence investigation report by the probation department, which works on behalf of the district court. Moreover, a remand for resentencing,

while not costless, does not invoke the same difficulties as a remand for retrial does. A resentencing is a brief event, normally taking less than a day and requiring the attendance of only the defendant, counsel, and court personnel. Rosales, S.Ct. at 1908.

In broad strokes, the public legitimacy of our justice system relies on procedures that are neutral, accurate, consistent, trustworthy, and fair and that provide opportunities for error correction. Id.

Closing

Does the Court mean that the sentencing court should get the math correct or just close enough? This is the question that we ask the Court to answer in its review of this case.

PRAYER

WHEREFORE PREMISES CONSIDERED, Martin Paul De-La-Rosa prays that the Court will grant this petition for writ of certiorari to the Honorable Fifth Circuit Court of Appeals.

Respectfully Submitted,

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Denton B. Lessman
TX Bar No. 24042474
Attorney for Petitioner,
Martin Paul De-La-Rosa

CERTIFICATE OF SERVICE

I, the undersigned attorney, hereby certify that a true and correct copy of the foregoing document has been served upon the following party(ies) via CMRRR on May 7, 2019:

Solicitor General of the United States
Room 5616, Department of Justice
950 Pennsylvania Ave. N.W.
Washington, DC 20530-001

United States Attorney for the Western District of Texas
Appellate Division
601 NW Loop 410, Suite 600
San Antonio, Texas 78216

Martin Paul De-La-Rosa
BOP#83662-380
c/o BOP FCI Polluck
1000 Airbase Road
Polluok, LA 71467

Denton B. Lessman
Attorney for Martin Paul De-La-Rosa

APPENDIX

Appendix A Fifth Circuit Panel Opinion

Appendix B Criminal Judgment from Western District of Texas, Waco Division

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17-50939
Summary Calendar

D.C. Docket No. 6:16-CR-317-5

United States Court of Appeals
Fifth Circuit
FILED
February 6, 2019
Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

MARTIN PAUL DE-LA-ROSA,

Defendant - Appellant

Appeal from the United States District Court for the
Western District of Texas

Before BENAVIDES, HAYNES, and WILLETT, Circuit Judges.

J U D G M E N T

This cause was considered on the record on appeal and the briefs on file.

It is ordered and adjudged that the judgment of the District Court is affirmed.

Certified as a true copy and issued as the mandate on Feb 28, 2019

Attest: Lyle W. Cayce

Clerk, U.S. Court of Appeals, Fifth Circuit

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17-50939
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
February 6, 2019
Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

MARTIN PAUL DE-LA-ROSA,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 6:16-CR-317-5

Before BENAVIDES, HAYNES, and WILLETT, Circuit Judges.

PER CURIAM:*

Martin Paul De-La-Rosa appeals the 235-month, within-guidelines sentence imposed following his guilty plea conviction of conspiracy to possess with intent to distribute a mixture or substance containing methamphetamine. He argues that the district court erred in failing to apply the purity rate to the drug quantity attributed to him at the sentencing hearing and in assessing a

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

criminal history point for a prior sentence that was imposed outside the applicable time period of U.S.S.G. § 4A1.2(e).

As De-La-Rosa correctly concedes, our review is for plain error. To show plain error, he must show a forfeited error that is clear or obvious and that affects his substantial rights. *Puckett v. United States*, 556 U.S. 129, 135 (2009). If he makes such a showing, we have the discretion to correct the error but should do so only if it seriously affects the fairness, integrity, or public reputation of judicial proceedings. *Id.*

At a minimum, De-La-Rosa has not satisfied the third prong of the plain error test with regard to either alleged error. As to whether his substantial rights were affected, his base offense level and guidelines range remain the same after the 96.5 per cent purity rate is applied to the 88 ounces of methamphetamine attributed to De-La-Rosa. Likewise, his criminal history category and guidelines range remain the same after subtraction of the contested criminal history point. De-La-Rosa thus fails to demonstrate "a reasonable probability that, but for the district court's error[s], [he] would have received a lower sentence." *United States v. Davis*, 602 F.3d 643, 647 (5th Cir. 2010).

AFFIRMED.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

February 28, 2019

Ms. Jeannette Clack
Western District of Texas, Waco
United States District Court
800 Franklin Avenue
Waco, TX 76701

No. 17-50939 USA v. Martin De-La-Rosa
USDC No. 6:16-CR-317-5

Dear Ms. Clack,

Enclosed is a copy of the judgment issued as the mandate and a copy of the court's opinion.

Sincerely,

LYLE W. CAYCE, Clerk

Sabrina B. Short

By: _____
Sabrina B. Short, Deputy Clerk
504-310-7817

cc:
Mr. Martin Paul De-La-Rosa
Mr. Joseph H. Gay Jr.
Mr. Denton Bryan Lessman

APPENDIX B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

UNITED STATES OF AMERICA

v.

Case Number: 6:16-CR-00317(5)- RP
USM Number: 83662-380

MARTIN PAUL DE-LA-ROSA
Aka: Martin De-La-Rosa

Defendant.

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant, MARTIN PAUL DE-LA-ROSA, was represented by Whitney Ely Fanning.

The defendant pled guilty to Count(s) 1s of the Superseding Indictment on May 2, 2017. Accordingly, the defendant is adjudged guilty of such Count(s), involving the following offense(s):

Title & Section	Nature of Offense	Offense Ended	Count
21 U.S.C. § 846{21:841(a)(1) and (b)(1)(A)}	Conspiracy To Possess With Intent To Distribute Methamphetamine, A Schedule II Controlled Substance	12/15/2016	1s

As pronounced on October 6, 2017, the defendant is sentenced as provided in pages 2 through 6 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

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

Signed this 6th day of October, 2017.

ROBERT PITMAN
United States District Judge

DEFENDANT: MARTIN PAUL DE-LA-ROSA
CASE NUMBER: 6:16-CR-00317(5) -RP

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of 235 months as to count 1s.

The defendant shall remain in custody pending service of sentence.

The Court recommends to the Bureau of Prisons that the defendant be placed in a federal facility as close to FCI Three Rivers as possible for family visitation.

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

DEFENDANT: MARTIN PAUL DE-LA-ROSA
CASE NUMBER: 6:16-CR-00317(5) -RP

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **five (5) years.**

While on supervised release, the defendant shall comply with the mandatory, standard and if applicable, the special conditions that have been adopted by this Court, and shall comply with the following additional conditions:

DEFENDANT: MARTIN PAUL DE-LA-ROSA
CASE NUMBER: 6:16-CR-00317(5) -RP

CONDITIONS OF SUPERVISION

Mandatory Conditions:

[1] The defendant shall not commit another federal, state, or local crime during the term of supervision.

[2] The defendant shall not unlawfully possess a controlled substance.

[3] The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release on probation or supervised release and at least two periodic drug tests thereafter (as determined by the court), but the condition stated in this paragraph may be ameliorated or suspended by the court if the defendant's presentence report or other reliable sentencing information indicates low risk of future substance abuse by the defendant.

[4] The defendant shall cooperate in the collection of DNA as instructed by the probation officer, if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. § 14135a).

[5] If applicable, the defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et. seq.*) as instructed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which the defendant resides, works, is a student, or was convicted of a qualifying offense.

[6] If convicted of a domestic violence crime as defined in 18 U.S.C. § 3561(b), the defendant shall participate in an approved program for domestic violence.

[7] If the judgment imposes a fine or restitution, it is a condition of supervision that the defendant pay in accordance with the Schedule of Payments sheet of the judgment.

[8] The defendant shall pay the assessment imposed in accordance with 18 U.S.C. § 3013.

[9] The defendant shall notify the court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution, fines or special assessments.

Standard Conditions:

[1] The defendant shall report to the probation office in the federal judicial district where he or she is authorized to reside within 72 hours of release from imprisonment, unless the probation officer instructs the defendant to report to a different probation office or within a different time frame.

[2] After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when to report to the probation officer, and the defendant shall report to the probation officer as instructed.

[3] The defendant shall not knowingly leave the federal judicial district where he or she is authorized to reside without first getting permission from the court or the probation officer.

[4] The defendant shall answer truthfully the questions asked by the probation officer.

[5] The defendant shall live at a place approved by the probation officer. If the defendant plans to change where he or she lives or anything about his or her living arrangements (such as the people the defendant lives with), the defendant shall 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, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change

[6] The defendant shall allow the probation officer to visit the defendant at any time at his or her home or elsewhere, and the defendant shall permit the probation officer to take any items prohibited by the conditions of the defendant's supervision that are observed in plain view.

DEFENDANT: MARTIN PAUL DE-LA-ROSA
CASE NUMBER: 6:16-CR-00317(5) -RP

[7] The defendant shall work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses the defendant from doing so. If the defendant does not have full-time employment, he or she shall try to find full-time employment, unless the probation officer excuses the defendant from doing so. If the defendant plans to change where the defendant works or anything about his or her work (such as the position or job responsibilities), the defendant shall 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, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change.

[8] The defendant shall not communicate or interact with someone the defendant knows is engaged in criminal activity. If the defendant knows someone has been convicted of a felony, the defendant shall not knowingly communicate or interact with that person without first getting the permission of the probation officer.

[9] If the defendant is arrested or questioned by a law enforcement officer, the defendant shall notify the probation officer within 72 hours.

[10] The defendant shall not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified, for the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).

[11] The defendant shall not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.

[12] If the probation officer determines that the defendant poses a risk to another person (including an organization), the probation officer may require the defendant to notify the person about the risk and the defendant shall comply with that instruction. The probation officer may contact the person and confirm that the defendant has notified the person about the risk.

[13] The defendant shall follow the instructions of the probation officer related to the conditions of supervision.

[14] If the judgment imposes other criminal monetary penalties, it is a condition of supervision that the defendant pay such penalties in accordance with the Schedule of Payments sheet of the judgment.

[15] If the judgment imposes a fine, special assessment, restitution, or other criminal monetary penalties, it is a condition of supervision that the defendant shall provide the probation officer access to any requested financial information.

[16] If the judgment imposes a fine, special assessment, restitution, or other criminal monetary penalties, it is a condition of supervision that the defendant shall not incur any new credit charges or open additional lines of credit without the approval of the probation officer, unless the defendant is in compliance with the payment schedule.

[17] If the defendant is excluded, deported, or removed upon release on probation or supervised release, the term of supervision shall be a non-reporting term of probation or supervised release. The defendant shall not illegally re-enter the United States. If the defendant is released from confinement or not deported, or lawfully re-enters the United States during the term of probation or supervised release, the defendant shall immediately report in person to the nearest U.S. Probation Office.

DEFENDANT: MARTIN PAUL DE-LA-ROSA
CASE NUMBER: 6:16-CR-00317(5) -RP

CRIMINAL MONETARY PENALTIES/SCHEDULE

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth. Unless the Court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. Criminal Monetary Penalties, except those payments made through Federal Bureau of Prisons' Inmate Financial Responsibility Program shall be paid through the Clerk, United States District Court, 800 Franklin Ave, Room 380, Waco, TX 76701. The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

If the defendant is not now able to pay this indebtedness, the defendant shall cooperate fully with the office of the United States Attorney, the Federal Bureau of Prisons and/or the United States Probation Office to make payment in full as soon as possible, including during any period of incarceration. Any unpaid balance at the commencement of a term of probation or supervised release shall be paid on a schedule of monthly installments to be established by the U.S. Probation office and approved by the Court.

	Assessment	Fine	Restitution
TOTALS	$100.00	$.00	$.00

SPECIAL ASSESSMENT

It is ordered that the defendant shall pay to the United States a special assessment of $100.00. Payment of this sum shall begin immediately.

FINE

The fine is waived because of the defendant's inability to pay.

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 above. However, pursuant to 18 U.S.C. § 3664(i), all non-federal victims must be paid before the United States is paid.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. §3614.

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

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

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.