
No. _____

IN THE
Supreme Court of the United States

Tawoine Aquil Frank Banks,
Petitioner,
v.

United States of America,
Respondent.

**On Petition for a Writ of Certiorari
To the Second Circuit Court of Appeals**

**Petitioner's Motion to Proceed
*In Forma Pauperis***

Elizabeth A. Latif*
Law Offices of Elizabeth A. Latif
PLLC
1022 Boulevard, #272
W. Hartford, CT 06119

Counsel for Petitioner

*Counsel of Record

By and through his counsel, Petitioner Tawoine Aquil Frank Banks respectfully moves this Court as follows:

1. On June 14, 2019, the Second Circuit Court of Appeals appointed petitioner's counsel pursuant to the Criminal Justice Act, 18 U.S.C. § 3006A.

2. Pursuant to Rule 39 of the Supreme Court of the United States, petitioner requests that his motion to proceed *in forma pauperis* be granted.

Respectfully submitted,

/s/ Elizabeth A. Latif*
Law Offices of Elizabeth A. Latif
PLLC
1022 Boulevard, #272
W. Hartford, CT 06119

Counsel for Petitioner

*Counsel of Record

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W. Hartford, CT 06119

Counsel for Petitioner

*Counsel of Record

QUESTION(S) PRESENTED

Did the Court of Appeals err in affirming of a supervised revocation sentence that ran consecutively to other supervised release revocation sentence?

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

[] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

United States v. Banks, No. 16-CR-390/16-CR-431/16-CR-432, U. S. District Court for the Eastern District of New York. Judgment entered May 29, 2018, and amended June 5, 2018.

United States v. Banks, No. 18-1683, U. S. Court of Appeals for the Second Circuit. Judgment entered May 9, 2019.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Tawoine Aquil Frank Banks, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case.

DECISION BELOW

The opinion of the court of appeals is unreported and unavailable in electronic databases, but that order is attached as App. A. Excerpts from the district court's sentencing transcripts are attached as App. B and C.

JURISDICTION

The Second Circuit entered judgment in this case on May 9, 2019. No petition for rehearing was filed. This Petition is timely under Rule 13.1, as it was filed within the time allowed by the Court's July 9, 2019, grant of a motion for extension of time to file the petition to September 13, 2019. The jurisdiction of this Court rests on 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 3583 provides, in relevant part:

Inclusion of a term of supervised release after imprisonment

(a) In General.— The court, in imposing a sentence to a term of imprisonment for a felony or a misdemeanor, may include as a part of the sentence a requirement that the defendant be placed on a term of supervised release after imprisonment, except that the court shall include as a part of the sentence a requirement that the defendant be placed on a term of supervised release if such a term is required by statute or if the defendant has been convicted for the first time of a domestic violence crime as defined in section 3561 (b).

(b) Authorized Terms of Supervised Release.— Except as otherwise provided, the authorized terms of supervised release are—

- (1) for a Class A or Class B felony, not more than five years;
- (2) for a Class C or Class D felony, not more than three years; and
- (3) for a Class E felony, or for a misdemeanor (other than a petty offense), not more than one year.

(c) Factors To Be Considered in Including a Term of Supervised Release.— The court, in determining whether to include a term of supervised release, and, if a term of supervised release is to be included, in determining the length of the term and the conditions of supervised release, shall consider the factors set forth in section 3553 (a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7).

...

(e) Modification of Conditions or Revocation.— The court may, after considering the factors set forth in section 3553 (a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7)—

(1) terminate a term of supervised release and discharge the defendant released at any time after the expiration of one year of supervised release, pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation, if it is satisfied that such action is warranted by the conduct of the defendant released and the interest of justice;

(2) extend a term of supervised release if less than the maximum authorized term

was previously imposed, and may modify, reduce, or enlarge the conditions of supervised release, at any time prior to the expiration or termination of the term of supervised release, pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation and the provisions applicable to the initial setting of the terms and conditions of post-release supervision;

(3) revoke a term of supervised release, and require the defendant to serve in prison all or part of the term of supervised release authorized by statute for the offense that resulted in such term of supervised release without credit for time previously served on post release supervision, if the court, pursuant to the Federal Rules of Criminal Procedure applicable to revocation of probation or supervised release, finds by a preponderance of the evidence that the defendant violated a condition of supervised release, except that a defendant whose term is revoked under this paragraph may not be required to serve on any such revocation more than 5 years in prison if the offense that resulted in the term of supervised release is a class A felony, more than 3 years in prison if such offense is a class B felony, more than 2 years in prison if such offense is a class C or D felony, or more than one year in any other case; or

(4) order the defendant to remain at his place of residence during nonworking hours and, if the court so directs, to have compliance monitored by telephone or electronic signaling devices, except that an order under this paragraph may be imposed only as an alternative to incarceration.

(f) Written Statement of Conditions.— The court shall direct that the probation officer provide the defendant with a written statement that sets forth all the conditions to which the term of supervised release is subject, and that is sufficiently clear and specific to serve as a guide for the defendant’s conduct and for such supervision as is required.

...

(h) Supervised Release Following Revocation.— When a term of supervised release is revoked and the defendant is required to serve a term of imprisonment, the court may include a requirement that the defendant be placed on a term of supervised release after imprisonment. The length of such a term of supervised release shall not exceed the term of supervised release authorized by statute for the offense that resulted in the original term of supervised release, less any term of imprisonment that was imposed upon revocation of supervised release.

(i) Delayed Revocation.— The power of the court to revoke a term of supervised release for violation of a condition of supervised release, and to order the defendant to serve a term of imprisonment and, subject to the limitations in subsection (h), a further term of supervised release, extends beyond the expiration of the term of supervised release for any period reasonably necessary for the adjudication of matters arising before its expiration if, before its expiration, a warrant or summons has been issued on the basis of an allegation of such a violation.

18 U.S.C. § 3624 provides, in relevant part:
Release of a prisoner

(a) Date of Release.— A prisoner shall be released by the Bureau of Prisons on the date of the expiration of the prisoner's term of imprisonment, less any time credited toward the service of the prisoner's sentence as provided in subsection (b). If the date for a prisoner's release falls on a Saturday, a Sunday, or a legal holiday at the place of confinement, the prisoner may be released by the Bureau on the last preceding weekday.

(b) Credit Toward Service of Sentence for Satisfactory Behavior.—

(1) Subject to paragraph (2), a prisoner who is serving a term of imprisonment of more than 1 year [1] other than a term of imprisonment for the duration of the prisoner's life, may receive credit toward the service of the prisoner's sentence, beyond the time served, of up to 54 days at the end of each year of the prisoner's term of imprisonment, beginning at the end of the first year of the term, subject to determination by the Bureau of Prisons that, during that year, the prisoner has displayed exemplary compliance with institutional disciplinary regulations. Subject to paragraph (2), if the Bureau determines that, during that year, the prisoner has not satisfactorily complied with such institutional regulations, the prisoner shall receive no such credit toward service of the prisoner's sentence or shall receive such lesser credit as the Bureau determines to be appropriate. In awarding credit under this section, the Bureau shall consider whether the prisoner, during the relevant period, has earned, or is making satisfactory progress toward earning, a high school diploma or an equivalent degree. Credit that has not been earned may not later be granted. Subject to paragraph (2), credit for the last year or portion of a year of the term of imprisonment shall be prorated and credited within the last six weeks of the sentence.

(2) Notwithstanding any other law, credit awarded under this subsection after the date of enactment of the Prison Litigation Reform Act shall vest on the date the

prisoner is released from custody.

18 U.S.C. § 3584 provides:

Multiple sentences of imprisonment

(a) Imposition of Concurrent or Consecutive Terms.— If multiple terms of imprisonment are imposed on a defendant at the same time, or if a term of imprisonment is imposed on a defendant who is already subject to an undischarged term of imprisonment, the terms may run concurrently or consecutively, except that the terms may not run consecutively for an attempt and for another offense that was the sole objective of the attempt. Multiple terms of imprisonment imposed at the same time run concurrently unless the court orders or the statute mandates that the terms are to run consecutively. Multiple terms of imprisonment imposed at different times run consecutively unless the court orders that the terms are to run concurrently.

(b) Factors To Be Considered in Imposing Concurrent or Consecutive Terms.— The court, in determining whether the terms imposed are to be ordered to run concurrently or consecutively, shall consider, as to each offense for which a term of imprisonment is being imposed, the factors set forth in section 3553 (a).

(c) Treatment of Multiple Sentence as an Aggregate.— Multiple terms of imprisonment ordered to run consecutively or concurrently shall be treated for administrative purposes as a single, aggregate term of imprisonment.

STATEMENT OF THE CASE

Defendant-Petitioner Tawoine Aquil Frank Banks appeals the Second Circuit's May 9, 2019, denial of his appeal of the judgment of the United States District Court for the Eastern District of New York (Irizarry, J.), revoking his term of supervised release and sentencing him to 12 months' imprisonment, to run consecutively to a previously imposed term of 10 months' imprisonment, followed by 3 years of supervised release, entered May 29, 2018, and amended June 5, 2018.

The original charges stemmed from Mr. Banks' arrest in North Carolina for robbing three banks (on three different dates) while armed. In June 2002, the North Carolina district court sentenced Mr. Banks to a 78-month term of imprisonment on each of the three robbery counts in which he was charged, to run concurrently with each other, followed by a consecutive 84-month term of imprisonment on a gun count. The court also imposed a 5-year term of supervised release on each of the four counts of conviction, to run concurrently. In July 2016, jurisdiction over Mr. Banks's case was transferred from the Middle District of North Carolina to the Eastern District of New York.

Mr. Banks violated his supervised release on several separate occasions in 2017. As to these violations, on October 20, 2017, the district court revoked supervision and imposed a sentence of 10 months' imprisonment, to be followed by a new 3-year term of supervised release.

Mr. Banks again violated his supervised release in 2018. On May 10, 2018, the district court revoked his term of supervised release and sentenced him to 12 months' imprisonment, to run consecutively to the previously imposed term of 10 months' imprisonment, followed by 3 years of supervised release.

The purpose of supervised release is not punishment, but rather, rehabilitation. When a district court revokes supervised release, it has the authority to order that "all or part" of that term of supervised release be served in custody. *See* 18 U.S.C. § 3583(e)(3). When a defendant is in custody on a supervised release violation, he is serving his term of supervised release in custody, not serving a term of imprisonment. *See Johnson v. United States*, 529 U.S. 694 (2000).

In Mr. Banks' case, although the district court had the authority to order him to serve his term(s) of supervised release in custody, it did not have the authority to impose consecutive sentences. 18 U.S.C. § 3624(e) expressly requires that terms of supervised release be served concurrently. Accordingly, this Court should vacate the Second Circuit's order affirming the district court's imposition of a consecutive supervised release revocation sentence and remand this case for resentencing.

REASONS FOR GRANTING THE PETITION

I. THE DISTRICT COURT'S IMPOSITION OF A SUPERVISED REVOCATION SENTENCE TO RUN CONSECUTIVELY TO OTHER SUPERVISED RELEASE REVOCATION SENTENCES VIOLATED SECTION 3624(e)'S REQUIREMENT THAT TERMS OF SUPERVISED RELEASE RUN CONCURRENTLY.

A. Standard of Review

The legality of a guidelines sentence is reviewed *de novo*. *See United States v. Carboni*, 204 F.3d 39, 46 (2d Cir. 2000).¹ Because Mr. Banks's appeal regards statutory construction, it is a question of law reviewed *de novo*. *Ehrenfeld v. Mahfouz*, 489 F.3d 542, 547 (2d Cir. 2007) (question of statutory interpretation is subject to *de novo* review).

B. The District Court Committed Error In Imposing Consecutive Supervised Release Revocation Sentences In Violation Of The Statutory Requirement That Terms of Supervised Release Run Concurrently

1. The Statutory Scheme of Supervised Release

The goal of supervised release is not punishment. Rather, it is either to assist an individual who has been incarcerated to transition and re-adjust to life outside of custody, or to provide rehabilitation to an individual who requires both further supervision and training programs. Therefore, supervised release, although its

¹ Mr. Banks did challenge his sentences below on the basis that they were procedurally and substantively unreasonable.

length is determined by the seriousness of the crime and tied to the offense, is not in itself part of the individual's punishment.

Title 18 U.S.C. § 3624(e) provides that multiple terms of supervised release are to run concurrently. *See* 18 U.S.C. § 3624(e). Specifically, section 3624(e) states that a “term of supervised release . . . runs concurrently with any Federal . . . term of . . . supervised release . . . to which the person is subject or becomes subject during the term of supervised release.” *Id.* Although section 3624(e) does not directly speak to revocation proceedings, it plainly covers all "terms of supervised release." *See id.*

Supervised release revocation proceedings generally are governed by 18 U.S.C. § 3583(e)(3), which provides that a court may

revoke a term of supervised release, and require the defendant to serve in prison *all or part of the term of supervised release* authorized by statute for the offense that resulted in the term of supervised release without credit for time previously served on post-release supervision.

Id. (emphasis added). Thus, when a term of supervised release is revoked, a court has discretion to order that all or part of that term be served in prison.

Upon revocation of supervised release, the term that is to be served in custody may not exceed the statutory maximum sentence. *See United States v. Brooks*, No. 16-4063 (2d Cir. 2018) (per curiam) (Parker, Lynch, Chin). A term

imposed by the court in excess of the statutory authorized term constitutes plain error. Ultimately, irrespective of the actual term imposed by the court, it is the term of supervised release that is served in custody, not a new sentence of imprisonment.

2. *Johnson* held that, after revocation of supervised release, no new “term” of imprisonment is imposed.

In *Johnson v. United States*, 529 U.S. 694 (2000), this Court analyzed whether section 3583(e)(3) permitted a court to revoke a defendant's supervised release, imprison him, and then return him to supervision upon release from custody. Citing the language of former section 3583(e)(3) that states that a court can “revoke a term of supervised release, and require the defendant to serve in prison all or part of the term of supervised release,” *Johnson*, 529 U.S. at 705, this Court noted that “it is not a ‘term of imprisonment’ that is to be served, but all or part of the ‘term of supervised release.’” *Id.* The term of supervised release “is being served, in whole or in part, in prison. . . .” *Id.*

Accordingly, this Court noted, “revocation” proceedings determine where the term of supervised release will be served: in prison or in the community.

It shows that saying a revoked term of supervised release survives to be served in prison following the court’s reconsideration of it is consistent with a secondary but recognized definition, and so is saying

that the balance not served in prison may survive to be served out as supervised release.

Id.

Because a "term of supervised release . . . runs concurrently with any Federal . . . term of . . . supervised release . . . to which the person is subject or becomes subject during the term of supervised release," 18 U.S.C. § 3624(e), Mr. Banks's two terms of supervised release come within section 3624(e)'s ambit and therefore should be served concurrently. Accordingly, Mr. Banks's revocation sentences cannot be imposed consecutively.

3. Section 3583(h) does not undermine Mr. Banks's argument.

18 U.S.C. § 3583(h) does not undermine Mr. Banks's position. That statute provides:

When a term of supervised release is revoked, and the defendant is required to serve a term of imprisonment, the court may include a requirement that the defendant be placed on a term of supervised release after imprisonment. The length of such a term of supervised release shall not exceed the term of supervised release authorized by the statute for the offense that resulted in the original term of supervised release, less any term of imprisonment that was imposed upon revocation of supervised release.

18 U.S.C. § 3583(h). Nothing in section 3583(h) undermines *Johnson's* interpretation of section 3583(e)(3). As noted above, section 3583(e)(3) still contains the same language that informed *Johnson's* holding that imprisonment after

revocation proceedings represented a determination that at least a portion of the term of supervised release was to be served in custody. Accordingly, this Court should vacate the Second Circuit's order affirming the district court's imposition of a consecutive supervised release revocation sentence and remand this case for resentencing.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

Elizabeth A. Latif*
Law Offices of Elizabeth A. Latif PLLC
1022 Boulevard, #272
W. Hartford, CT 06119
Counsel for Petitioner

*Counsel of Record

APPENDIX

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APPENDIX A

MANDATE

Pet.App.1

18-1683-cr
U.S. v. Banks

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 16th day of April, two thousand nineteen.

PRESENT:

ROBERT A. KATZMANN,
Chief Judge,
JOSÉ A. CABRANES,
SUSAN L. CARNEY,
Circuit Judges.

UNITED STATES OF AMERICA,

Appellee,

v.

No. 18-1683-cr

TAWOINE AQUIL FRANK BANKS,

Defendant-Appellant.

For Defendant-Appellant:

Yuanchung Lee, Federal Defenders of New
York, New York, NY.

For Appellee:

Emily Berger, Nicholas J. Moscow, Assistant
United States Attorneys, *for* Richard P.
Donoghue, United States Attorney for the
Eastern District of New York, Brooklyn, NY.

Appeal from a judgment of the United States District Court for the Eastern District of New York (Irizarry, *J.*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is **AFFIRMED**.

Tawoine Banks appeals from a judgment of the United States District Court for the Eastern District of New York (Irizarry, *J.*) entered May 29, 2018, and amended June 5, 2018, sentencing Banks principally to twelve months and one day in prison for violating supervised release, to run consecutive to a previously-imposed ten-month sentence of imprisonment for a prior violation of supervised release. We assume the parties' familiarity with the underlying facts, the procedural history of the case, and the issues on appeal.

Banks argues, first, that the district court's sentence was procedurally unreasonable because the court improperly relied on 18 U.S.C. § 3553(a)(2)(A) – “the need for the sentence imposed . . . to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense” – in imposing a consecutive term of imprisonment significantly longer than the term recommended by the parties. But the cases Banks cites are about a district court's decision to impose a term of supervised release, *not* a district court's decision to impose a term of incarceration for violating supervised release. Banks does not point to any case suggesting that a court may not consider the factors enumerated in 18 U.S.C. § 3553(a)(2)(A) in conjunction with a carceral sentence for *violating* supervised release. Indeed, 18 U.S.C. § 3583(e), which governs revocation of supervised release, does not prohibit a district court from considering the § 3553(a)(2)(A) factors when imposing a sentence for violating supervised release. *See United States v. Williams*, 443 F.3d 35, 47 (2d Cir. 2006) (“Section 3583 does not state that any particular factor cannot be considered, and we interpret § 3583(e) simply as requiring consideration of the

enumerated subsections of § 3553(a), without forbidding consideration of other pertinent factors.”).¹

Second, Banks argues that his sentence was substantively unreasonable because it was far longer than necessary to address the breach of trust his violation conduct represented. This Court, however, “will not second guess the weight (or lack thereof) that the [district court] accorded to a given factor or to a specific argument” in determining sentence. *United States v. Pope*, 554 F.3d 240, 247 (2d Cir. 2009). Rather, “[t]he particular weight to be afforded aggravating and mitigating factors is a matter firmly committed to the discretion of the sentencing [court].” *United States v. Broxmeyer*, 699 F.3d 265, 289 (2d Cir. 2012). The district court here adequately explained its decision to impose a sentence of a year and a day by reference to the applicable factors listed in §§ 3553(a) and 3583.² Accordingly, although Banks’s sentence was two months above the Chapter Seven policy statement range, we conclude that it was within the range of permissible decisions. *See, e.g., United States v. Goffi*, 446 F.3d 319, 320-21 (2d Cir. 2006).

Banks also argues that his sentence was substantively unreasonable because the district court failed to consider several mitigating circumstances, such as his poor health, his improved behavior, his ten-month supervised release sentence entered on October 24, 2017, his potential ten-year sentence in another district for drug trafficking, and the joint recommendation of the parties. We disagree. The district court was not required to accept Banks’s explanation of his conduct as resulting principally from his drug addiction. *See App. at 271-72; id. at 272* (explaining that Banks “has violated nearly every one of the standard conditions that the court of the Middle

¹ Unless otherwise indicated, in quoting cases, all internal quotation marks, alterations, footnotes, and citations are omitted.

² For example, the district court cited a series of infractions including violations of home confinement, violations of local law, and over twenty failures to appear for drug testing.

District of North Carolina issued at sentencing”); *id.* (noting that Banks “continued with additional arrests, the criminal activity continued” and that “[w]hen sanctioned with home confinement, he violated the terms of that home confinement”).

Nor was the district court required to accept Banks’s conclusion that his more “recent good behavior” constituted a “transformation” due to his medical condition. Appellant’s Br. at 32. Indeed, the district court considered Banks’s “different outlook on life” argument, App. at 280, and rejected it, *id.* (“I’m not buying it. I have heard that song before.”). The district court was similarly permitted to give little weight to the parties’ recommendations of a ten-month concurrent sentence. *See United States v. Pelensky*, 129 F.3d 63, 69 (2d Cir. 1997). Finally, the district court was adequately attentive to defendant’s medical condition, delaying sentencing and remand into custody multiple times to ensure that Banks could receive treatment and to ensure that the Bureau of Prisons was prepared to treat Banks’s condition after he surrendered.

We have considered all of Banks’s remaining contentions on appeal and have found in them no basis for reversal. Accordingly, the judgment of the district court is **AFFIRMED**.³

FOR THE COURT:

Catherine O’Hagan Wolfe, Clerk

A True Copy

Catherine O’Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit

 

 

³ Because the Government consents to removing the “16 Cr. 432” docket number from the final written judgment in this case, we order the district court to so amend the judgment and we reserve decision on whether a defendant remains subject to conditions of supervised release after revocation but before self-surrender. *See, e.g., Johnson v. United States*, 529 U.S. 694 (2000); *United States v. Wing*, 682 F.3d 861 (9th Cir. 2012); *United States v. Winfield*, 665 F.3d 107 (4th Cir. 2012).

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - X

UNITED STATES OF AMERICA,	:	16-CR-00432(DLI)
	:	
	:	
-against-	:	United States Courthouse
	:	Brooklyn, New York
	:	
	:	Thursday, May 10, 2018
TAWOINE BANKS,	:	12:00 p.m.
	:	
Defendant.	:	

- - - - - X

TRANSCRIPT OF CRIMINAL CAUSE FOR VIOLATION OF SUPERVISED
RELEASE
BEFORE THE HONORABLE DORA L. IRIZARRY
UNITED STATES DISTRICT COURT CHIEF JUDGE

A P P E A R A N C E S:

For the Government:	RICHARD P. DONOGHUE United States Attorney Eastern District of New York 271 Cadman Plaza East Brooklyn, New York 11201 BY:NICHOLAS MOSCOW, ESQ. United States Attorney
For the Defendant:	FEDERAL DEFENDERS OF NEW YORK, INC. One Pierrepont Plaza Brooklyn, New York 11201 BY:LEN H. KAMDANG, ESQ.

Court Reporter: Michele D. Lucchese, RPR, CRR
Official Court Reporter
E-mail: MLuccheseENDY@gmail.com

Proceedings recorded by computerized stenography. Transcript
produced by Computer-aided Transcription.

1 That is an important consideration.

2 For all of the reasons that I have stated, Probation
3 has stated and the Government, the sentence imposed is 12
4 months and one day consecutive to the ten-month sentence that
5 you are currently serving, follow by 46 months of supervised
6 release, with the following special conditions of supervised
7 release: That you participate in an outpatient substance
8 abuse treatment program approved by the Probation Department,
9 contribute to the cost of such treatment, not to exceed an
10 amount determined reasonable by the Probation Department's
11 sliding scale for substance abuse treatment services, and
12 cooperate in securing any applicable third-party payment.
13 That is like Medicaid insurance. Disclose all financial
14 information and documents to the Probation Department to
15 assess your ability to pay. You must not consume any alcohol
16 or other intoxicants during and after treatment unless you are
17 given a prescription by a licensed physician and you provide
18 proof of that to the Probation Department, and you must submit
19 to random drug testing during and after treatment to ensure
20 abstinence from drugs and alcohol.

21 You must also participate in mental health treatment
22 program approved by the Probation Department. Again, you will
23 have to contribute to the cost of any services rendered or any
24 psychotropic medications that might be prescribed either by
25 co-payment or full payment, and your ability to pay will be

APPENDIX C

1 UNITED STATES DISTRICT COURT
 2 EASTERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA

16 CR 432 (DLI)

4 versus

U. S. COURTHOUSE
 225 Cadman Plaza East
 Brooklyn, New York

5 TAWOINE BANKS,

6 DEFENDANT.

October 20th, 2017

10:00 AM

7 TRANSCRIPT OF CRIMINAL CAUSE FOR SENTENCING ON VOSR
 8 BEFORE THE HONORABLE DORA IRIZARRRY
 9 UNITED STATES DISTRICT JUDGE

10 APPEARANCES

11 Representing the Government:

12 BRIDGET ROHDE
 13 UNITED STATES ATTORNEY
 14 EASTERN DISTRICT OF NEW YORK
 271 CADMAN PLAZA EAST
 15 BROOKLYN, NEW YORK 11201
 BY: NICHOLAS MOSCOW, ESQ.

16 Representing the Defendant:

17 FEDERAL DEFENDERS OF NEW YORK
 One Pierrepont Street
 Brooklyn, New York, 11201
 18 BY: LEN KAMDANG, ESQ.

19 ALSO PRESENT: CHRISTOPHER WODZINISKI, USPO

22 Reported by:

23 LISA SCHMID, CCR, RMR
 24 OFFICIAL COURT REPORTER
 225 Cadman Plaza East, Room N377
 Brooklyn, New York 11201

25 Proceedings recorded by mechanical stenography. Transcript
 produced by Computer-Aided Transcription.

LISA SCHMID, CCR, RMR

A000117

Pet.App.8

1 violations of the law: Possession of drugs, the purchase of
2 drugs. Those are both federal and local violations. Usually,
3 they're brought locally.

4 It is the sentence of the Court that you serve ten
5 months custody, followed by three years of supervised release.

6 The Court imposes the following special conditions
7 of supervised release: That you not possess any firearm,
8 ammunition or destructive device. In addition, you must
9 participate in mental health treatment with a provider
10 approved by Probation, as well as outpatient drug treatment,
11 also approved by the Department of Probation with a program
12 approved by the Department of Probation.

13 With respect to both, you must contribute to the
14 cost of that treatment, not to exceed an amount determined
15 reasonable by the Probation Department's sliding scale for
16 substance abuse treatment programs -- it also applies to
17 mental health, as well -- to the extent that you're able to
18 pay. You must cooperate in securing any applicable third
19 party payment. That's Medicaid, any health insurance you may
20 have. You must disclose all financial information and
21 documents to Probation, to assess your ability to pay.

22 You must not consume any alcohol or other
23 intoxicants of any kind during and after treatment, unless you
24 are given a prescription by a licensed doctor, and you provide
25 proof of that to the Probation Department. If you are being

LISA SCHMID, CCR, RMR

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