

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

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IN THE  
SUPREME COURT OF THE UNITED STATES

\_\_\_\_\_  
JODY LANARDO WHITE,

*Petitioner*

v.

UNITED STATES OF AMERICA

*Respondent*

\_\_\_\_\_  
APPENDIX  
\_\_\_\_\_

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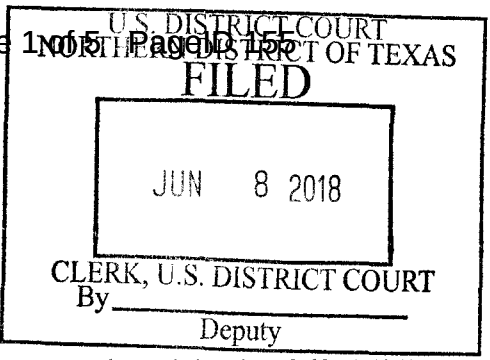
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Appendix B Judgment and Opinion of Fifth Circuit

## APPENDIX A



**United States District Court**  
Northern District of Texas  
Fort Worth Division

UNITED STATES OF AMERICA §  
v. §  
JODY LANARDO WHITE §

Case Number: 4:17-CR-263-A(01)

**JUDGMENT IN A CRIMINAL CASE**

The government was represented by Assistant United States Attorney Megan J. Fahey. The defendant, JODY LANARDO WHITE, was represented by Federal Public Defender through Assistant Federal Public Defender Cody Cofer.

The defendant pleaded guilty on February 15, 2018 to the one count indictment filed on December 13, 2017. Accordingly, the court ORDERS that the defendant be, and is hereby, adjudged guilty of such count involving the following offense:

<u>Title &amp; Section / Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count</u>
18 U.S.C. §§ 922(g)(1) Felon in Possession of Firearm	11/8/2017	1

As pronounced and imposed on June 8, 2018, the defendant is sentenced as provided in this judgment.

The court ORDERS that the defendant immediately pay to the United States, through the Clerk of this Court, a special assessment of \$100.00.

The court further ORDERS that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence address, or mailing address, as set forth below, until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court, through the clerk of this court, and the Attorney General, through the United States Attorney for this district, of any material change in the defendant's economic circumstances.

IMPRISONMENT

The court further ORDERS that the defendant be, and is hereby, committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 120 months. This sentence shall run concurrently to any sentences which may be imposed in Case Nos. 1521851D; 1521854D; 1521855D; and 1521856D, in the 213<sup>th</sup> District Court of Tarrant County.

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

SUPERVISED RELEASE

The court further ORDERS that, upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years and that while on supervised release, the defendant shall comply with the following conditions:

1. The defendant shall not commit another federal, state, or local crime.
2. The defendant shall not unlawfully possess a controlled substance.
3. The defendant shall cooperate in the collection of DNA as directed by the U.S. Probation Officer, as authorized by the Justice for All Act of 2004.
4. The defendant shall not possess a firearm, ammunition, destructive device, or any dangerous weapon.
5. The defendant shall report in person to the U.S. Probation Office in the district to which the defendant is released from the custody of the Federal Bureau of Prisons within 72 hours of release.
6. The defendant shall refrain from any unlawful use of a controlled substance, submitting to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer pursuant to the mandatory drug testing provision of the 1994 crime bill.
7. The defendant shall participate in a program approved by the probation officer for treatment of narcotic or drug or alcohol dependency that will include testing for the detection of substance use, abstaining from the use of alcohol and all other intoxicants during and after completion of treatment, contributing to the costs of services rendered at the rate of at least \$25 per month.
8. The defendant shall participate in mental health treatment services as directed by the probation officer until successfully discharged, which services may include prescribed medications by a licensed physician, with the defendant contributing to the costs of services rendered at a rate of at least \$25 per month.
9. The defendant shall also comply with the Standard Conditions of Supervision as hereinafter set forth.

Standard Conditions of Supervision

1. The defendant shall report in person to the probation office in the district to which the defendant is released within seventy-two (72) hours of release from the custody of the Bureau of Prisons.
2. The defendant shall not possess a firearm, destructive device, or other dangerous weapon.

3. The defendant shall provide to the U.S. Probation Officer any requested financial information.
4. The defendant shall not leave the judicial district where the defendant is being supervised without the permission of the Court or U.S. Probation Officer.
5. The defendant shall report to the U.S. Probation Officer as directed by the court or U.S. Probation Officer and shall submit a truthful and complete written report within the first five (5) days of each month.
6. The defendant shall answer truthfully all inquiries by the U.S. Probation Officer and follow the instructions of the U.S. Probation Officer.
7. The defendant shall support his dependents and meet other family responsibilities.
8. The defendant shall work regularly at a lawful occupation unless excused by the U.S. Probation Officer for schooling, training, or other acceptable reasons.
9. The defendant shall notify the probation officer at least ten (10) days prior to any change in residence or employment.
10. The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
11. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
12. The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the U.S. Probation Officer.
13. The defendant shall permit a probation officer to visit him at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the U.S. Probation Officer.
14. The defendant shall notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer.
15. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
16. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

The court hereby directs the probation officer to provide defendant with a written statement that sets forth all the conditions to which the term of supervised release is subject, as contemplated and required by 18 U.S.C. § 3583(f).

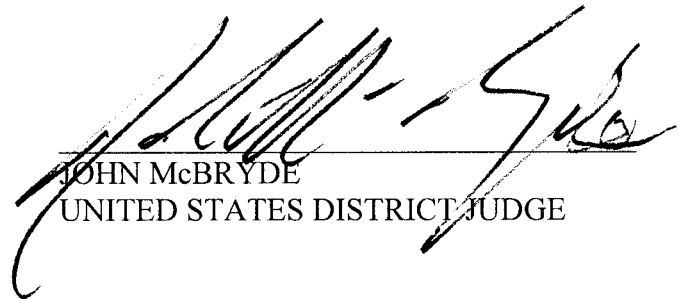
FINE

The court did not order a fine because the defendant does not have the financial resource or future earning capacity to pay a fine.

STATEMENT OF REASONS

The "Statement of Reasons" and personal information about the defendant are set forth on the attachment to this judgment.

Signed this the 8th day of June, 2018.



JOHN McBRYDE  
UNITED STATES DISTRICT JUDGE

RETURN

I have executed the imprisonment part of this Judgment as follows:

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

Defendant delivered on \_\_\_\_\_, 2018 to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this Judgment.

United States Marshal for the  
Northern District of Texas

By \_\_\_\_\_  
Deputy United States Marshal



## APPENDIX B

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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No. 18-10733  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

March 15, 2019

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JODY LANARDO WHITE,

Defendant-Appellant

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:17-CR-263-1

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Before DENNIS, CLEMENT, and OWEN, Circuit Judges.

PER CURIAM:\*

Jody Lanardo White appeals the sentence imposed following his guilty plea conviction for being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1). The district court imposed an upward variance to 120 months of imprisonment from the advisory guidelines range of 70 to 87 months.

For the first time, White argues that the district court erred by relying on a bare arrest record of his charge of a 1983 theft of less than five dollars at

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

## No. 18-10733

nine years of age. Because White failed to challenge the district court's reliance on this prior arrest, our review is for plain error only. *United States v. Neal*, 578 F.3d 270, 272 (5th Cir. 2009). Thus, 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 only if it "seriously affects the fairness, integrity, or public reputation of judicial proceedings." *Id.* The burden is on White to "demonstrate[] a reasonable probability that he would have received a lesser sentence but for the court's consideration of the 'bare' arrest record." *United States v. Williams*, 620 F.3d 483, 496 (5th Cir. 2010).

"[F]or a non-Guidelines sentence, just as for a Guidelines sentence, it is error for a district court to consider a defendant's 'bare arrest record' at sentencing." *United States v. Johnson*, 648 F.3d 273, 278 (5th Cir. 2011). The term "bare arrest record," describes the reference "to the mere fact of an arrest—*i.e.* the date, charge, jurisdiction and disposition—without corresponding information about the underlying facts or circumstances regarding the defendant's conduct that led to the arrest." *United States v. Windless*, 719 F.3d 415, 420 (5th Cir. 2013) (internal quotation marks, brackets, and citation omitted). The record at issue here, White's 1983 arrest for theft under \$5, constitutes a bare arrest record that the district court arguably considered during sentencing. *See United States v. Jones*, 444 F.3d 430, 436 (5th Cir. 2006).

Even if the district court committed clear or obvious error by considering White's 1983 arrest, we must determine, in the context of plain-error review, "whether the consideration of prior arrests in conjunction with other, permissible, factors affected [White's] substantial rights." *Jones*, 444 F.3d at 436. In addition to the 1983 arrest, the court considered a number of other factors, including: White's "over 30-year history of criminal activity" which

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included 12 adjudicated convictions, his most recent conviction for failure to identify as a fugitive and providing officers with a false name, and the fact that the instant offense occurred while White was on parole for aggravated assault against a public servant and burglary of a habitation. Due to White's continued participation in criminal activity, the district court sought to impose the maximum possible sentence to "protect society as long as it can be protected in this case." Accordingly, the record reveals that the court gave significant weight to several valid 18 U.S.C. § 3553(a) factors, and the record does not show it gave weight to White's 1983 arrest. Accordingly, White has failed to demonstrate that, but for the court's consideration of the bare arrest, he would have received a lesser sentence. *See Williams*, 620 F.3d at 495-96 (holding that district court's "lengthy and weighted discussion of other significant" factors rebutted defendant's argument that his substantial rights were affected); *see also Jones*, 444 F.3d at 438.

Additionally, White contends that his prior Texas aggravated-assault conviction does not qualify as a crime of violence. White correctly acknowledges that this argument is foreclosed by circuit precedent and raises the issue only to preserve it for further review. *United States v. Guillen-Alvarez*, 489 F.3d 197, 198-201 (5th Cir. 2007) (holding Texas aggravated-assault conviction under Texas Penal Code Ann. § 22.02 qualifies as the enumerated offense of aggravated assault and is therefore a crime of violence); *see also United States v. Shepherd*, 848 F.3d 425, 427-28 (5th Cir. 2017).

The judgment of the district court is AFFIRMED.