No. 19-151

In the
Supreme Court of the United States

UNITED STATES OF AMERICA,
Petitioner,

v.

DOMINIC LADALE WALTON,
Respondent,

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

---

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

KEVIN JOEL PAGE
COUNSEL OF RECORD
FEDERAL PUBLIC DEFENDER'S OFFICE
NORTHERN DISTRICT OF TEXAS
525 GRIFFIN STREET, SUITE 629
DALLAS, TEXAS, 75202
(214) 767-2746

Counsel for Respondent

QUESTIONS PRESENTED

1. Whether there is a reasonable probability of a different result if this Court were to vacate the judgment below and remand the case, where the court below has recently found[1] the Armed Career Criminal Act inapplicable on materially identical facts?

2. Whether equity favors the use of the "GVR" mechanism where a veteran district judge has concluded that a two year sentence adequately satisfies the goals of sentencing set forth at 18 U.S.C. §3553(a) for a defendant who lacked any adult convictions for offenses committed after his 18th birthday, but where extensive litigation delays by the government have arguably enabled it to take advantage of volatility in the controlling law, and hence to demand a 15 year mandatory minimum for the peaceable possession of a firearm?

[1] *United States v. Owens*, 753 Fed. Appx. 209 (5th Cir. October 12, 2018)(unpublished).

TABLE OF CONTENTS

TABLE OF APPENDICES

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes

Miscellaneous

STATEMENT OF THE CASE

A. Facts

Respondent Dominic Ladale Walton turned 18 years old in October of 2000.[2] In July and August of that year, while he was 17 years old, he sustained three adult burglary convictions for offenses committed on just two days.[3] He would not suffer another felony conviction until February 1, 2017, when a federal judge assessed two years imprisonment for possessing a firearm in the instant case.[4]

The instant case arose from a motorcycle accident. Respondent's motorcycle collided with another vehicle on April 10, 2015, and a responding firefighter saw him drop a gun into a ditch by the road.[5] He was arrested, and pleaded guilty to violating 18 U.S.C. §922(g)(1).[6]

B. Sentencing

A Presentence Report (PSR) calculated a mandatory minimum punishment of 15 years imprisonment, and a maximum of life, due to the application of 18 U.S.C. §924(e), the Armed Career Criminal Act (ACCA).[7] ACCA applies when a §922(g) defendant has

---

[2] *See* (Record in the Court of Appeals at 136).

[3] *See* [Appendix A].

[4] *See* (Record in the Court of Appeals at 145-146); [Appendix B].

[5] *See* (Record in the Court of Appeals at 140).

[6] *See* (Record in the Court of Appeals at 37-43, 140).

[7] *See* (Record in the Court of Appeals at 153).

sustained three convictions for violent felonies committed on occasions different from each other.[8] The PSR regarded the three burglaries as qualifying "violent felonies."[9]

Before sentencing, the parties exchanged pleadings about ACCA.[10] The defense argued that ACCA should not be applied because: 1) the Texas burglary of a habitation statute does not constitute "burglary" as the term is used in ACCA, and 2) the government could not prove with cognizable documents that two of his burglaries occurred on separate occasions.[11] Specifically, the defense maintained that Tex. Penal Code §30.02(a)(3) reached conduct outside the definition of "burglary": entering a residence without having formed a preexisting intent to commit a crime.[12] The defense also said that the statute was broader than "generic burglary" because it could be committed by entering certain vehicles.[13] Finally, it noted that *United States v. Fuller*, 453 F.3d 274 (5th Cir. 2006), requires the government to establish that prior offenses occurred on separate occasions using only conclusive judicial records of the prior qualifying convictions.[14]

---

[8] *See* 18 U.S.C. §924(e).

[9] *See* (Record in the Court of Appeals at 142).

[10] *See* (Record in the Court of Appeals at 177-186, 202-220, 246-255).

[11] *See* (Record in the Court of Appeals at 177-186, 246-255).

[12] *See* (Record in the Court of Appeals at 177-182, 246-250).

[13] *See* (Record in the Court of Appeals at 177-182, 246-250).

[14] *See* (Record in the Court of Appeals at 182-186).

In an effort to substantiate the enhancement, the government introduced judgments, indictments, and judicial confessions associated with the prior burglary offenses.[15]These documents showed a common offense date of August 22, 2000 for two of the burglaries.[16]They named different victims, but said nothing about the habitation or habitations entered by the defendant.[17]

The district court ruled with the defense – it agreed that Texas burglary of a habitation is overbroad because it encompasses the entry of certain vehicles.[18] It thus found the proper sentencing range to be zero to ten years imprisonment, and imposed two years imprisonment.[19] The government objected to the ruling, but did not further specify the basis of its objection.[20]

C. Appeal

The government appealed. On May 22, 2017, it filed an Initial Brief relying on the Fifth Circuit's unpublished panel decision in *United States v. Herrold*, 685 Fed. Appx. 302 (5th Cir. April 11, 2017)(unpublished), *rehearing en banc granted by* 693 Fed. Appx. 272 (July 7, 2017), *opinion on rehearing* 883 F.3d 517 (Feb. 20, 2018)(*en banc*), *vacated and remanded by* __U.S.__, 139 S.Ct. 2712 (June 17, 2019), *opinion on remand*, __F.3d__, 2019

---

[15]*See* [Appendix A].

[16]*See* [Appendix A].

[17]*See* [Appendix A].

[18]*See* (Record in the Court of Appeals at 89).

[19]*See* (Record in the Court of Appeals at 109-110).

[20]*See* (Record in the Court of Appeals at 91).

WL 5288154 (October 18, 2019).[21] At the time of the Initial Brief, the last opinion issued in *Herrold* had held that Texas burglary offense qualifies as a "violent felony."[22] The Initial Brief also argued that the judicial records of the prior offenses sufficed to show burglaries on separate occasions, notwithstanding the common offense date, because it is impossible to be in two places at once.[23] Further, it noted that none of these documents expressly alleged, admitted, or found that Respondent acted as a mere accomplice.[24]

Answering, Respondent argued that Texas burglary did not qualify as a violent felony because it could be committed against certain vehicles, because it did not require truly unauthorized entry, and because it could be committed by entering a building without pre-existing intent to commit a crime. Further, he noted again that Fifth Circuit law required the government to prove with conclusive judicial records that the defendant's offenses occurred on separate occasions. The records did not, he argued, exclude the possibility that the offenses were committed simultaneously. As far as the records showed, Respondent might have acted only as an accomplice to multiple simultaneous burglaries committed by other people, or might have burgled adjoining structures.

---

[21] *See* Appellant's Brief in *United States v. Walton*, No. 17-10199, 2017 WL 2266148, at *13-14 (5th Cir. May 22, 2017).

[22] *See Herrold*, 685 Fed. Appx. at 303.

[23] *See* Appellant's Brief in *United States v. Walton*, No. 17-10199, 2017 WL 2266148, at *14-20 (5th Cir. May 22, 2017).

[24] *See* Appellant's Brief in *United States v. Walton*, No. 17-10199, 2017 WL 2266148, at *14-20 (5th Cir. May 22, 2017).

By the time the Reply Brief was due, the Fifth Circuit had agreed to decide *Herrold en banc*.[25] The government obtained a stay pending the result of *Herrold en banc*,[26] but the Fifth Circuit decided *Herrold* adversely to it.[27] Specifically, it held that the Texas burglary statute did not constitute a violent felony because it can be violated by entering a habitation without a pre-existing intent to commit a crime.[28] The *en banc* Fifth Circuit did not decide the vehicle question, though it did discuss the matter at length.[29] Nor did it decide or discuss the means by which offenses could be shown to occur on separate occasions.

The court below decided Respondent's case in his favor, affirming the judgment and citing the *en banc* opinion in *Herrold*.[30] Through a series of motions for stays and for extensions that began when its Reply Brief was due, the government succeeded in delaying its Petition for Certiorari until July 31, 2019.[31] By that time, this Court had held in *United States v. Stitt*, __U.S.__, 139 S.Ct. 399 (December 10, 2018), that burglary statutes criminalizing entry into certain vehicles may qualify as "violent felonies." It had also held

---

[25] *United States v. Herrold*, 693 Fed. Appx. 272 (July 7, 2017)(granting rehearing *en banc*), *opinion on rehearing* 883 F.3d 517 (Feb. 20, 2018)(*en banc*), *vacated and remanded by* __U.S.__, 139 S.Ct. 2712 (June 17, 2019), *opinion on remand*, __F.3d__, 2019 WL 5288154 (October 18, 2019).

[26] *See* [Appendix D].

[27] *See United States v. Herrold*, 883 F.3d 517 (Feb. 20, 2018)(*en banc*), *vacated and remanded by* __U.S.__, 139 S.Ct. 2712 (June 17, 2019), *opinion on remand*, __F.3d__, 2019 WL 5288154 (October 18, 2019).

[28] *See Herrold*, 883 F.3d at 531-536.

[29] *See id.* 537-541.

[30] *See* [Government's Appendix to Petition for Certiorari, at pp.1a-2a].

[31] *See* [Appendices C-N].

in *Quarles v. United States*, __U.S.__, 139 S.Ct. 1872 (June 10, 2019), that burglary offenses may constitute a "violent felony" even if they criminalize entry into a building without pre-existing intent to commit a crime.

The government now petitions this Court to grant *certiorari*, vacate the judgment below, and remand (GVR) in light of *Quarles*. Though the "separate occasions" issue was fully briefed by both parties below, the Petition makes no mention of it. As such, the Petition also overlooks an intervening Fifth Circuit decision holding that judicial confessions, indictments, and judgments naming common offense dates for multiple burglaries do not suffice to show offenses committed on separate occasions.[32]

On October 18, 2019, the Fifth Circuit affirmed the ACCA designation for the defendant in *Herrold*, holding that Texas burglary constitutes a violent felony under ACCA.[33]

---

[32] *See United States v. Owens*, 753 Fed. Appx. 209 (5th Cir. October 12, 2018)(unpublished).

[33] *See United States v. Herrold*, __F.3d__, 2019 WL 5288154 (October 18, 2019)(en banc). Because Mr. Herrold carries as an ACCA predicate a Texas drug trafficking offense, this most recent decision also has a reasonable chance of *vacatur* by this Court. The government has already conceded that ACCA cases relying on Texas drug offenses as predicates must be held pending *Shular v. United States*, __U.S.__, 139 S.Ct. 2773 (June 28, 2019). *See* Memorandum for the United States in *Mitchell v. United States*, No. 19-5309 (Filed August 26, 2019). This is an additional reason to believe that finality may not be quickly achieved in this case if the government's Petition is granted. Mr. Herrold may also present a circuit split to this Court on the question of whether a burglary offense qualifies as a "violent felony" if it may be committed by a an unintentional offense inside the burgled structure. *Compare Herrold*, 2019 WL 5288154, at *4 *with Chazen v. Marske*, 938 F.3d 851, 861 (7th Cir. Sept. 9, 2019) ("What we can say with confidence is that *Quarles* did not abrogate *Van Cannon's* conclusion that Minnesota burglary is broader than generic burglary because the state statute does not require proof of any intent at any point. Indeed, the Court expressly declined to address this issue in *Quarles*.").

ARGUMENT

The government asks that this Court grant *certiorari*, vacate the judgment below, and remand in light of *Quarles v. United States*, __U.S.__,139 S.Ct. 1872 (2019). This Court should deny the writ of *certiorari* for two reasons. First, *Quarles* cannot change the outcome of the case below. Second, granting *certiorari* in these circumstances would be inequitable, and would not serve the goals of the GVR mechanism.

1. GVR would be futile.

If the case is remanded, the court below will find insufficient cognizable evidence that the defendant's burglaries occurred on separate occasions. In the court below, *United States v. Fuller*, 453 F.3d 274 (5th Cir. 2006), limits the government to the "*Shepard*[34] documents" in showing that the defendant's offenses occurred on separate occasions.[35] The *Fuller* opinion also says that the government cannot meet that burden by showing that the defendant sustained distinct convictions for burglary on the same day – the Texas law of parties, it explains, authorizes separate convictions for simultaneous conduct.[36] Here, two of

---

[34] *Shepard v. United States*, 544 U.S. 13 (2005). *Shepard* held that if an ACCA defendant's prior statute of conviction encompasses statutory alternatives that do not meet the definition of a "violent felony," a sentencing court may only use certain conclusive judicial records ("*Shepard* documents") to determine whether the defendant was convicted of a qualifying form of the offense. *See Shepard v*, 544 U.S. at 16 ("...a later court determining the character of an admitted burglary is generally limited to examining the statutory definition, charging document, written plea agreement, transcript of plea colloquy, and any explicit factual finding by the trial judge to which the defendant assented.").

[35] *See Fuller*, 453 F.3d at 279.

[36] *See id.*

the judgments, indictments, and judicial confessions refer to a single offense date.[37] As such, the government failed its burden to show that the offenses occurred at different times.

As the government noted below, the Fifth Circuit has previously denied relief on this claim in some cases.[38] But in those cases, the judicial records of the prior convictions showed that the defendant's offenses occurred on different dates.[39] When the records show offenses on the same date, the court below treats this as insufficient proof that the offenses occurred at different times.[40] That is the case here.[41]

Because the government cannot show with cognizable documents that Respondent's two burglaries committed on separate occasions, the government cannot show three separately countable offenses. There is therefore no reasonable probability of a different result after *Quarles*. Any challenge to Fifth Circuit law in this respect falls outside the government's Question Presented, and would thus be waived in this forum.[42]

---

[37] *See* [Appendix A].

[38] *See United States v. Bookman*, 263 Fed. Appx 398 (5th Cir. 2008)(unpublished), *United States v. Taylor*, 263 Fed. Appx. 402 (5th Cir. 2008)(unpublished), and *United States v. Martin*, 447 Fed. Appx. 546 (5th Cir. 2011)(unpublished).

[39] *See Bookman*, 263 Fed. Appx at 401; *Taylor*, 263 Fed. Appx. at 404; *Martin*, *supra*; Appellee's Brief in *United States v. Martin*, No. 10-10836, 2011 WL 2687881, at *10-11 (5th Cir. Filed July 1, 2011)("Substantively, the documents show on their face that Martin committed his cocaine sales on four separate dates in September, October, and November of 1992.")

[40] *United States v. Owens*, 753 Fed. Appx. 209 (5th Cir. October 12, 2018)(unpublished).

[41] *See* [Appendix A].

[42] *See Yee v. City of Escondido*, 503 U.S. 519, 535 (1992).

Further, the rule applied in the Fifth Circuit with respect to the separate occasions question is a sound one. Its limitation to *Shepard* documents as a means of establishing the separateness of the defendant's convictions is likely necessary to bring ACCA within constitutional bounds, and certainly necessary to avoid serious constitutional doubt. This Court has permitted a sentencing judge to find the bare fact of a prior conviction, even when it increases the defendant's statutory maximum or minimum.[43] But it has consistently cautioned that this is a narrow exception to the general rule of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), which forbids judicial determination of facts that affect the statutory maximum.[44] Accordingly, it has not held, but rather seriously doubted, that judges may find "facts about a prior conviction" if these facts increase the maximum punishment.

The court below limits the sentencing court to those facts necessarily established by the defendant's prior burglary convictions, as shown by conclusive judicial records.[45] And

---

[43] *See Almendarez-Torres v. United States*, 523 U.S. 224 (1998).

[44] *See Shepard*, 544 U.S. at 25 (Souter, J., controlling plurality op.)("While the disputed fact here can be described as a fact about a prior conviction, it is too far removed from the conclusive significance of a prior judicial record, and too much like the findings subject to Jones and *Apprendi*, to say that *Almendarez-Torres* clearly authorizes a judge to resolve the dispute.")(emphasis added); *Apprendi*, 530 U.S. at 490 (referring to the prior conviction exception as a "narrow exception."); *Nijhawan v. Holder*, 557 U.S. 29, 40 (2009)(accepting government's concession that a defendant subjected to a twenty year re-entry sentence on the basis of a prior fraud offense would be entitled to a jury trial on the amount of loss in that case); *Dretke v. Haley*, 541 U.S. 386, 395-396 (2004)(applying the doctrine of constitutional avoidance to the scope of the prior conviction exception in a case where the sequence of a defendant's prior convictions raised his statutory maximum); *Mathis v. United States*, __U.S.__, 136 S. Ct. 2243, 2252, (2016)("..a construction of ACCA allowing a sentencing judge to go any further would raise serious Sixth Amendment concerns. ... [A] judge cannot go beyond identifying the crime of conviction to explore the manner in which the defendant committed that offense.")

[45] *See Fuller*, 453 F.3d at 279.

in doing so, it ensures that ACCA does not premise a potential life sentence on judicial fact-finding about the timing of the defendant's prior convictions. Rather, it limits judicial fact-finding to the bare fact of the conviction itself.

The record here – two indictments, judicial confessions, and judgments reflecting burglaries committed on the same day against separate victims – simply does not show burglaries committed on separate occasions. A defendant may commit two burglaries simultaneously if he acts as a party (such as a look-out or driver) to two burglaries.[46] And under Texas law, an allegation that "the defendant" engaged in criminal conduct – here, that he entered a particular location – may impliedly allege that he acted as a party to another who undertook the conduct described.[47]

Even assuming that the Shepard documents did reflect findings or admissions about the defendant's personal conduct, those findings or admissions may not be used to increase the maximum sentence, because the defendant had no right to acquittal upon a finding that he acted only as a party.[48] ACCA liability is triggered only by those findings the defendant

---

[46] *See Fuller*, 453 F.3d at 279.

[47] *See Marable v. State*, 85 S.W.3d 287, 287 (Tex. Crim. App. 2002); *accord Malik v. State*, 953 S.W.2d 234, 239 (Tex. Crim. App. 1997); *Jackson v. State*, 898 S.W.2d 896, 898 (Tex. Crim. App. 1995); *Fisher v. State*, 887 S.W.2d 49, 57 (Tex. Crim. App. 1994); *Swope v. State*, 805 S.W.2d 442 (Tex. Crim. App. 1991); *Montoya v. State*, 810 S.W.2d 160, 165 (Tex. Crim. App. 1989); *Crank v. State*, 761 S.W.2d 328, 352 (Tex. Crim. App. 1988); *Pitts v. State*, 569 S.W.2d 898, 900 (Tex. Crim. App. 1978).

[48] *See Marable*, 85 S.W.3d at 287-288.

had right and incentive to contest, not by extraneous findings or admissions that could not have rendered him innocent of the charged offense.[49]

Below, the government argued that the existence of two judicial confessions naming different burglary victims, and failing to mention accomplice liability, showed that the offenses occurred on separate occasions.[50] But it did not make this argument in district court, where its pleadings discussed only the indictments, not the judicial confessions.[51] As such, that claim would have to be reviewed for plain error, which is certainly not established.

More importantly, the government's argument has recently been rejected by the court below on identical facts. In *United States v. Owens,* 753 Fed. Appx. 209 (5th Cir. October 12, 2018)(unpublished), the defendant suffered an ACCA sentence on the basis of two burglary convictions, where the indictments and judicial confessions both showed the same date and different victims.[52] The court below held that these collection of documents – identical to those in the instant case in all material respects – did not satisfy the government's burden to show separate occasions:

> The parties do not dispute that the district court properly considered the indictments and confessions associated with Owens' June 2009 burglary

---

[49] *See Mathis*, 136 S. Ct. at 2253 ("At trial, and still more at plea hearings, a defendant may have no incentive to contest what does not matter under the law; to the contrary, he "may have good reason not to"—or even be precluded from doing so by the court. ...Such inaccuracies should not come back to haunt the defendant many years down the road by triggering a lengthy mandatory sentence.")

[50] *See* Appellant's Brief in *United States v. Walton*, No. 17-10199, 2017 WL 2266148, at *18-19 (5th Cir. May 22, 2017).

[51] *See* (Record in the Court of Appeals, at pp.215-220).

[52] *See Owens*, 753 F. App'x at 214-215.

> convictions. We agree with Owens, however, that these documents standing alone do not establish that his two burglary convictions arose from separate criminal transactions. The documents establish that Owens' two convictions arose from acts against different victims, Sheila Powers and V.G., but do not exclude the possibility that one criminal transaction simultaneously infringed two victims' interests. The Government insists the two indictments establish that Owens' convictions involved different structures—an apartment and a building—and that the underlying criminal acts could not have been concurrent. But these documents do not allow the court to understand how Sheila Powers' habitation related to V.G.'s building, nor how Owens' actions related to both.[53]

And even if the government's documents did establish the personal entry of each structure by the defendant – with indictments and judicial confessions that simply tracked the statute – it would still not exclude simultaneous offenses. A defendant who burglarizes adjoining structures may begin a second burglary without completing the first, as occurred in *United States v. McElyea*, 158 F.3d 1016 (9th Cir 1998). In that case:

> McElyea and an accomplice broke into a store that was part of a strip mall. Once inside the store, they chopped a hole in the wall between the store they had entered and the adjoining store.[54]

The indictments, judicial confessions and the judgments in this case say nothing at all about the geometric structure of the burgled habitations.[55] As such, they do not carry the government's burden to show that the offenses occurred on separate occasions.[56]

In short, there is no realistic way for the government to obtain the ACCA sentence it desires on remand. *Certiorari* should be denied on this ground alone.

---

[53] *Owens*, 753 F. App'x at 214–215.

[54] *McElyea*, 158 F.3d at 1018.

[55] *See* [Appendix A].

[56] *See McElyea*, 158 F.3d at 1018.

2. GVR would be inequitable.

The GVR mechanism serves many related functions, but chief among them is the equal treatment of similarly situated litigants.[57] Because this Court lacks the resources to hear every case before it on the merits, the volume of cases before it can create a real problem of potential inequity any time it changes or clarifies the law.[58] When the Court awards a plenary grant of *certiorari*, the litigants in that case will enjoy the benefits (or suffer the consequences) of the rules announced in that decision. Denial of certiorari to similarly situated parties would cause parties with similar cases to receive decisions using different rules. The GVR mechanism enables parties with similar cases to receive a decision under the same new rules.

Yet the GVR mechanism is not without cost. It compels affected circuit courts to decide a case that has already been before them, consuming judicial resources. And it reduces the certainty that litigants may have in the finality of their judgments, even after the parties have twice received their day in court. As this Court has explained, "[r]espect for lower courts, the public interest in finality of judgments, and concern about our own expanding certiorari docket all counsel against undisciplined GVR'ing."[59] For that reason, "all are agreed that [the] GVR power should be exercised sparingly."[60] Importantly, GVR is not automatically applied to every case potentially affected by a new development. Rather, its

---

[57] *See Lawrence v. Chater*, 516 U.S. 163, 167-168 (1996).

[58] *See Lawrence*, 516 U.S. at 167.

[59] *Id*. at 174.

[60] *Id*.

use is governed entirely by principles of equity, and it may be withheld in cases of manipulative litigation behavior, or where it otherwise does not serve its ordinary purposes.[61]

Here, the equities do not favor use of the GVR mechanism. Respondent received a sentence of 24 months on February 1, 2017.[62] The government filed its Initial Brief four months later. At that point, extensive delays began in the resolution of the case. They occurred as follows:

- Respondent received an extension of 16 days from June 19, 2017 until July 5, 2017.
- After the Fifth Circuit denied a motion to stay the case pending the *en banc* Fifth Circuit's resolution of *United States v. Herrold*, 693 Fed. Appx. 272 (July 7, 2017)(granting rehearing *en banc*), *opinion on rehearing* 883 F.3d 517 (Feb. 20, 2018)(*en banc*), *vacated and remanded by* __U.S.__, 139 S.Ct. 2712 (June 17, 2019), *opinion on remand*, __F.3d__, 2019 WL 5288154 (October 18, 2019), the government successfully moved for reconsideration, which it obtained July 26, 2017.[63]

---

[61] *See id.* at 167-168 ("Whether a GVR order is ultimately appropriate depends further on the equities of the case: If it appears that the intervening development, such as a confession of error in some, but not all, aspects of the decision below, is part of an unfair or manipulative litigation strategy, or if the delay and further cost entailed in a remand are not justified by the potential benefits of further consideration by the lower court, a GVR order is inappropriate.").

[62] *See* [Appendix B].

[63] *See* [Appendices C, D].

- The government lost before the *Herrold en banc* court on February 20, 2018, but it moved for a 40 day extension of time to file the Reply Brief in this case until April 10, 2018. That motion was granted.[64]
- On April 4, 2018, the government successfully moved for another extension of more than a month, until May 10, 2018.[65]
- On May 9, 2018, the government moved for a stay in light of its pending Petition for Certiorari in *Herrold*, hoping to overturn Fifth Circuit law that foreclosed its position. The Fifth Circuit asked Respondent to respond to the request for the stay, and denied the order for a stay on May 30, 2018. But it extended the government's deadline another 30 days.[66]
- The government filed its Reply Brief on June 21, 2018, and the Fifth Circuit waited five months to affirm, in spite of perfectly on point *en banc* precedent.[67]
- The government successfully moved to extend the time to file a Petition for Rehearing until January 11, 2019, delaying the finality of the Fifth Circuit's opinion in that court by another month.[68]

---

[64] *See* [Appendix E].

[65] *See* [Appendix F].

[66] *See* [Appendices G, H].

[67] *See* [Government's Appendix to Petition for Certiorari, at pp.1a-2a].

[68] *See* [Appendix I].

- On January 11, 2019, the government successfully moved a second time to extend the time to file a Petition for Rehearing, now until February 25, 2019.[69]
- On February 8, 2019, the government filed an unsuccessful motion to stay the proceedings pending the Supreme Court's resolution of *Herrold* and *Quarles*. Although it did not obtain the stay, it did obtain another extension of two and a half weeks to file the Petition for Rehearing, until March 11, 2019.[70]
- The government filed its Petition for Rehearing March 11, 2019, which was not denied until April 2, 2019, even though the Petition conceded that relief was foreclosed under its decision in *Herrold*.[71]
- Although *Certiorari* is ordinarily due in 90 days from the denial of rehearing, the government obtained an order extending time to file a Petition for *Certiorari* until July 31, 2019.[72] This Court ordered a Response September 20, 2019.

As the foregoing recitation demonstrates, the government has filed nine motions for stays or extensions since its Initial Brief, obtaining a delay after each one. The manifest purpose of these motions – most of them, anyway – was to delay the finality of Respondent's judgment until the intervention of new decisional law by the Fifth Circuit or this Court.

The result is that Respondent's case has persisted in appellate limbo for more than two years and eight months, during which time he has not enjoyed any real certainty as to the

---

[69] *See* [Appendix J].

[70] *See* [Appendix K].

[71] *See* [Appendices L, M].

[72] *See* [Appendix N].

basic contours of his sentence: whether he will serve only two years in federal prison, or whether he will instead serve between 15 years and the rest of his life. And certainty will not likely be achieved if this Court grants the government's Petition now. As noted above, the "separate occasions" question provides at least a measure of hope for Respondent as he awaits his fate. Note 33, *supra*, discusses additional reasons to doubt that the Fifth Circuit's last decision in *Herrold* will fully settle the law.

The delays in the case have not merely deprived Respondent of certainty or finality in a psychological sense. He has also been deprived, potentially, of the benefit of existing law each time the Solicitor General undertook to decide whether his case presented a worthy use of government resources to pursue further appeals.[73] And of course, if the law had not changed to his detriment while the case were on direct appeal, the government would have had to persuade this Court to award it a plenary grant of *certiorari*.

To be sure, there is nothing unethical about the government's strategy in this case – it has been largely up-front about its motives, and the courts were free to deny its many motions. But there remains a basic fact: granting GVR in this case, and in others like them, would exact an unusually heavy a price in terms of the finality of judgment, with little benefit. While all GVR's compromise the parties' expectations of repose, the impact on finality and certainty is tolerated because the mechanism carries with it an inherent limitation. Specifically, GVR can only reach those judgments that remain on direct appeal. It is thus incapable of reaching cases decided too long before changes or clarifications of the law. But that limitation is undermined when parties deliberately extend the life of the direct

[73] *See* 28 C.F.R. §0.20(a),(b)

appeal in hopes that the law will change. Here, the delays have been unusually long, and obviously directed toward taking advantage of new legal developments.

One final equitable consideration weighs heavily against the use of the GVR mechanism here. An experienced district judge of 17 years carefully weighed the factors enumerated at 18 U.S.C. §3553(a). He concluded that the seriousness of the offense, respect for the law, just punishment, deterrence, and protection of the public required a sentence of no more than two years. The circumstances of the offense and the defendant's record make that an eminently reasonable decision. At the time of sentencing, the defendant had suffered just three felony adult convictions, all for offense committed before he had even turned 18 years of age.[74] They predated the instant offense by more than 15 years, and two had been committed the same day.[75] In the instant case, moreover, Respondent did not possess the firearm in connection with serious[76] criminal activity.[77] It simply happened to be on his person during a motorcycle accident.[78]

On the basis of wildly shifting decisional law and its own successful strategy of delay, the government now proposes to increase the sentence by at least 13 years. Given the facts of the case, the district court was correct to regard such a sentence as excessive. Its decision

---

[74] *See* (Record in the Court of Appeals, at pp.145-146).

[75] *See* [Appendix A].

[76] Respondent did possess half a gram of marijuana at the time. *See* (Record in the Court of Appeals, at p.140). There was no evidence of trafficking. *See* (Record in the Court of Appeals, at p.140).

[77] *See* (Record in the Court of Appeals, at p.140)

[78] *See* (Record in the Court of Appeals, at p.140).

to forego the mandatory minimum, moreover, was defensible under the law at the time,[79] and may still prove correct.

The government has been heard by two courts, and can make no compelling equitable case that injustice will occur if this Court simply denies *certiorari*. GVR is only an exception to the principle that this Court does not exist to perform error correction. The present case does not merit such an exception.

CONCLUSION

For all the foregoing reasons, the petition for a writ of *certiorari* should be denied. **In the event that it is granted, the order should make clear that Petitioner may raise in the court below, at least, his alternative defense of the sentence related to proof of "separate occasions," which has never been waived or addressed on the merits.**

Respectfully submitted this 21st day of October, 2019,

/s/ Kevin Joel Page
KEVIN J. PAGE
Counsel of Record
FEDERAL PUBLIC DEFENDER'S OFFICE
NORTHERN DISTRICT OF TEXAS
525 GRIFFIN STREET, SUITE 629
DALLAS, TEXAS 75202
(214) 767-2746

[79] *See United States v. Herrold*, 883 F.3d 517 (Feb. 20, 2018)(*en banc*), *vacated and remanded by* __U.S.__, 139 S.Ct. 2712 (June 17, 2019), *opinion on remand*, __F.3d__, 2019 WL 5288154 (October 18, 2019),

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

UNITED STATES OF AMERICA,

Petitioner

v.

DOMINIC LADALE WALTON

Respondent

APPENDIX TO BRIEF IN OPPOSTITION

INDEX TO APPENDICES

APPENDIX A

FORM 1
(REV. 09/01/94)

TDC

NO. F-0071731-J0

THE STATE OF TEXAS
VS.
DOMINIC LADALE WALTON

IN THE 204TH JUDICIAL DISTRICT
COURT OF
DALLAS COUNTY, TEXAS

JUDGMENT ON PLEA OF GUILTY OR NOLO CONTENDERE BEFORE COURT
WAIVER OF JURY TRIAL

JULY TERM, A.D., 2000

JUDGE PRESIDING: MARK NANCARROW

DATE OF JUDGMENT: 11/16/00

ATTORNEY FOR STATE: J COOPER

ATTORNEY FOR DEFENDANT: JEANETTE GREEN

OFFENSE CONVICTED OF: BURGLARY OF A HABITATION

DEGREE: SECOND

DATE OFFENSE COMMITTED: 07/05/00

CHARGING INSTRUMENT: INDICTMENT

PLEA: GUILTY

TERMS OF PLEA BARGAIN (IN DETAIL): OPEN

PLEA TO ENHANCEMENT PARAGRAPH(S): N/A

FINDINGS ON ENHANCEMENT: N/A

FINDINGS ON DEADLY WEAPON, BIAS OR PREJUDICE, AND/OR FAMILY VIOLENCE: NO FINDING

DATE SENTENCE IMPOSED: 11/16/00

COSTS: YES

PUNISHMENT AND PLACE OF CONFINEMENT: 5 YEARS CONFINEMENT IN THE INSTITUTIONAL DIVISION OF THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE AND A FINE OF $1,000.00

DATE TO COMMENCE: 11/16/00

TIME CREDITED: 082200-111600

RESTITUTION/REPARATION: YES

CONCURRENT UNLESS OTHERWISE SPECIFIED. **

SJ

VOL. 378 PAGE 66

ON THIS DAY, SET FORTH ABOVE, THE ABOVE STYLED AND NUMBERED CAUSE CAME TO TRIAL. THE STATE OF TEXAS AND DEFENDANT APPEARED BY AND THROUGH THE ABOVE NAMED ATTORNEYS AND ANNOUNCED READY FOR TRIAL. DEFENDANT APPEARED IN PERSON IN OPEN COURT. WHERE DEFENDANT WAS NOT REPRESENTED BY COUNSEL, DEFENDANT KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY WAIVED THE RIGHT TO REPRESENTATION BY COUNSEL. DEFENDANT, IN PERSON AND IN WRITING IN OPEN COURT WAIVED HIS RIGHT OF TRIAL BY JURY WITH THE CONSENT AND APPROVAL OF HIS ATTORNEY, THE ATTORNEY FOR THE STATE, AND THE COURT. WHERE SHOWN ABOVE THAT THE CHARGING INSTRUMENT WAS BY INFORMATION INSTEAD OF INDICTMENT, THE DEFENDANT DID, WITH THE CONSENT AND APPROVAL OF HIS ATTORNEY WAIVE HIS RIGHT TO PROSECUTION BY INDICTMENT AND AGREE TO BE TRIED ON AN INFORMATION. ALL SUCH WAIVERS, AGREEMENTS AND CONSENTS WERE IN WRITING AND FILED IN THE PAPERS OF THIS CAUSE PRIOR TO THE DEFENDANT ENTERING HIS PLEA HEREIN. DEFENDANT WAS DULY ARRAIGNED AND IN OPEN COURT ENTERED THE ABOVE PLEA TO THE CHARGE CONTAINED IN THE CHARGING INSTRUMENT. DEFENDANT WAS ADMONISHED BY THE COURT OF THE CONSEQUENCES OF THE SAID PLEA AND DEFENDANT PERSISTED IN ENTERING SAID PLEA, AND IT PLAINLY APPEARING TO THE COURT THAT DEFENDANT IS MENTALLY COMPETENT AND SAID PLEA IS FREE AND VOLUNTARY THE SAID PLEA WAS ACCEPTED BY THE COURT AND IS NOW ENTERED OF RECORD AS THE PLEA HEREIN OF DEFENDANT. DEFENDANT IN OPEN COURT, IN WRITING HAVING WAIVED THE READING OF THE CHARGING INSTRUMENT, THE APPEARANCE, CONFRONTATION, AND CROSS-EXAMINATION OF WITNESSES, AND AGREED THAT THE EVIDENCE MAY BE BY STIPULATION, CONSENTED TO THE INTRODUCTION OF TESTIMONY ORALLY, BY JUDICIAL CONFESSIONS, BY AFFIDAVITS, WRITTEN STATEMENTS OF WITNESSES AND ANY OTHER DOCUMENTARY EVIDENCE. SUCH WAIVER AND CONSENT HAVING BEEN APPROVED BY THE COURT IN WRITING AND FILED IN THE PAPERS OF THE CAUSE. THE COURT HAVING HEARD DEFENDANT'S WAIVER OF THE READING OF THE CHARGING INSTRUMENT, AS SHOWN ABOVE, DEFENDANT'S PLEA THERETO, THE EVIDENCE SUBMITTED, AND THE ARGUMENT OF COUNSEL, IS OF THE OPINION FROM THE EVIDENCE SUBMITTED THAT DEFENDANT IS GUILTY OF THE OFFENSE AS SHOWN ABOVE AND THAT THE OFFENSE WAS COMMITTED BY SAID DEFENDANT ON THE DATE SET FORTH ABOVE. THE COURT FURTHER MAKES IT FINDINGS AS TO DEADLY WEAPON, FAMILY VIOLENCE, BIAS OR PREJUDICE, RESTITUTION OR REPARATION AS SET FORTH ABOVE.

AND WHEN SHOWN ABOVE THAT THE CHARGING INSTRUMENT CONTAINS ENHANCEMENT PARAGRAPH(S), WHICH WERE NOT WAIVED OR DISMISSED, THE COURT, AFTER HEARING THE DEFENDANT'S PLEA TO SAID PARAGRAPH(S), AS SET OUT ABOVE AND AFTER HEARING FURTHER EVIDENCE ON THE ISSUE OF PUNISHMENT, MAKES ITS FINDING AS SET OUT ABOVE, IF TRUE, THE COURT IS OF THE OPINION AND FINDS DEFENDANT HAS BEEN HERETOFORE CONVICTED OF SAID OFFENSE(S) ALLEGED IN THE SAID ENHANCEMENT PARAGRAPH(S) AS MAY BE SHOWN ABOVE.

AND WHEN SHOWN ABOVE THAT THERE WAS A PLEA BARGAIN AGREEMENT, THE DEFENDANT WAS INFORMED AS TO WHETHER THE COURT WOULD FOLLOW OR REJECT SUCH AGREEMENT AND IF THE COURT REJECTED SUCH AGREEMENT THE DEFENDANT WAS GIVEN AN OPPORTUNITY TO WITHDRAW HIS PLEA PRIOR TO ANY FINDING ON THE PLEA.

WHEN IT IS SHOWN ABOVE THAT RESTITUTION HAS BEEN ORDERED BUT, THE COURT DETERMINES THAT THE INCLUSION OF THE VICTIM'S NAME AND ADDRESS IN THE JUDGMENT IS NOT IN THE BEST INTEREST OF THE VICTIM, THE PERSON OR AGENCY WHOSE NAME AND ADDRESS IS SET OUT IN THIS JUDGEMENT WILL ACCEPT AND FORWARD THE RESTITUTION PAYMENTS TO THE VICTIM.

AND WHEN IT IS SHOWN BELOW THAT PAYMENT OF THE COSTS OF LEGAL SERVICES PROVIDED TO THE DEFENDANT IN THIS CAUSE HAS BEEN ORDERED, THE COURT FINDS THAT THE DEFENDANT HAS THE FINANCIAL RESOURCES TO ENABLE THE DEFENDANT TO OFFSET SAID COSTS IN THE AMOUNT ORDERED.

THEREUPON THE SAID DEFENDANT WAS ASKED BY THE COURT WHETHER HE HAD ANYTHING TO SAY WHY SAID SENTENCE SHOULD NOT BE PRONOUNCED AGAINST HIM, AND HE ANSWERED NOTHING IN BAR THEREOF. AND IT APPEARING TO THE COURT THAT DEFENDANT IS MENTALLY COMPETENT AND UNDERSTANDING OF THE PROCEEDINGS;

IT IS, THEREFORE, CONSIDERED AND ORDERED BY THE COURT, IN THE PRESENCE OF DEFENDANT, AND HIS ATTORNEY, THAT SAID JUDGMENT AS SET FORTH ABOVE, IS HEREBY IN ALL THINGS APPROVED AND CONFIRMED, AND THAT SAID DEFENDANT BE ADJUDGED GUILTY OF THE OFFENSE AS SHOWN ABOVE, AND THAT SAID DEFENDANT BE PUNISHED IN ACCORDANCE WITH THE PUNISHMENT SET FORTH ABOVE, AND DEFENDANT IS SENTENCED TO A TERM OF IMPRISONMENT OR FINE OR BOTH, AS SET FORTH ABOVE, AND DEFENDANT SHALL BE DELIVERED BY THE SHERIFF TO THE DIRECTOR OF THE INSTITUTIONAL DIVISION OF THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE, OR OTHER

PERSON LEGALLY AUTHORIZE TO RECEIVE SUCH CONVICTS F THE PUNISHMENT ASSESSED HEREIN, AND SAID DEFENDAN; SHALL BE CONFINED FOR THE ABOVE-NAMED TERM IN ACCORDANCE WITH THE PROVISIONS OF LAW GOVERNING SUCH PUNISHMENTS. IT IS FURTHER ORDERED THAT THE DEFENDANT PAY THE FINE, COURT COST, COSTS AND EXPENSES OF LEGAL SERVICE PROVIDED BY THE COURT APPOINTED ATTORNEY IN THIS CAUSE, IF ANY, AND RESTITUTION OR REPARATION, AS SET FORTH HEREIN.

DEFENDANT IS HEREBY ORDERED REMANDED TO JAIL UNTIL SAID SHERIFF CAN OBEY THE DIRECTIONS OF THIS JUDGMENT.

FOLLOWING THE DISPOSITION OF THIS CAUSE THE DEFENDANT'S FINGERPRINT WAS, IN OPEN COURT, PLACED UPON A CERTIFICATE OF FINGERPRINT. SAID CERTIFICATE IS ATTACHED HERETO AND IS INCORPORATED BY REFERENCE AS A PART OF THIS JUDGMENT.

WHEN REQUIRED, A PRESENTENCE INVESTIGATION WAS CONDUCTED IN ACCORDANCE WITH THE APPLICABLE PROVISIONS OF LAW.

** NO VICTIM IMPACT STATEMENT HAS BEEN RECEIVED BY THE COURT **

COURT COSTS IN THE AMOUNT OF $197.25

RESTITUTION IN THE AMOUNT OF $5,000 TO BE PAID TO:
NAME:
ADDRESS:

RESTITUTION MUST BE PAID AS A CONDITION OF PAROLE; PR JG NANCARROW

Nancarrow

JUDGE PRESIDING

JUDGMENT
CERTIFICATE OF THUMBPRINT

CAUSE NO. F00-71731-Q

THE STATE OF TEXAS

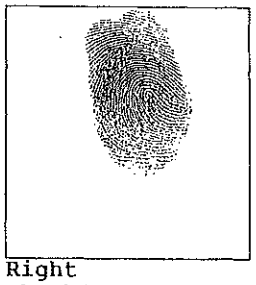
VS.

Dominic L. Walton

IN THE 204TH

DISTRICT COURT

DALLAS COUNTY, TEXAS



Right
Thumb*

Defendant's right hand

THIS IS TO CERTIFY THAT THE FINGERPRINTS ABOVE ARE THE ABOVE-NAMED DEFENDANT'S FINGERPRINTS TAKEN AT THE TIME OF DISPOSITION OF THE ABOVE STYLED AND NUMBERED CAUSE.

DONE IN COURT THIS 16th DAY OF November, ~~19~~ 2000

#1638
BAILIFF/DEPUTY SHERIFF

*Indicate here if print other than defendant's right thumbprint is placed in box:

☐ left thumbprint ☐ left/right index finger

☐ other, _____

Cause No. F00-71731-Q

THE STATE OF TEXAS
V.
Dominic L Walton

IN THE 204th
DISTRICT COURT
DALLAS COUNTY, TEXAS

PLEA BARGAIN AGREEMENT

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now Defendant, Counsel for Defendant, and Counsel for State herein and would show that a plea bargain agreement has been entered into between the undersigned, and that under the terms of said agreement both sides agree they will waive their right to a jury trial and agree to and recommend the following:

Defendant will plead ✓ guilty _____ nolo contendere

Defendant will testify ✓ will not testify _____

✓ confinement in Penitentiary for 6 years.

_____ confinement in [State Jail] [County Jail] for _____ [days] _____ [years]

✓ fine $ 750.00

_____ **NO PROBATION**

_____ **PROBATION TO BE GRANTED FOR** _____ years subject to all the terms and conditions imposed by the trial court. Further, the judge, as provided by Article 42.12, Sec. 11 & 15 V.A.C.C.P., may at any time during the period of probation alter or modify the conditions.

OPEN PLEA

_____ confinement in [State Jail] [County Jail] for _____ days as a condition of Probation.

_____ supervised work or community service for _____ hours as required by Article 42.12, Sec. 16 V.A.C.C.P.

_____ **SHOCK PROBATION TO BE GRANTED** _____ days after sentence, subject to good behavior of defendant in the Penitentiary.

_____ participation in **SPECIAL ALTERNATIVE INCARCERATION PROGRAM.**

FILED
NOV 16 2000
JIM HAMLIN
DIST. CLERK, DALLAS CO., TEXAS
DEPUTY

Conviction to be as follows:

_____ Felony
_____ Non-conviction Deferred Probation
_____ Misdemeanor
_____ Restitution

_____ No credit for back time served

Defendant's back time date is: _____

Additional provisions of the agreement are: Open Plea

The undersigned certify they have read the terms of the above agreement and that it fully contains all the provisions of said agreement.

JOHN VANCE
DISTRICT ATTORNEY
DALLAS COUNTY, TEXAS

By _____
Assistant District Attorney

X Dominique Walton
Defendant

Jeanette Deschner Green
Counsel for Defendant

If a victim impact statement has been returned to the State, a copy of said statement shall be turned over to the Court by the State's attorney prior to the Court's acceptance of this plea.

Rev. 6/95

17-10199.226

FORM 188-B

LVG

DEFENDANT WALTON, DOMINIC ADALE BM 10061982 CHARGE BURG HAB
AKA:
ADDRESS 1816 SPRINGLAKE, MESQUITE, TX LOCATION UNKNOWN
FILING AGENCY TXDPD0000 DATE FILED 7/31/00 COURT
COMPLAINANT TORRES, JOSE F-0071731
C/C

THE STATE OF TEXAS

CAUSE NO. F00-71731-Q

VS.

204th DISTRICT COURT

Dominic L. Walton

DALLAS COUNTY, TEXAS

JUDICIAL CONFESSION

Comes now Defendant in the above cause, in writing and in open Court, and consents to the stipulation of the evidence in this case and in so doing expressly waives the appearance, confrontation and cross-examination of witnesses. I further consent to the introduction of this Judicial Confession, and testimony orally, by affidavits, written statements of witnesses and other documentary evidence. Accordingly, having waived my Federal and State constitutional right against self-incrimination, and after having been sworn, upon oath, I judicially confess to the following facts and agree and stipulate that these facts are true and correct and constitute the evidence in this case:

On the 5th day of July 20 00, in Dallas County, Texas, I did unlawfully

unlawfully, intentionally and knowingly enter a habitation without the effective consent of JOSE TORRES, the owner thereof, with the intent to commit theft,

and further, said defendant did intentionally and knowingly enter a habitation without the effective consent of JOSE TORRES, the owner thereof, and did then and there commit and attempt to commit theft,

FILED
NOV 16 2000
JIM HAMLIN
DIST. CLERK, DALLAS CO., TEXAS
DEPUTY

I further judicially confess that I committed the offense with which I stand charged exactly as alleged in the indictment in this cause.

APPROVED BY:

Jeanette Duscher Green
Attorney for Defendant

X Dominic Walton
Defendant

SWORN TO AND SUBSCRIBED before me on the 16th day of November, 2000.

APPROVED BY:

Kim M. Cooper
Assistant District Attorney

~~BILL LONG~~, CLERK Jim Hamlin
DISTRICT COURTS OF
DALLAS COUNTY, TEXAS

By
Deputy District Clerk

Defendant's agreement to stipulate and waiver of confrontation and cross-examination of witnesses are in all things approved by the Court. The above Judicial Confession is hereby approved by the Court.

PRESIDING JUDGE

JUDICIAL CONFESSION

17-10199.227

FORM.188-B

LVG

DEFENDANT WALTON, DOMIN ADALE BM 10061982 IARGE BURG HAB

AKA:

ADDRESS 1816 SPRINGLAKE, MESQUITE, TX LOCATION UNKNOWN

FILING AGENCY TXDPD0000 DATE FILED 7/31/00 COURT

COMPLAINANT TORRES, JOSE F-0071731

C/C

TRUE BILL OF INDICTMENT

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF TEXAS: The Grand Jury of Dallas County, State of Texas, duly organized at the JULY Term, A.D. 20 00 of the CRIMINAL District Court NO. 3, Dallas County, in said court at said Term, do present that one WALTON, DOMINIC LADALE, defendant,

on or about the 5TH day of JULY A.D. 20 00 in the County of Dallas and said State, did

unlawfully, intentionally and knowingly enter a habitation without the effective consent of JOSE TORRES, the owner thereof, with the intent to commit theft,

and further, said defendant did intentionally and knowingly enter a habitation without the effective consent of JOSE TORRES, the owner thereof, and did then and there commit and attempt to commit theft,

against the peace and dignity of the State.

BILL HILL

Criminal District Attorney of Dallas County, Texas.

Foreman of the Grand Jury.

COURT

17-10199.228

FORM 1
(REV. 09/01/94)

TDC

NO. F-0038340-HQ

THE STATE OF TEXAS
VS.
DOMONIQUE LYDALE WALTON

IN THE 204TH JUDICIAL DISTRICT COURT OF DALLAS COUNTY, TEXAS

JUDGMENT ON PLEA OF GUILTY OR NOLO CONTENDERE BEFORE COURT WAIVER OF JURY TRIAL

JULY TERM, A.D., 2000

JUDGE PRESIDING: MARK NANCARROW

DATE OF JUDGMENT: 11/16/00

ATTORNEY FOR STATE: COOPER JOHN

ATTORNEY FOR DEFENDANT: JEANETTE GREEN

OFFENSE CONVICTED OF: BURGLARY OF A HABITATION

DEGREE: SECOND

DATE OFFENSE COMMITTED: 08/22/00

CHARGING INSTRUMENT: INDICTMENT

PLEA: GUILTY

TERMS OF PLEA BARGAIN (IN DETAIL): 5 YRS TDC; FINE $1000

PLEA TO ENHANCEMENT PARAGRAPH(S): N/A

FINDINGS ON ENHANCEMENT: N/A

FINDINGS ON DEADLY WEAPON, BIAS OR PREJUDICE, AND/OR FAMILY VIOLENCE: NO FINDING

DATE SENTENCE IMPOSED: 11/16/00

COSTS: YES

PUNISHMENT AND PLACE OF CONFINEMENT: 5 YEARS CONFINEMENT IN THE INSTITUTIONAL DIVISION OF THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE AND A FINE OF $1,000.00

DATE TO COMMENCE: 11/16/00

TIME CREDITED: 082200-111600

RESTITUTION/REPARATION: NO

CONCURRENT UNLESS OTHERWISE SPECIFIED.

SJ

VOL. 378 PAGE 68

17-10199.229

GOVERNMENT EXHIBIT 2 3:15-cr-364-K

Case 3:15-cr-00364-K Document 35-1 *SEALED* Filed 09/22/16 Page 8 of 22 PageID 155

ON THIS DAY, SET FORTH ABOVE, THE ABOVE STYLED AND NUMBERED CAUSE CAME TO TRIAL. THE STATE OF TEXAS AND DEFENDANT APPEARED BY AND THROUGH THE ABOVE NAMED ATTORNEYS AND ANNOUNCED READY FOR TRIAL. DEFENDANT APPEARED IN PERSON IN OPEN COURT. WHERE DEFENDANT WAS NOT REPRESENTED BY COUNSEL, DEFENDANT KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY WAIVED THE RIGHT TO REPRESENTATION BY COUNSEL. DEFENDANT, IN PERSON AND IN WRITING IN OPEN COURT WAIVED HIS RIGHT OF TRIAL BY JURY WITH THE CONSENT AND APPROVAL OF HIS ATTORNEY, THE ATTORNEY FOR THE STATE, AND THE COURT. WHERE SHOWN ABOVE THAT THE CHARGING INSTRUMENT WAS BY INFORMATION INSTEAD OF INDICTMENT, THE DEFENDANT DID, WITH THE CONSENT AND APPROVAL OF HIS ATTORNEY WAIVE HIS RIGHT TO PROSECUTION BY INDICTMENT AND AGREE TO BE TRIED ON AN INFORMATION. ALL SUCH WAIVERS, AGREEMENTS AND CONSENTS WERE IN WRITING AND FILED IN THE PAPERS OF THIS CAUSE PRIOR TO THE DEFENDANT ENTERING HIS PLEA HEREIN. DEFENDANT WAS DULY ARRAIGNED AND IN OPEN COURT ENTERED THE ABOVE PLEA TO THE CHARGE CONTAINED IN THE CHARGING INSTRUMENT. DEFENDANT WAS ADMONISHED BY THE COURT OF THE CONSEQUENCES OF THE SAID PLEA AND DEFENDANT PERSISTED IN ENTERING SAID PLEA, AND IT PLAINLY APPEARING TO THE COURT THAT DEFENDANT IS MENTALLY COMPETENT AND SAID PLEA IS FREE AND VOLUNTARY THE SAID PLEA WAS ACCEPTED BY THE COURT AND IS NOW ENTERED OF RECORD AS THE PLEA HEREIN OF DEFENDANT. DEFENDANT IN OPEN COURT, IN WRITING HAVING WAIVED THE READING OF THE CHARGING INSTRUMENT, THE APPEARANCE, CONFRONTATION, AND CROSS-EXAMINATION OF WITNESSES, AND AGREED THAT THE EVIDENCE MAY BE BY STIPULATION, CONSENTED TO THE INTRODUCTION OF TESTIMONY ORALLY, BY JUDICIAL CONFESSIONS, BY AFFIDAVITS, WRITTEN STATEMENTS OF WITNESSES AND ANY OTHER DOCUMENTARY EVIDENCE. SUCH WAIVER AND CONSENT HAVING BEEN APPROVED BY THE COURT IN WRITING AND FILED IN THE PAPERS OF THE CAUSE. THE COURT HAVING HEARD DEFENDANT'S WAIVER OF THE READING OF THE CHARGING INSTRUMENT, AS SHOWN ABOVE, DEFENDANT'S PLEA THERETO, THE EVIDENCE SUBMITTED, AND THE ARGUMENT OF COUNSEL, IS OF THE OPINION FROM THE EVIDENCE SUBMITTED THAT DEFENDANT IS GUILTY OF THE OFFENSE AS SHOWN ABOVE AND THAT THE OFFENSE WAS COMMITTED BY SAID DEFENDANT ON THE DATE SET FORTH ABOVE. THE COURT FURTHER MAKES IT FINDINGS AS TO DEADLY WEAPON, FAMILY VIOLENCE, BIAS OR PREJUDICE, RESTITUTION OR REPARATION AS SET FORTH ABOVE.

AND WHEN SHOWN ABOVE THAT THE CHARGING INSTRUMENT CONTAINS ENHANCEMENT PARAGRAPH(S), WHICH WERE NOT WAIVED OR DISMISSED, THE COURT, AFTER HEARING THE DEFENDANT'S PLEA TO SAID PARAGRAPH(S), AS SET OUT ABOVE AND AFTER HEARING FURTHER EVIDENCE ON THE ISSUE OF PUNISHMENT, MAKES ITS FINDING AS SET OUT ABOVE. IF TRUE, THE COURT IS OF THE OPINION AND FINDS DEFENDANT HAS BEEN HERETOFORE CONVICTED OF SAID OFFENSE(S) ALLEGED IN THE SAID ENHANCEMENT PARAGRAPH(S) AS MAY BE SHOWN ABOVE.

AND WHEN SHOWN ABOVE THAT THERE WAS A PLEA BARGAIN AGREEMENT, THE DEFENDANT WAS INFORMED AS TO WHETHER THE COURT WOULD FOLLOW OR REJECT SUCH AGREEMENT AND IF THE COURT REJECTED SUCH AGREEMENT THE DEFENDANT WAS GIVEN AN OPPORTUNITY TO WITHDRAW HIS PLEA PRIOR TO ANY FINDING ON THE PLEA.

WHEN IT IS SHOWN ABOVE THAT RESTITUTION HAS BEEN ORDERED BUT, THE COURT DETERMINES THAT THE INCLUSION OF THE VICTIM'S NAME AND ADDRESS IN THE JUDGMENT IS NOT IN THE BEST INTEREST OF THE VICTIM, THE PERSON OR AGENCY WHOSE NAME AND ADDRESS IS SET OUT IN THIS JUDGEMENT WILL ACCEPT AND FORWARD THE RESTITUTION PAYMENTS TO THE VICTIM.

AND WHEN IT IS SHOWN BELOW THAT PAYMENT OF THE COSTS OF LEGAL SERVICES PROVIDED TO THE DEFENDANT IN THIS CAUSE HAS BEEN ORDERED, THE COURT FINDS THAT THE DEFENDANT HAS THE FINANCIAL RESOURCES TO ENABLE THE DEFENDANT TO OFFSET SAID COSTS IN THE AMOUNT ORDERED.

THEREUPON THE SAID DEFENDANT WAS ASKED BY THE COURT WHETHER HE HAD ANYTHING TO SAY WHY SAID SENTENCE SHOULD NOT BE PRONOUNCED AGAINST HIM, AND HE ANSWERED NOTHING IN BAR THEREOF, AND IT APPEARING TO THE COURT THAT DEFENDANT IS MENTALLY COMPETENT AND UNDERSTANDING OF THE PROCEEDINGS;

IT IS, THEREFORE, CONSIDERED AND ORDERED BY THE COURT, IN THE PRESENCE OF DEFENDANT, AND HIS ATTORNEY, THAT SAID JUDGMENT AS SET FORTH ABOVE, IS HEREBY IN ALL THINGS APPROVED AND CONFIRMED, AND THAT SAID DEFENDANT BE ADJUDGED GUILTY OF THE OFFENSE AS SHOWN ABOVE, AND THAT SAID DEFENDANT BE PUNISHED IN ACCORDANCE WITH THE PUNISHMENT SET FORTH ABOVE, AND DEFENDANT IS SENTENCED TO A TERM OF IMPRISONMENT OR FINE OR BOTH, AS SET FORTH ABOVE, AND DEFENDANT SHALL BE DELIVERED BY THE SHERIFF TO THE DIRECTOR OF THE INSTITUTIONAL DIVISION OF THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE, OR OTHER

PERSON LEGALLY AUTHORIZ TO RECEIVE SUCH CONVICTS , OR THE PUNISHMENT ASSESSED HEREIN, AND SAID DEFENDANT SHALL BE CONFINED FOR THE ABOVE-NAMED TERM IN ACCORDANCE WITH THE PROVISIONS OF LAW GOVERNING SUCH PUNISHMENTS. IT IS FURTHER ORDERED THAT THE DEFENDANT PAY THE FINE, COURT COST, COSTS AND EXPENSES OF LEGAL SERVICE PROVIDED BY THE COURT APPOINTED ATTORNEY IN THIS CAUSE, IF ANY, AND RESTITUTION OR REPARATION, AS SET FORTH HEREIN.

DEFENDANT IS HEREBY ORDERED REMANDED TO JAIL UNTIL SAID SHERIFF CAN OBEY THE DIRECTIONS OF THIS JUDGMENT.

FOLLOWING THE DISPOSITION OF THIS CAUSE THE DEFENDANT'S FINGERPRINT WAS, IN OPEN COURT, PLACED UPON A CERTIFICATE OF FINGERPRINT. SAID CERTIFICATE IS ATTACHED HERETO AND IS INCORPORATED BY REFERENCE AS A PART OF THIS JUDGMENT.

WHEN REQUIRED, A PRESENTENCE INVESTIGATION WAS CONDUCTED IN ACCORDANCE WITH THE APPLICABLE PROVISIONS OF LAW.

** NO VICTIM IMPACT STATEMENT HAS BEEN RECEIVED BY THE COURT **

COURT COSTS IN THE AMOUNT OF $197.25

JUDGE PRESIDING

JUDGMENT
CERTIFICATE OF THUMBPRINT

CAUSE NO. F00-38340-Q

THE STATE OF TEXAS

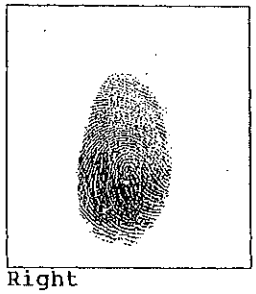
VS.

Domonique L-Walton

IN THE 204th

DISTRICT COURT

DALLAS COUNTY, TEXAS



Right
Thumb*

Defendant's right hand

THIS IS TO CERTIFY THAT THE FINGERPRINTS ABOVE ARE THE ABOVE-NAMED DEFENDANT'S FINGERPRINTS TAKEN AT THE TIME OF DISPOSITION OF THE ABOVE STYLED AND NUMBERED CAUSE.

DONE IN COURT THIS 16th DAY OF November, ~~19~~ 2000

#638
BAILIFF/DEPUTY SHERIFF

*Indicate here if print other than defendant's right thumbprint is placed in box:

☐ left thumbprint ☐ left/right index finger

☐ other, _____

Cause No. F00-38340-Q

THE STATE OF TEXAS
V.
Domonique L. Walton

IN THE 204th
DISTRICT COURT
DALLAS COUNTY, TEXAS

PLEA BARGAIN AGREEMENT

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now Defendant, Counsel for Defendant, and Counsel for State herein and would show that a plea bargain agreement has been entered into between the undersigned, and that under the terms of said agreement both sides agree they will waive their right to a jury trial and agree to and recommend the following:

Defendant will plead ✓ guilty _____ nolo contendere

Defendant will testify ✓ will not testify _____

✓ confinement in Penitentiary for 6 years.

_____ confinement in [State Jail] [County Jail] for _____ [days] _____ [years]

✓ fine $ 750.00

_____ **NO PROBATION**

_____ **PROBATION TO BE GRANTED FOR** _____ years subject to all the terms and conditions imposed by the trial court. Further, the judge, as provided by Article 42.12, Sec. 11 & 15 V.A.C.C.P., may at any time during the period of probation alter or modify the conditions.

_____ confinement in [State Jail] [County Jail] for _____ days as a condition of Probation.

_____ supervised work or community service for _____ hours as required by Article 42.12, Sec. 16 V.A.C.C.P.

_____ **SHOCK PROBATION TO BE GRANTED** _____ days after sentence, subject to good behavior of defendant in the Penitentiary.

_____ participation in **SPECIAL ALTERNATIVE INCARCERATION PROGRAM.**

OPEN PLEA

FILED
NOV 16 2000
LAMAR HAMLIN
DIST. CLERK DALLAS CO., TEXAS
DEPUTY

Conviction to be as follows:

_____ Felony
_____ Non-conviction Deferred Probation

_____ Misdemeanor
_____ Restitution

_____ No credit for back time served

Defendant's back time date is: _____

Additional provisions of the agreement are: Open Plea

The undersigned certify they have read the terms of the above agreement and that it fully contains all the provisions of said agreement.

JOHN VANCE
DISTRICT ATTORNEY
DALLAS COUNTY, TEXAS

By _____
Assistant District Attorney

X Domonique Walton
Defendant

Jeanette Duscher Green
Counsel for Defendant

If a victim impact statement has been returned to the State, a copy of said statement shall be turned over to the Court by the State's attorney prior to the Court's acceptance of this plea.

Rev. 6/95

17-10199.233

FORM 166-B jae

DEFENDANT WALTON, DOMON LYDALE BH 10061982 CHARGE BURG HAB

AKA:

ADDRESS UNKNOWN, MESQUITE, TX LOCATION DSO

FILING AGENCY TX0571800 DATE FILED August 25, 2000 COURT

COMPLAINANT BROWN, DEBRA F-0038340

C/C CALVIN MOSLEY

THE STATE OF TEXAS

CAUSE NO. F00-38340-Q

VS.

204th DISTRICT COURT

Domonique Lydale Walton

DALLAS COUNTY, TEXAS

JUDICIAL CONFESSION

Comes now Defendant in the above cause, in writing and in open Court, and consents to the stipulation of the evidence in this case and in so doing expressly waives the appearance, confrontation and cross-examination of witnesses. I further consent to the introduction of this Judicial Confession, and testimony orally, by affidavits, written statements of witnesses and other documentary evidence. Accordingly, having waived my Federal and State constitutional right against self-incrimination, and after having been sworn, upon oath, I judicially confess to the following facts and agree and stipulate that these facts are true and correct and constitute the evidence in this case:

On the 22nd day of August 2000, in Dallas County, Texas, I did unlawfully

unlawfully, intentionally and knowingly enter a habitation without the effective consent of DEBRA BROWN, the owner thereof, with the intent to commit theft,

and further, said defendant did intentionally and knowingly enter a habitation without the effective consent of DEBRA BROWN, the owner thereof, and did then and there commit and attempt to commit theft,

FILED
NOV 16 2000
JIM HAMLIN
DIST. CLERK, DALLAS CO., TEXAS
DEPUTY

I further judicially confess that I committed the offense with which I stand charged exactly as alleged in the indictment in this cause.

APPROVED BY:

Jeanette Duscher Thuen
Attorney for Defendant

X Domonique Walton
Defendant

SWORN TO AND SUBSCRIBED before me on the 16th day of November, 2000.

APPROVED BY:

Ken M. Cooper
Assistant District Attorney

~~BILL LONG~~, CLERK
DISTRICT COURTS OF
DALLAS COUNTY, TEXAS

By
Deputy District Clerk

Defendant's agreement to stipulate and waiver of confrontation and cross-examination of witnesses are in all things approved by the Court. The above Judicial Confession is hereby approved by the Court.

PRESIDING JUDGE

JUDICIAL CONFESSION

1-7-10 99-234

FORM 188-B jae

DEFENDANT WALTON, DOMONI LYDALE BM 10061982 CHARGE BURG HAB

AKA:

ADDRESS UNKNOWN, MESQUITE, TX LOCATION DSO

FILING AGENCY TX0571800 DATE FILED August 25, 2000 COURT

COMPLAINANT BROWN, DEBRA F-0038340

C/C CALVIN MOSLEY

TRUE BILL OF INDICTMENT

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF TEXAS: The Grand Jury of Dallas County, State of Texas, duly organized at the JULY Term, A.D. 20 00 of the ~~CRIMINAL~~ District Court, Dallas County, in said court at said Term, do present that one WALTON, DOMONIQUE LYDALE, defendant,

on or about the 22ND day of AUGUST A.D. 20 00 in the County of Dallas and said State, d

unlawfully, intentionally and knowingly enter a habitation without the effective consent of DEBRA BROWN, the owner thereof, with the intent to commit theft,

and further, said defendant did intentionally and knowingly enter a habitation without the effective consent of DEBRA BROWN, the owner thereof, and did then and there commit and attempt to commit theft,

against the peace and dignity of the State.

17-10198-235

BILL HILL

Criminal District Attorney of Dallas County, Texas.

Foreman of the Grand Jury.

COURT

FORM 1
(REV. 09/01/94)

TDC

NO. F-0038848-QLQ

THE STATE OF TEXAS
VS.
DOMONIQUE LYDALE WALTON

IN THE 204TH JUDICIAL DISTRICT
COURT OF
DALLAS COUNTY, TEXAS

JUDGMENT ON PLEA OF GUILTY OR NOLO CONTENDERE BEFORE COURT
WAIVER OF JURY TRIAL

JANUARY TERM, A.D., 2001

JUDGE PRESIDING: MARK NANCARROW

DATE OF JUDGMENT: 02/08/01

ATTORNEY FOR STATE: B MONTALVO

ATTORNEY FOR DEFENDANT: JEANETTE GREEN

OFFENSE CONVICTED OF: BURGLARY OF A HABITATION

DEGREE: SECOND

DATE OFFENSE COMMITTED: 08/22/00

CHARGING INSTRUMENT: INDICTMENT

PLEA: GUILTY

TERMS OF PLEA BARGAIN (IN DETAIL): 5 YRS TDC; FINE $100

PLEA TO ENHANCEMENT PARAGRAPH(S): N/A

FINDINGS ON ENHANCEMENT: N/A

FINDINGS ON DEADLY WEAPON, BIAS OR PREJUDICE, AND/OR FAMILY VIOLENCE: NO FINDING

DATE SENTENCE IMPOSED: 02/08/01

COSTS: YES

PUNISHMENT AND PLACE OF CONFINEMENT: 5 YEARS CONFINEMENT IN THE INSTITUTIONAL DIVISION OF THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE AND A FINE OF $1,000.00

DATE TO COMMENCE: 02/08/01

TIME CREDITED: 082400-020801

RESTITUTION/REPARATION: YES

CONCURRENT UNLESS OTHERWISE SPECIFIED.

SJ

VOL. 383 PAGE 23

ON THIS DAY, SET JRTH ABOVE, THE ABOVE STYL AND NUMBERED CAUSE CAME TO TRIAL. THE STATE OF EXAS AND DEFENDANT APPEARE.. BY AND THROUGH THE ABOVE NAMED ATTORNEYS AND ANNOUNCED READY FOR TRIAL. DEFENDANT APPEARED IN PERSON IN OPEN COURT. WHERE DEFENDANT WAS NOT REPRESENTED BY COUNSEL, DEFENDANT KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY WAIVED THE RIGHT TO REPRESENTATION BY COUNSEL. DEFENDANT, IN PERSON AND IN WRITING IN OPEN COURT WAIVED HIS RIGHT OF TRIAL BY JURY WITH THE CONSENT AND APPROVAL OF HIS ATTORNEY, THE ATTORNEY FOR THE STATE, AND THE COURT. WHERE SHOWN ABOVE THAT THE CHARGING INSTRUMENT WAS BY INFORMATION INSTEAD OF INDICTMENT, THE DEFENDANT DID, WITH THE CONSENT AND APPROVAL OF HIS ATTORNEY WAIVE HIS RIGHT TO PROSECUTION BY INDICTMENT AND AGREE TO BE TRIED ON AN INFORMATION. ALL SUCH WAIVERS, AGREEMENTS AND CONSENTS WERE IN WRITING AND FILED IN THE PAPERS OF THIS CAUSE PRIOR TO THE DEFENDANT ENTERING HIS PLEA HEREIN. DEFENDANT WAS DULY ARRAIGNED AND IN OPEN COURT ENTERED THE ABOVE PLEA TO THE CHARGE CONTAINED IN THE CHARGING INSTRUMENT. DEFENDANT WAS ADMONISHED BY THE COURT OF THE CONSEQUENCES OF THE SAID PLEA AND DEFENDANT PERSISTED IN ENTERING SAID PLEA, AND IT PLAINLY APPEARING TO THE COURT THAT DEFENDANT IS MENTALLY COMPETENT AND SAID PLEA IS FREE AND VOLUNTARY THE SAID PLEA WAS ACCEPTED BY THE COURT AND IS NOW ENTERED OF RECORD AS THE PLEA HEREIN OF DEFENDANT. DEFENDANT IN OPEN COURT, IN WRITING HAVING WAIVED THE READING OF THE CHARGING INSTRUMENT, THE APPEARANCE, CONFRONTATION, AND CROSS-EXAMINATION OF WITNESSES, AND AGREED THAT THE EVIDENCE MAY BE BY STIPULATION, CONSENTED TO THE INTRODUCTION OF TESTIMONY ORALLY, BY JUDICIAL CONFESSIONS, BY AFFIDAVITS, WRITTEN STATEMENTS OF WITNESSES AND ANY OTHER DOCUMENTARY EVIDENCE. SUCH WAIVER AND CONSENT HAVING BEEN APPROVED BY THE COURT IN WRITING AND FILED IN THE PAPERS OF THE CAUSE. THE COURT HAVING HEARD DEFENDANT'S WAIVER OF THE READING OF THE CHARGING INSTRUMENT, AS SHOWN ABOVE, DEFENDANT'S PLEA THERETO, THE EVIDENCE SUBMITTED, AND THE ARGUMENT OF COUNSEL, IS OF THE OPINION FROM THE EVIDENCE SUBMITTED THAT DEFENDANT IS GUILTY OF THE OFFENSE AS SHOWN ABOVE AND THAT THE OFFENSE WAS COMMITTED BY SAID DEFENDANT ON THE DATE SET FORTH ABOVE. THE COURT FURTHER MAKES IT FINDINGS AS TO DEADLY WEAPON, FAMILY VIOLENCE, BIAS OR PREJUDICE, RESTITUTION OR REPARATION AS SET FORTH ABOVE.

AND WHEN SHOWN ABOVE THAT THE CHARGING INSTRUMENT CONTAINS ENHANCEMENT PARAGRAPH(S), WHICH WERE NOT WAIVED OR DISMISSED, THE COURT, AFTER HEARING THE DEFENDANT'S PLEA TO SAID PARAGRAPH(S), AS SET OUT ABOVE AND AFTER HEARING FURTHER EVIDENCE ON THE ISSUE OF PUNISHMENT, MAKES ITS FINDING AS SET OUT ABOVE. IF TRUE, THE COURT IS OF THE OPINION AND FINDS DEFENDANT HAS BEEN HERETOFORE CONVICTED OF SAID OFFENSE(S) ALLEGED IN THE SAID ENHANCEMENT PARAGRAPH(S) AS MAY BE SHOWN ABOVE.

AND WHEN SHOWN ABOVE THAT THERE WAS A PLEA BARGAIN AGREEMENT, THE DEFENDANT WAS INFORMED AS TO WHETHER THE COURT WOULD FOLLOW OR REJECT SUCH AGREEMENT AND IF THE COURT REJECTED SUCH AGREEMENT THE DEFENDANT WAS GIVEN AN OPPORTUNITY TO WITHDRAW HIS PLEA PRIOR TO ANY FINDING ON THE PLEA.

WHEN IT IS SHOWN ABOVE THAT RESTITUTION HAS BEEN ORDERED BUT, THE COURT DETERMINES THAT THE INCLUSION OF THE VICTIM'S NAME AND ADDRESS IN THE JUDGMENT IS NOT IN THE BEST INTEREST OF THE VICTIM, THE PERSON OR AGENCY WHOSE NAME AND ADDRESS IS SET OUT IN THIS JUDGEMENT WILL ACCEPT AND FORWARD THE RESTITUTION PAYMENTS TO THE VICTIM.

AND WHEN IT IS SHOWN BELOW THAT PAYMENT OF THE COSTS OF LEGAL SERVICES PROVIDED TO THE DEFENDANT IN THIS CAUSE HAS BEEN ORDERED, THE COURT FINDS THAT THE DEFENDANT HAS THE FINANCIAL RESOURCES TO ENABLE THE DEFENDANT TO OFFSET SAID COSTS IN THE AMOUNT ORDERED.

THEREUPON THE SAID DEFENDANT WAS ASKED BY THE COURT WHETHER HE HAD ANYTHING TO SAY WHY SAID SENTENCE SHOULD NOT BE PRONOUNCED AGAINST HIM, AND THE ANSWERED NOTHING IN BAR THEREOF, AND IT APPEARING TO THE COURT THAT DEFENDANT IS MENTALLY COMPETENT AND UNDERSTANDING OF THE PROCEEDINGS;

IT IS, THEREFORE, CONSIDERED AND ORDERED BY THE COURT, IN THE PRESENCE OF DEFENDANT, AND HIS ATTORNEY, THAT SAID JUDGMENT AS SET FORTH ABOVE IS HEREBY IN ALL THINGS APPROVED AND CONFIRMED, AND THAT SAID DEFENDANT BE ADJUDGED GUILTY OF THE OFFENSE AS SHOWN ABOVE, AND THAT SAID DEFENDANT BE PUNISHED IN ACCORDANCE WITH THE PUNISHMENT SET FORTH ABOVE, AND DEFENDANT IS SENTENCED TO A TERM OF IMPRISONMENT OR FINE OR BOTH, AS SET FORTH ABOVE, AND DEFENDANT SHALL BE DELIVERED BY THE SHERIFF TO THE DIRECTOR OF THE INSTITUTIONAL DIVISION OF THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE, OR OTHER

PERSON LEGALLY AUTHORIZ TO RECEIVE SUCH CONVICTS R THE PUNISHMENT ASSESSED HEREIN, AND SAID DEFEND..T SHALL BE CONFINED FOR THE ABOVE-NAMED TERM IN ACCORDANCE WITH THE PROVISIONS OF LAW GOVERNING SUCH PUNISHMENTS. IT IS FURTHER ORDERED THAT THE DEFENDANT PAY THE FINE, COURT COST, COSTS AND EXPENSES OF LEGAL SERVICE PROVIDED BY THE COURT APPOINTED ATTORNEY IN THIS CAUSE, IF ANY, AND RESTITUTION OR REPARATION, AS SET FORTH HEREIN.

DEFENDANT IS HEREBY ORDERED REMANDED TO JAIL UNTIL SAID SHERIFF CAN OBEY THE DIRECTIONS OF THIS JUDGMENT.

FOLLOWING THE DISPOSITION OF THIS CAUSE THE DEFENDANT'S FINGERPRINT WAS, IN OPEN COURT, PLACED UPON A CERTIFICATE OF FINGERPRINT. SAID CERTIFICATE IS ATTACHED HERETO AND IS INCORPORATED BY REFERENCE AS A PART OF THIS JUDGMENT.

WHEN REQUIRED, A PRESENTENCE INVESTIGATION WAS CONDUCTED IN ACCORDANCE WITH THE APPLICABLE PROVISIONS OF LAW.

** NO VICTIM IMPACT STATEMENT HAS BEEN RECEIVED BY THE COURT **

COURT COSTS IN THE AMOUNT OF $222.25

RESTITUTION IN THE AMOUNT OF $1,000 TO BE PAID TO:
NAME:
ADDRESS:

*Immediately upon release, defendant must report in person to the Felony Collections Dept., 5th fl., Rm. C-2, Crowley Courts Bldg., Dallas, TX, for payment arrangement of court ordered costs, fines and/or attorney fees.

JUDGE PRESIDING

JUDGMENT
CERTIFICATE OF THUMBPRINT

CAUSE NO. F00-38368-Q

THE STATE OF TEXAS

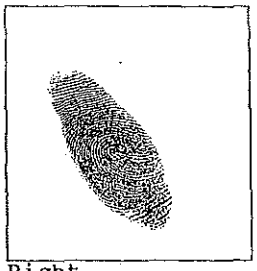
VS.

Domonique Lydale Walton

IN THE 204th

DISTRICT COURT

DALLAS COUNTY, TEXAS



Right
Thumb*

Defendant's right hand

THIS IS TO CERTIFY THAT THE FINGERPRINTS ABOVE ARE THE ABOVE-NAMED DEFENDANT'S FINGERPRINTS TAKEN AT THE TIME OF DISPOSITION OF THE ABOVE STYLED AND NUMBERED CAUSE.

DONE IN COURT THIS 8th DAY OF February, ~~19~~ 2001

#630
BAILIFF/DEPUTY SHERIFF

*Indicate here if print other than defendant's right thumbprint is placed in box:

☐ left thumbprint ☐ left/right index finger

☐ other, _____

Cause No. F 00-38368-Q

STATE OF TEXAS § IN THE 204th
VS. § DISTRICT COURT
Domonique Lydale Walton § DALLAS COUNTY, TEXAS

PLEA AGREEMENT

TO THE HONORABLE JUDGE OF SAID COURT:

The defendant herein and the attorneys for both the defendant and the State waive a jury trial and make the following agreement:

Defendant's plea: [✓] Guilty [ ] Nolo contendere
Plea to enhancement paragraph(s): [ ] True [ ] Not true
Type of plea: [✓] Plea bargain [ ] Open plea
Open as to: [ ] Deferred Adjudication [ ] Community Supervision [ ] Fine [ ] Restitution [ ] Other:
State's recommendation:
Agreed sentence:
[✓] Confinement in (penitentiary) (state jail) (county jail) for 5 (years) (months) (days).
[ ] Post-conviction community supervision. _____ (years) (months) (days) in (penitentiary) (state jail) (county jail) probated for _____ (years) (months) (days).
[ ] Deferred community supervision for _____ (years) (months) (days).
[✓] Fine of $ 1000. [✓] To be paid. [ ] To be probated.
[ ] Boot Camp [ ] Shock Probation [ ] Substance Abuse Felony Punishment Facility
[ ] Judicial Drug Treatment Center [ ] Cinekor
[ ] Dallas County Jail Chemical Dependency Program
[✓] Restitution in the amount of $ 1000
[ ] Defendant will sign waiver of extradition. [✓] Other: Concurrent with F00-71730 & F00-38340 + Backtime from 8-24-00 to plea

[ ] CHANGE OF NAME *(Applicable only if box is checked)*

The defendant having suggested that his/her true name is other than that set forth in the charging instrument, and having moved that the charging instrument and all other documents in this cause be amended to show his/her true name to be _____ said motion is hereby granted. It is so ordered.

FILED
FEB 8 2001
JIM HAMLIN
DIST. CLERK DALLAS CO., TEXAS
DEPUTY

COURT'S ADMONITIONS TO DEFENDANT

You are charged with the offense of: Burglary of a Habitation
The punishment range for the offense charged is:
[ ] 1st Degree Felony, 5 - 99 years or Life and an optional fine not to exceed $10,000.00.
[✓] 2nd Degree Felony, 2 - 20 years confinement and an optional fine not to exceed $10,000.00.
[ ] 3rd Degree Felony, 2 - 10 years confinement and an optional fine not to exceed $10,000.00.
[ ] State Jail Felony, 180 days - 2 years State Jail and an optional fine not to exceed $10,000.00.
[ ] _____, _____.

You have an absolute right to a jury trial, to confront and cross-examine the witnesses against you, and to call witnesses in your own behalf. You have a right to testify, but you cannot be compelled to do so. The prosecuting attorney's recommendation as to punishment is not binding on the Court. You will be permitted to withdraw your plea if the Court rejects any plea bargain made in this case. If the punishment assessed by the Court is not greater than that which you have plea-bargained, you may not appeal a nonjurisdictional defect or error that occurred before the plea unless the Court grants permission for the appeal, or the matters appealed were raised by written motion filed and ruled on before the plea. If you enter a plea of guilty or nolo contendere and there is no plea bargain, the court may assess your punishment anywhere within the range allowed by law. If you are not a citizen of the United States, a plea of guilty or nolo contendere may, and under current Federal Immigration rules *is almost certain to,* result in your deportation, exclusion from admission to the United States, or denial of naturalization. If you have a court-appointed attorney, you have a right to ten days from the date of the attorneys appointment to prepare for trial. You have the right to be tried on an indictment returned by a Grand Jury, and, unless you are on bond, a right to two entire days after being served with a copy of the charging instrument before being arraigned. If you receive unadjudicated community supervision and violate its conditions, you may be arrested and subjected to a hearing to determine whether or not guilt should be adjudicated. If guilt is adjudicated, no appeal may be taken from the Court's decision, and the full range of punishment is open to the Court. All proceedings, including your right to appeal, then continue. [In sex offense cases, see Court's Admonition to Sex Offenders, which is incorporated by reference and attached hereto.]

F00-38368 L. ENDANT'S STATEMENTS AND WAIVERS 383/24

With the approval of counsel, defendant makes the following statements and waivers. I am the accused in the charging instrument and am mentally competent. I understand the nature of the accusation made against me, the range of punishment for such offense, and the consequences of a plea of guilty or *nolo contendere*. I understand that I have an absolute right to a jury trial, that I have the right to remain silent, that anything I say can and will be used against me, that I have the right to confront and cross-examine the witnesses against me, and that I have a right to be tried upon an indictment returned by a grand jury. I understand that if I am not a United States citizen, a plea of guilty or *nolo contendere* will probably result in my deportation from the United States, exclusion from admission to the United States, or denial of naturalization under Federal law.

I hereby waive my right to be tried on an indictment returned by a grand jury, any and all defects, errors, or irregularities, whether of form or substance, in the charging instrument, my right to a jury trial, and my right to remain silent. I waive arraignment and reading of the charging instrument, the appearance, confrontation, and cross-examination of witnesses, my right to ten days to prepare for trial after the appointment of counsel (if counsel has been appointed), and the preparation of a pre-sentence report. I consent to the oral or written stipulation of evidence or testimony, to the introduction of testimony by affidavits or written statements of witnesses, and to all other documentary evidence. I affirm that my plea and judicial confession are freely and voluntarily made, and not influenced by any consideration of fear, persuasion, or delusive hope of pardon or parole.

I understand the admonitions regarding unadjudicated community supervision, and that I will be required to register as a sex offender if convicted of , or placed on community supervision for, one of the offenses enumerated under Court's Admonition to Sex Offenders, attached hereto. I understand that under the Uniform Extradition Act, should I be charged with a violation of my community supervision and be arrested in another state, I have the right to require the issuance and service of a warrant of extradition, the right to hire legal counsel, or, if indigent, to have counsel appointed, and the right to apply for a writ of habeas corpus to contest my arrest and return to the State of Texas. I voluntarily and knowingly waive my rights under the Extradition Act, waive extradition, and waive my right to contest my return to the State of Texas from any jurisdiction where I may be found. I understand and agree that such waiver is irrevocable.

[ ] DEFENDANT'S PLEA TO ENHANCEMENT PARAGRAPH(S) *(Applicable only if box is checked)*

I, the defendant, plead true to the enhancement paragraph(s) which is/are contained in the charging instrument, and judicially confess that I am the same person who was previously duly and legally convicted of the offense(s) alleged therein.

SIGNATURES AND ACKNOWLEDGMENTS

I, the defendant herein, acknowledge that my attorney has explained to me, and I have read and I understand, all the foregoing admonitions and warnings regarding my rights and my plea, and that my statements and waivers are freely and voluntarily made with full understanding of the consequences. I request that the Court accept all my waivers, statements, agreements, and my plea.

2-8-01
Date

x Domenique Walton
Defendant

I have consulted with the defendant, whom I believe to be competent, concerning the plea in this case and have advised the defendant of his/her rights. I approve and agree to all waivers, statements, and agreements of the defendant herein and ask the Court to accept them and the defendant's plea.

2-8-01
Date

Jeanette Meschelsen
Attorney for Defendant
State Bar # 06116000

As attorney for the State, I hereby consent to and approve the requests, waivers, agreements, and stipulations in this instrument.

2-8-01
Date

BILL HILL, Criminal District Attorney, Dallas County, by

Assistant District Attorney
State Bar # 00792538

It appearing to the Court that the defendant is mentally competent and is represented by counsel, that the defendant understands the nature and consequences of the charge, and that all the parties have consented to and approved the waiver of jury trial and stipulations of evidence, the Court finds the waivers, agreements, and plea to have been voluntarily made, approves the waivers and agreements, accepts the defendant's plea, approves the stipulation of testimony, and approves the change of name contained herein (if applicable).

Date

Judge

(11-17-99)

17-10199.241

THE STATE OF TEXAS

VS.

Domonique Lydale Walton

CAUSE NO. F00-38368-O

204th DISTRICT COURT

DALLAS COUNTY, TEXAS

JUDICIAL CONFESSION

Comes now Defendant in the above cause, in writing and in open Court, and consents to the stipulation of the evidence in this case and in so doing expressly waives the appearance, confrontation and cross-examination of witnesses. I further consent to the introduction of testimony orally, by affidavits, written statements of witnesses and other documentary evidence. Accordingly, having waived my Federal and State constitutional right against self-incrimination, and after having been sworn, upon oath, I judicially confess to the following facts and agree and stipulate that these facts are true and correct and constitute the evidence in this case:

On or about the 22nd day of August, A.D. 2000, in Dallas County, Texas, I did knowingly and intentionally

unlawfully, intentionally and knowingly enter a habitation without the effective consent of REX HARRIS, the owner thereof, with the intent to commit theft,

and further, said defendant did intentionally and knowingly enter a habitation without the effective consent of REX HARRIS, the owner thereof, and did then and there commit and attempt to commit theft,

Jeanette Drescher Green
Attorney for Defendant

Domonique Walton
Defendant

SWORN TO AND SUBSCRIBED before me on the 8th day of February A.D. 2001.

JIM HAMLIN, DISTRICT CLERK
DISTRICT COURTS OF
DALLAS COUNTY, TEXAS

By: _____
Deputy District Clerk

SA#1

ADA for State

Defendant's agreement to stipulate and waiver of confrontation and cross-examination of witnesses are in all things approved by the Court. The above Judicial Confession is hereby approved by the Court.

PRESIDING JUDGE

17-10199.242

9/86

FORM 188-B

CC

DEFENDANT WALTON, DOMONIQUE LYDALE BM 10061982 CHARGE BURG HAB

AKA:

ADDRESS UNKNOWN, DALLAS, TX LOCATION DSO

FILING AGENCY TX0571800 DATE FILED 12/13/00 COURT

COMPLAINANT HARRIS, REX F-0038368

C/C Calvin mosley

TRUE BILL OF INDICTMENT

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF TEXAS: The Grand Jury of Dallas County, State of Texas, duly organized at the JANUARY Term, A.D. 20 01 of the 204TH JUDICIAL District Court, Dallas County, in said court at said Term, do present that one WALTON, DOMONIQUE LYDALE, defendant,

on or about the 22ND day of AUGUST A.D. 20 00 in the County of Dallas and said State, did

unlawfully, intentionally and knowingly enter a habitation without the effective consent of REX HARRIS, the owner thereof, with the intent to commit theft,

and further, said defendant did intentionally and knowingly enter a habitation without the effective consent of REX HARRIS, the owner thereof, and did then and there commit and attempt to commit theft,

against the peace and dignity of the State.

BILL HILL

Criminal District Attorney of Dallas County, Texas.

Foreman of the Grand Jury.

COURT

17-10199-243

APPENDIX B

United States District Court

Northern District of Texas Dallas Division

UNITED STATES OF AMERICA

v.

DOMINIC LADALE WALTON

§ **JUDGMENT IN A CRIMINAL CASE**
§
§
§ Case Number: **3:15-CR-00364-K (01)**
§ USM Number: **50079-177**
§
§ **John M Nicholson**
§ Defendant's Attorney

THE DEFENDANT:

☐	pleaded guilty to count(s)	
☒	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	**To the One Count Indictment, filed on August 18, 2015.**
☐	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 offenses:

Title & Section / Nature of Offense		Offense Ended	Count
18 USC § 922(g)(1) and 924(e) -	**Felon in Possession of a Firearm**	**04/10/2015**	**1**

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)

☐ Count(s) ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant 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.

February 1, 2017
Date of Imposition of Judgment

Ed Kinkeade
Signature of Judge

Ed Kinkeade, United States District Judge
Name and Title of Judge

February 2, 2017
Date

DEFENDANT: DOMINIC LADALE WALTON
CASE NUMBER: 3:15-CR-00364-K (01)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

TWENTY-FOUR (24) Months. This sentence shall run concurrently to the charge of Aggravated Assault With a Deadly Weapon, Case No. F-1440260, pending in the 283rd Judicial District Court of Dallas County, Dallas, Texas; and it shall run concurrently with the charge of Unlawful Possession of Firearm by Felon, Case No. F 1540769, pending in the 283rd Judicial District Court of Dallas, County, Texas.

The defendant shall receive credit for time served in federal custody, prior to sentencing.

☒ The court makes the following recommendations to the Bureau of Prisons:
The Court recommends that the defendant be allowed to serve his sentence at FCI Seagoville, Seagoville, Texas.

☒ 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 ☐ a.m. ☐ p.m. 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 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

DEFENDANT: DOMINIC LADALE WALTON
CASE NUMBER: 3:15-CR-00364-K (01)

SUPERVISED RELEASE

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

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*)

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

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

DEFENDANT: DOMINIC LADALE WALTON
CASE NUMBER: 3:15-CR-00364-K (01)

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 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 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. I understand additional information regarding these conditions is available at www.txnp.uscourts.gov.

Defendant's Signature _____ Date _____

DEFENDANT: DOMINIC LADALE WALTON
CASE NUMBER: 3:15-CR-00364-K (01)

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall report in person at least once every week any time he is unemployed and provide proof or evidence he is making a good-faith effort to secure a legitimate, verifiable, full-time job. Once the defendant secures employment, he shall furnish proof of earnings each month and report to the probation officer as directed.

The defendant shall make all court-ordered child support payments on a timely basis, producing proof of payment to the probation officer within the first 5 days of each month, whether as part of a written report required by the probation officer or otherwise.

DEFENDANT: DOMINIC LADALE WALTON
CASE NUMBER: 3:15-CR-00364-K (01)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

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

☐ The determination of restitution is deferred until after such determination. An *Amended Judgment in a Criminal Case (AO245C)* will be entered

☐ The defendant must 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. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

☐ Restitution amount ordered pursuant to plea agreement $

☐ The defendant must pay interest on restitution and 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 on Sheet 6 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 ☐ restitution

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22
** 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.

DEFENDANT: DOMINIC LADALE WALTON
CASE NUMBER: 3:15-CR-00364-K (01)

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 payments of $ _____ due immediately, balance due

☐ not later than , or

☐ in accordance ☐ 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 20 *(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:
It is ordered that the Defendant shall pay to the United States a special assessment of $100.00 for Count 1 which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during 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.

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

☐ Joint and Several
See above for Defendant and Co-Defendant Names and Case Numbers *(including defendant number)*, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ Defendant shall receive credit on his restitution obligation for recovery from other defendants who contributed to the same loss that gave rise to defendant's restitution obligation.

☐ 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:
Pursuant to the Preliminary Order of Forfeiture, the defendant shall forfeit a Taurus, Model P609 PRO, 9-millimeter pistol, bearing Serial No. TPD20566.

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) JVTA Assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

APPENDIX C

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

July 18, 2017

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 17-10199 USA v. Dominic Walton
USDC No. 3:15-CR-364-1

The court has denied the motion to stay, and granted in part the extension of time to and including July 26, 2017 for filing a reply brief in this case.

Sincerely,

LYLE W. CAYCE, Clerk

By: _____
Melissa B. Courseault, Deputy Clerk
504-310-7701

Mr. John J. Boyle
Mr. Jason Douglas Hawkins
Ms. Gail A. Hayworth
Mr. James Wesley Hendrix
Mr. Kevin Joel Page

APPENDIX D

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17-10199

UNITED STATES OF AMERICA,

Plaintiff - Appellant

v.

DOMINIC LADALE WALTON,

Defendant - Appellee

Appeal from the United States District Court for the
Northern District of Texas, Dallas

O R D E R :

IT IS ORDERED that appellant's unopposed motion for reconsideration of the Clerk's order denying appellant's motion to stay case pending the en banc decision in *U.S. v. Herrold*, 14-11317 is GRANTED and this appeal is stayed until fourteen days after the en banc issues its ruling in *Herrold*;

IT IS FURTHER ORDERED that appellant's alternative motion for an extension of fourteen (14) days from denial of motion for reconsideration to file a reply brief is DENIED as moot.

Signed: 7-26-2017

___/s/ Catharina Haynes_____
CATHARINA HAYNES
UNITED STATES CIRCUIT JUDGE

APPENDIX E

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17-10199

UNITED STATES OF AMERICA,

Plaintiff - Appellant

v.

DOMINIC LADALE WALTON,

Defendant - Appellee

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

O R D E R:

IT IS ORDERED that appellant's unopposed motion for extension of time to file reply brief, to and including April 10, 2018 is GRANTED.

IT IS FURTHER ORDERED that appellant's alternative unopposed motion for extension of time to file reply brief, twenty days from denial of motion is denied as moot.

/s/ Catharina Haynes
CATHARINA HAYNES
UNITED STATES CIRCUIT JUDGE

APPENDIX F

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17-10199

UNITED STATES OF AMERICA,

Plaintiff - Appellant

v.

DOMINIC LADALE WALTON,

Defendant - Appellee

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

O R D E R :

IT IS ORDERED that appellant's unopposed motion for an extension of time of 30 days to file reply brief, to and including May 10, 2018 is GRANTED.

Signed: 4-10-2018

/s/ Catharina Haynes
CATHARINA HAYNES
UNITED STATES CIRCUIT JUDGE

APPENDIX G

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17-10199

UNITED STATES OF AMERICA,

Plaintiff - Appellant

v.

DOMINIC LADALE WALTON,

Defendant - Appellee

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

O R D E R :

Before the court is appellant's opposed motion to stay the appeal pending the determination by the Supreme Court of the petition for certiorari in *United States v. Herrold*, No. 17-1445 (U.S. 2018) and the alternative motion for extension of time to file a reply brief.

IT IS ORDERED that the appellant's opposed motion to stay the appeal pending Supreme Court United States v Herrold, 17-1445 is held in abeyance pending response by Walton; said response shall be filed within 10 days of the date of this order and any reply shall be filed within 7 days of the response.

IT IS FURTHER ORDERED that the alternative motion for extension of time of 30 days to file reply brief is GRANTED.

Signed: 5-10-2018

/s/ Catharina Haynes
CATHARINA HAYNES
UNITED STATES CIRCUIT JUDGE

APPENDIX H

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17-10199

UNITED STATES OF AMERICA,

Plaintiff - Appellant

v.

DOMINIC LADALE WALTON,

Defendant - Appellee

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

---

O R D E R:

IT IS ORDERED that the appellant's opposed motion to stay the appeal pending Supreme Court case United States v. Herrold, 17-1445 is DENIED.

The thirty-day extended period for filing a reply brief begins on the date of this order.

Signed: 5-30-2018

/s/ Catharina Haynes

CATHARINA HAYNES
UNITED STATES CIRCUIT JUDGE

APPENDIX I

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17-10199

UNITED STATES OF AMERICA,

Plaintiff - Appellant

v.

DOMINIC LADALE WALTON,

Defendant - Appellee

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

O R D E R :

IT IS ORDERED that Appellant's unopposed motion for an extension of 45 days, or, to and including January 11, 2019 to file its petition for rehearing/petition for rehearing en banc is GRANTED.

/s/ James L. Dennis

JAMES L. DENNIS
UNITED STATES CIRCUIT JUDGE

APPENDIX J

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17-10199

UNITED STATES OF AMERICA,

Plaintiff - Appellant

v.

DOMINIC LADALE WALTON,

Defendant - Appellee

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

O R D E R :

IT IS ORDERED that Appellant's unopposed motion for an extension of time to file its petition for rehearing/petition for rehearing en banc to February 25, 2019 is GRANTED.

/s/ James L. Dennis

JAMES L. DENNIS
UNITED STATES CIRCUIT JUDGE

APPENDIX K

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17-10199

UNITED STATES OF AMERICA,

Plaintiff - Appellant

v.

DOMINIC LADALE WALTON,

Defendant - Appellee

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

O R D E R :

IT IS ORDERED that the opposed motion of appellant to stay the case pending resolution by the Supreme Court of *United States v. Quarles,* and *United States v. Herrold* is DENIED. Appellant must file a petition for rehearing by Monday, March 11, 2019.

/s/ James L. Dennis

JAMES L. DENNIS
UNITED STATES CIRCUIT JUDGE

APPENDIX L

17-10199

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellant

v.

DOMINIC LADALE WALTON,
Defendant-Appellee

On Appeal from the United States District Court
For the Northern District of Texas
Dallas Division
District Court No. 3:15-CR-364-K-1

UNITED STATES' PETITION FOR PANEL REHEARING, OR ALTERNATIVELY, MOTION TO STAY PENDING *QUARLES* AND *HERROLD*

Erin Nealy Cox
United States Attorney

/s/ Gail Hayworth
Gail Hayworth
Assistant United States Attorney
Texas Bar No. 24074382
1100 Commerce Street, Third Floor
Dallas, Texas 75242
Telephone: (214) 659-8600
gail.hayworth@usdoj.gov

Attorneys for Appellant

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Federal Cases **Page(s)**

Other Authorities

PETITION FOR PANEL REHEARING, OR ALTERNATIVELY, MOTION TO STAY PENDING *QUARLES* AND *HERROLD*

Because the Supreme Court has overturned the district court's reasoning, and because the alternative ground on which this Court upheld the district court's judgment is now set for oral argument before the Supreme Court, the government respectfully moves for rehearing in this case and asks this Court to stay proceedings pending the Supreme Court's resolution of *Quarles v. United States*, No. 17-778 (oral argument set for Apr. 24, 2019), and *United States v. Herrold*, No. 17-1445 (cert. petition filed – Apr. 18, 2018).

In this appeal, the government argued that the district court erred in holding that Walton's three prior Texas convictions for burglary of a habitation, in violation of Texas Penal Code § 30.02(a)(1), do not constitute "violent felonies" under the Armed Career Criminal Act, 18 U.S.C. § 924(e) (ACCA). Specifically, the district court held that Texas Penal Code § 30.02(a)(1) does not qualify as an ACCA predicate under the enumerated-offenses clause because it protects, among other things, vehicles adapted for the overnight accommodation of persons. (ROA.89.)

The Supreme Court has now overruled that reasoning. In *United States v. Stitt*, the Supreme Court held that generic burglary under the ACCA includes burglary of a structure or vehicle that has been adapted, or is customarily used, for overnight accommodation. 139 S. Ct. 399, 403-04 (2018). Thus, under

Stitt, the district court erred in holding that the Texas burglary statute's definition of a "habitation" precluded it from qualifying as an ACCA predicate.

Additionally, the alternative ground on which this Court affirmed the district court's judgment—i.e., this Court's conclusion in *United States v. Herrold*, 883 F.3d 517 (5th Cir. 2018) (en banc), that generic burglary requires a defendant to have the intent to commit a crime at the moment he enters or initially remains in a building or structure without authorization —is now before the Supreme Court. On April 24, 2019, the Supreme Court will hear oral argument in *Quarles v. United States*, No. 17-778, a case originating in the Sixth Circuit that raises the same question as *Herrold* about the intent needed to commit "remaining-in burglary" under the ACCA. In addition, the Supreme Court has yet to act on the government's petition for certiorari review in *Herrold*. (*See* Docket, No. 17-1445.) Based on the Supreme Court's past practice, and after consulting the attorneys at the Department of Justice responsible for our Supreme Court litigation, we believe the Supreme Court has decided to hold the certiorari petition in *Herrold* pending its decision in

Quarles. The Supreme Court will resolve *Herrold* shortly after issuing its decision in *Quarles*, which will occur before the end of the term in June 2019.

Accordingly, given that *Stitt* has overruled the district court's reasoning in holding that Walton's Texas burglary convictions do not qualify as ACCA predicates, and given that the Supreme Court will soon address the alternative ground on which this Court upheld the district court's judgment, the government seeks rehearing in this case and a stay pending the Supreme Court's decision in *Quarles*.

1. The Court's en banc decision in *Herrold* was wrongly decided.

Although the government acknowledges that this Court's en banc opinion in *Herrold* currently forecloses the government's argument that Texas burglary qualifies as generic burglary under the ACCA, the government maintains that *Herrold* was wrongly decided for the same reasons the Solicitor General has articulated to the Supreme Court in *Quarles*. (*See, e.g.*, United States' Petition at 9-10, *Quarles v. United States*, No. 17-778.)

Contrary to the en banc's opinion, generic burglary, as defined by *Taylor*,[1] does not require the defendant to have formulated the intent to commit a crime at the initial moment of his decision to remain in the building.

[1] *Taylor v. United States*, 495 U.S. 575, 598 (1990) (defining "burglary" as the "unlawful or unprivileged entry into, or remaining in, a building or other structure, with intent to commit a crime").

The en banc Court treated "remaining in" under *Taylor* as a precise moment in time when the length or circumstances of a defendant's presence first render it unpermitted, and the Court required the formation of criminal intent at that time. *See Herrold*, 883 F.3d at 531. But "[n]either the dictionary definition nor the common usage," *Honeycutt v. United States*, 137 S. Ct. 1626, 1632 (2017), of the word "remain" supports that reading. *See, e.g.*, *Webster's Third New International Dictionary* 1919 (1993) (defining "remain" as to be "still extant, present, or available"). The Texas statute criminalizes "burglary" under *Taylor* because it applies when a defendant develops the intent to commit a crime while he continues to be present in a building or habitation without authorization.

The en banc opinion further concluded that giving "remaining in" its common meaning would render *Taylor*'s "unlawful entry" language superfluous. *See Herrold*, 883 F.3d at 532, 536. The government disagrees. The reference to unlawful entry is necessary to make clear that a defendant can commit burglary when either his entry or his continued presence after entry is unlawful.

Additionally, contrary to the en banc opinion, *id.* at 534, defining "remaining in" broadly does not involve "a less culpable mental state on the part of the defendant," nor does it present "less danger to victims." As the

dissent in *Herrold* explained, "[t]he timing of when intent was formed implicates neither the culpability of the perpetrator nor the extent of danger to victims." *Id.* at 547 (Haynes, J., dissenting). "If a perpetrator forms intent prior to entering a home but, once inside, discovers nothing worth taking, is he or she somehow less culpable or dangerous than a perpetrator who initially *unlawfully* enters without intent to commit an additional crime but, once inside, discovers something worth taking or, surprised by a resident in the home, commits an assault?" *Id.* "The fact that [Texas Penal Code § 30.02](a)(3) requires commission or attempted commission of the crime implicates an even higher degree of culpability than one who commits burglary simply by forming the requisite intent prior to physical entry." *Id.*

Similarly, no greater inherent potential for harm to persons exists when a defendant enters or initially remains in a building or structure with the intent to commit a crime, as compared to developing that intent later. *Taylor*, 495 U.S. at 588. *Taylor* recognized that a surprise encounter between an occupant and an intruder increases the "possibility of a violent confrontation" on either side. *Id.* Neither the homeowner nor the burglar is less likely to respond with

violence simply because the burglar developed the intent to commit a crime only after his initial trespass.

Finally, as the *Herrold* dissent emphasized, "*Taylor* is . . . not concerned with definitional technicalities but, rather, with substantively enforcing Congress's policy of singling out a property crime that bears 'inherent potential for harm to persons.'" *Herrold*, 883 F.3d at 545 (Haynes, J., dissenting). "[A]n important aspect of § 30.02(a)(3)" is that it "actually requires more than the minimum described by the Court in *Taylor* in that it requires an unlawful or unprivileged entry AND the actual *commission or attempted commission* of a crime; mere intent is not enough." *Id.* at 546. "There is nothing overbroad or overblown about considering as 'generic burglary' an offense that involves an unlawful entry into a structure, plus the intent to commit a crime formed while remaining in the structure as evidenced by the actual commission or attempted commission of the crime." *Id.*

2. The government maintains that a stay is the best course of action.

The government maintains that a stay pending the Supreme Court's decision in *Quarles* and *Herrold* is the most efficient course of action. The Court has already taken this approach in various appeals. *See United States v. Lipscomb*, No. 18-11168 (Feb. 20, 2019 Order) (granting a stay pending the Supreme Court's decision in *Herrold*); *see also United States v. Garrett*, No. 17-

10516 (Jan. 24, 2019 Order); *United States v. Matthews*, No. 18-10235 (Aug. 14, 2018 Order); *United States v. Lopez*, No. 18-10231 (Aug. 9, 2018 Order); *United States v. Lister*, No. 17-10655 (July 16, 2018 Order).

The same is true here—judicial efficiency would be well served by a stay. If the Supreme Court accepts the government's position in *Quarles*, it will have necessarily abrogated this Court's en banc decision in *Herrold*—and the basis of the decision to affirm Walton's sentence here. If this result occurs, this Court can reverse the district court's judgment and remand for resentencing. By contrast, if the Supreme Court accepts the defendant's position in *Quarles*, it will have necessarily affirmed this Court's reasoning in *Herrold*. If that occurs, this Court can simply reinstate its judgment affirming Walton's sentence.

As mentioned above, all of this will be resolved soon. The Supreme Court will hear oral argument in *Quarles* on April 24, 2019, and issue a decision in June 2019.

By contrast, if this Court denies the present rehearing and stay motion, then the government will recommend that the Solicitor General file a petition for certiorari with the Supreme Court. That petition would presumably ask the Supreme Court to hold this case pending its resolution of *Quarles* and *Herrold*.[2]

[2] Of course, the Solicitor General would make the final decision over whether to file a certiorari petition in this circumstance and, if so, what arguments to advance.

If the Supreme Court decides those cases in the government's favor, the Court would likely, by summary order, vacate the judgment here, and remand Walton's case to this Court for reconsideration.

Simply put, a stay in this case offers the most direct and efficient route for the parties to await the Supreme Court's resolution of *Quarles* and *Herrold*—which, again, will occur in the next few months. By contrast, the circuitous route of requesting certiorari would require the expenditure of unnecessary resources by the government, defense counsel, and the Supreme Court. Finally, a stay of these proceedings would not prejudice Walton because the district court imposed a non-ACCA sentence, and, according to Bureau of Prison records, Walton has already been released from federal custody.

If a stay is granted, the government will promptly inform this Court of any developments in *Quarles* and *Herrold*.

Conclusion

The Court should grant the government's request for rehearing and stay proceedings until the Supreme Court's resolution of *Quarles* and *Herrold*, or, alternatively, merely stay the proceedings pending the Supreme Court's resolution of *Quarles* and *Herrold*.

Respectfully submitted,

Erin Nealy Cox
United States Attorney

/s/ Gail Hayworth
Gail Hayworth
Assistant United States Attorney
Texas Bar No. 24074382
1100 Commerce Street, Third Floor
Dallas, Texas 75242
Telephone: (214) 659-8600
gail.hayworth@usdoj.gov

Attorneys for Appellant

CERTIFICATE OF SERVICE

I certify that this document was served on Walton's attorney, Kevin Joel Page, through the Court's ECF system on March 11, 2019, and that: (1) any required privacy redactions have been made; (2) the electronic submission is an exact copy of the paper document; and (3) the document has been scanned for viruses with the most recent version of a commercial virus scanning program and is free of viruses.

/s/ Gail Hayworth
Gail Hayworth
Assistant United States Attorney

CERTIFICATE OF COMPLIANCE

1. This document complies with the type-volume limit of Fed. R. App. P. 32(a)(7)(B) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), this document contains 1,716 words.

2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Calisto MT font.

/s/ Gail Hayworth
Gail Hayworth
Assistant United States Attorney
Date: March 11, 2019

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17-10199
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
November 27, 2018
Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff - Appellant

v.

DOMINIC LADALE WALTON,

Defendant - Appellee

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:15-CR-364-1

Before DENNIS, CLEMENT, and OWEN, Circuit Judges.

PER CURIAM:*

Dominic Ladale Walton received a 24-month sentence following his guilty plea conviction for felon in possession of a firearm. The district court sustained Walton's objection to the application of the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e), based on his three prior convictions for burglary of a habitation, violations of Texas Penal Code § 30.02(a)(1). The Government timely appealed.

* 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.

Upon motion by the Government, this case was held in abeyance pending a decision in *United States v. Herrold*, 883 F.3d 517 (5th Cir. 2018) (en banc), *petition for cert. filed* (Apr. 18, 2018) (No. 17-1445). *Herrold* has now issued and, as the Government concedes, the district court did not err in determining that Walton's three prior convictions for burglary of a habitation, in violation of Texas Penal Code § 30.02(a)(1), could not serve as predicate offenses under the ACCA. *See Herrold*, 883 F.3d at 541. Accordingly, the judgment of the district court is AFFIRMED.

APPENDIX M

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17-10199

UNITED STATES OF AMERICA,

Plaintiff - Appellant

v.

DOMINIC LADALE WALTON,

Defendant - Appellee

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

ON PETITION FOR REHEARING

Before DENNIS, CLEMENT, and OWEN, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing is DENIED.

ENTERED FOR THE COURT:

JAMES L. DENNIS
UNITED STATES CIRCUIT JUDGE

APPENDIX N

Search documents in this case: Search

No. 19-151

Title:	**United States, Petitioner** **v.** **Dominic Ladale Walton**
Docketed:	August 1, 2019
Linked with 18A1315	
Lower Ct:	United States Court of Appeals for the Fifth Circuit
Case Numbers:	(17-10199)
Decision Date:	November 27, 2018
Rehearing Denied:	April 2, 2019

DATE	PROCEEDINGS AND ORDERS
Jun 20 2019	Application (18A1315) to extend the time to file a petition for a writ of certiorari from July 1, 2019 to July 31, 2019, submitted to Justice Alito. **Main Document** **Proof of Service**
Jun 20 2019	Application (18A1315) granted by Justice Alito extending the time to file until July 31, 2019.
Jul 31 2019	Petition for a writ of certiorari filed. (Response due September 3, 2019) **Petition** **Proof of Service**
Sep 18 2019	DISTRIBUTED for Conference of 10/11/2019.
Sep 20 2019	Response Requested. (Due October 21, 2019)

NAME	ADDRESS	PHONE

Attorneys for Petitioner

Noel J. Francisco Counsel of Record	Solicitor General United States Department of Justice 950 Pennsylvania Avenue, NW Washington, DC 20530-0001 SupremeCtBriefs@USDOJ.gov	202-514-2217

Party name: United States of America

Attorneys for Respondent

Kevin Joel Page Counsel of Record	Federal Public Defender's Office- Northern District of Texas 525 S. Griffin Street Suite 629 Dallas, TX 75202 joel_page@fd.org	214-767-2746

Party name: Dominic Ladale Walton