

APPENDIX

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JUN 7 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

MITCHUM PASTOR,

Defendant-Appellant.

No. 18-10330

D.C. No. 1:18-cr-00058-JMS-1
District of Hawaii,
Honolulu

ORDER

Before: LEAVY, BEA, and N.R. SMITH, Circuit Judges.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

Pastor's petition for rehearing en banc (Docket Entry No. 19) is denied.

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MAR 19 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

No. 18-10330

Plaintiff-Appellee,

D.C. No. 1:18-cr-00058-JMS

v.

MEMORANDUM*

MITCHUM PASTOR,

Defendant-Appellant.

Appeal from the United States District Court
for the District of Hawaii
J. Michael Seabright, Chief Judge, Presiding

Submitted March 12, 2019**

Before: LEAVY, BEA, and N.R. SMITH, Circuit Judges.

Mitchum Pastor appeals from the district court's judgment and challenges the 168-month sentence imposed following his guilty-plea conviction for bank robbery and credit union robbery, in violation of 18 U.S.C. § 2113(a). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See Fed. R. App. P. 34(a)(2).*

Pastor contends that the district court erred by sentencing him as a career offender because federal bank robbery, 18 U.S.C. § 2113(a), is not a crime of violence under U.S.S.G. §§ 4B1.1 and 4B1.2. As Pastor concedes, this contention is foreclosed. *See United States v. Watson*, 881 F.3d 782, 786 (9th Cir.), *cert. denied*, 139 S. Ct. 203 (2018). Pastor claims that *Watson* should be reconsidered but recognizes that this panel has no power to overrule circuit precedent in this case. *See Miller v. Gammie*, 335 F.3d 889, 900 (9th Cir. 2003) (en banc) (three-judge panel may depart from circuit precedent only if that precedent is “clearly irreconcilable” with intervening higher authority).

AFFIRMED.

ORIGINAL

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAIIUnited States District Court
District of HawaiiAUG 30 2018
at 3 o'clock and 30 min. M.
SUE BEITIA, CLERK

UNITED STATES OF AMERICA

v.

MITCHUM L. PASTOR

JUDGMENT IN A CRIMINAL CASE

Case Number: 1:18CR00058-001

USM Number: 83965-022

ALEXANDER SILVERT, FAFD

Defendant's Attorney

THE DEFENDANT:

pleaded guilty to Counts 1 and 2 of the Indictment.
 pleaded nolo contendere to count(s) ___ which was accepted by the court.
 was found guilty on count(s) ___ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 2113(a)	Bank Robbery	4/12/2018	1
18 U.S.C. § 2113(a)	Credit Union Robbery	4/13/2018	2

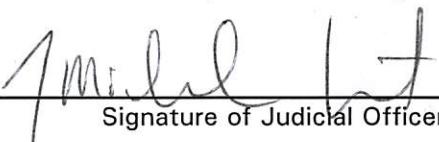
The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) ___ and is discharged as to such count(s).
 Count(s) ___ (is)(are) dismissed on the motion of the United States.

It is further 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.

August 29, 2018

Date of Imposition of Judgment


Signature of Judicial OfficerJ. MICHAEL SEABRIGHT, Chief United States District Judge
Name & Title of Judicial OfficerAugust 30, 2018
Date

AO 245B

(Rev. 6/05) Judgment in a Criminal Case
Sheet 2 - Imprisonment

CASE NUMBER: 1:18CR00058-001
DEFENDANT: MITCHUM L. PASTOR

Judgment - Page 2 of 6

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: ONE HUNDRED SIXTY-EIGHT (168) MONTHS.

This term consists of ONE HUNDRED SIXTY-EIGHT (168) MONTHS as to each of Counts 1 and 2, with all such terms to run concurrently.

—

The court makes the following recommendations to the Bureau of Prisons:
1) Butner FCC (for mental health treatment); and
2) Mental Health Treatment.

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

The defendant shall surrender to the United States Marshal for this district.
[] at ____ on ____.
[] as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
[] before ____ on ____.
[] as notified by the United States Marshal.
[] as notified by the Probation or Pretrial Services Officer.

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 U.S. Marshal

AO 245B

(Rev. 6/05) Judgment in a Criminal Case
Sheet 3 - Supervised ReleaseCASE NUMBER: 1:18CR00058-001
DEFENDANT: MITCHUM L. PASTOR

Judgment - Page 3 of 6

SUPERVISED RELEASE**Upon release from imprisonment, the defendant shall be on supervised release for a term of: THREE (3) YEARS.****This term consists of THREE (3) YEARS as to each of Counts 1 and 2, with all such terms to run concurrently.****The defendant shall not commit another federal, state, or local crime.****That the defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of commencement on supervision and at least two periodic drug tests thereafter, but not more than 15 valid drug tests per month during the term of supervised release.**

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check if applicable.)
- The defendant shall cooperate in the collection of DNA as directed by the probation officer, if not already completed. (Check if applicable.)
- The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. (Check, if applicable.)
- The defendant shall participate in an approved program for domestic violence. (Check if applicable.)

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.

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.

STANDARD CONDITIONS OF SUPERVISION

- 1) You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of the time you are released, 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 to 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 the probation officer. Your legitimate invocation of the Fifth Amendment privilege against self-incrimination in response to a probation officer's question shall not be considered a violation of this condition.
- 5) You must live at a place approved by the probation officer. If you plan to change where you live or who lives with you, 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.
- 6) You must allow the probation officer to visit you at any time reasonable under the circumstances at your home or elsewhere, and you must permit, to the extent you are able or authorized to do so, the probation officer to take any items prohibited by the conditions of your supervision that the officer 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 if there are substantial changes to 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) Unless you have received advance permission from the probation officer or the association is required by supervision conditions, you must not voluntarily and intentionally associate with any person you know is engaged in committing a federal, state, or local crime, not including traffic offenses, whether the crime is being committed in or outside of your presence. 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, as defined in 18 U.S.C. § 921(a)(4), or dangerous weapon (that is, 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 an organization or a person relating to your criminal record or personal history or characteristics, the probation officer may require, with the court's approval, that you notify that organization or person (or that person's parent, guardian, caretaker, or other individual responsible for the person's welfare) about the risk, and you must comply with that instruction. The probation officer may contact the organization or person that you were directed to notify and confirm that you notified that organization or person about the risk.
- 13) You must follow the instructions of the probation officer related to the conditions of supervision.

CASE NUMBER: 1:18CR00058-001
DEFENDANT: MITCHUM L. PASTOR

Judgment - Page 4 of 6

SPECIAL CONDITIONS OF SUPERVISION

1. You must participate in a substance abuse treatment program and follow the rules and regulations of that program. The probation officer, in consultation with the treatment provider, will supervise your participation in the program (such as provider, location, modality, duration, and intensity).
2. As part of the substance abuse treatment regimen and monitoring, you must submit to substance abuse testing to determine if you have used a prohibited substance. You must not attempt to obstruct or tamper with the testing methods.
3. Restitution of \$320.00 is due to First Hawaiian Bank, Attn: Security Department, P.O. Box 1959, Honolulu, HI 96805, to be paid starting 30 days after commencement of the term of supervised release, according to a schedule determined by the court. You must submit documents requested by the probation officer that would assist the court in determining an appropriate payment schedule. Your financial circumstances must be reviewed by the probation officer on at least an annual basis. You must notify the probation officer of any change in your financial circumstances that affect your ability to pay. Payments must be made by payroll deduction, when applicable.
4. You must provide the probation officer access to any requested financial information and authorize the release of any financial information. The probation office may share financial information with the U.S. Attorney's Office.
5. You must apply all monies received from income tax refunds, lottery winnings, inheritance, judgments and any anticipated or unexpected financial gains to the outstanding court-ordered financial obligation, at the discretion and direction of the court.
6. You must not incur new credit charges, or open additional lines of credit, or apply for any loans without the prior approval of the probation officer.
7. You must participate in a mental health treatment program and follow the rules and regulations of that program. The probation officer, in consultation with the treatment provider, will supervise your participation in the program (such as provider, location, modality, duration, and intensity). You must take all mental health medications, including psychotropic medications, that are prescribed by your treating physician.
8. You must submit your person, property, house, residence, vehicle, papers, or office, to a search conducted by a United States Probation Officer. Failure to submit to a search may be grounds for revocation of release. You must warn any other occupants that the premises may be subject to searches pursuant to this condition. The probation officer may conduct a search under this condition only when reasonable suspicion exists that you have violated a condition of supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.

CASE NUMBER: 1:18CR00058-001
DEFENDANT: MITCHUM L. PASTOR

Judgment - Page 5 of 6

CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
Totals:	\$ 200.00	\$	\$ 320.00 (as to Count 1)

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

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, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. §3664(i), all non-federal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
First Hawaiian Bank Attn: Security Department P.O. Box 1959 Honolulu, HI 96805		\$320.00	

TOTALS	\$	<u>\$320.00</u>
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Restitution amount ordered pursuant to plea agreement \$ _

The defendant must pay interest on restitution and a fine of more than \$2500, 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:

<input type="checkbox"/> the interest requirement is waived for the	<input type="checkbox"/> fine	<input type="checkbox"/> restitution
<input type="checkbox"/> the interest requirement for the	<input type="checkbox"/> fine	<input type="checkbox"/> restitution is modified as follows:

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

AO 245B

(Rev. 6/05) Judgment in a Criminal Case
Sheet 6 - Schedule of PaymentsCASE NUMBER: 1:18CR00058-001
DEFENDANT: MITCHUM L. PASTOR

Judgment - Page 6 of 6

SCHEDULE OF PAYMENTS

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

- A Lump sum payment of \$ __ due immediately, balance due
 - not later than __, or
 - in accordance C, D, E, or F below, or
- B Payment to begin (may be combined with C, D, or F below); or
- C Payment in equal __ (e.g., weekly, monthly, quarterly) installments of \$ __ over a period of __ (e.g., months or years), to commence __ (e.g., 30 or 60 days) after the date of this judgment ; or
- D Payment in equal __ (e.g., weekly, monthly, quarterly) installments of \$ __ over a period of __ (e.g., months or years), to commence __ (e.g., 30 or 60 days) after the 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:

You must submit documents requested by the probation officer that would assist the court in determining an appropriate payment schedule after 30 days of supervision.

If this judgment imposes imprisonment, payment of criminal monetary penalties is not due during imprisonment, unless specifically required by this judgment. However, this order does not preclude a defendant from making voluntary payments towards any criminal monetary penalties. 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

Defendant and Co-Defendant Names and Case Numbers (including defendant number, Total Amount, Joint and Several Amount, and corresponding pay, if appropriate).

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

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