

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 2019

NALEN PIERRE WILLIAMS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

**APPENDIX TO THE PETITION
FOR A WRIT OF CERTIORARI**

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

AUG 23 2019

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

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
NALEN PIERRE WILLIAMS,
Defendant-Appellant.

No. 18-30089

D.C. No.
2:17-cr-00138-RAJ-1
Western District of Washington,
Seattle

ORDER

Before: D.W. NELSON, RAWLINSON, and BEA, Circuit Judges.

The members of the panel that decided this case voted unanimously to deny the petition for rehearing. Judge Rawlinson and Judge Bea voted to deny the petition for rehearing en banc. Judge Nelson recommended denial of the petition for rehearing en banc.

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

The petition for rehearing and the petition for rehearing en banc are **DENIED.**

No. 18-30089

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

NALEN PIERRE WILLIAMS,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

(District Court No. CR17-138-RAJ)

The Honorable Richard A. Jones
United States District Court Judge

**APPELLANT'S PETITION FOR REHEARING
WITH SUGGESTION FOR REHEARING EN BANC**

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I. STATEMENT OF COUNSEL

Appellant Nalen Williams respectfully petitions for rehearing and suggests rehearing en banc of the panel's June 7, 2019 memorandum decision.¹ *See* Addendum A. In the judgment of counsel, for the reasons detailed below, a rehearing should be granted pursuant to Rule 35 and Rule 40 of the Federal Rules of Appellate Procedure.

1. The Ninth Circuit panel's decision conflicts with the United States Supreme Court's opinion in *Rehaif v. United States*, 139 S. Ct. 2191, 2194, 2200 (2019), which, contrary to the precedent of all the circuits, held that for prosecutions under 18 U.S.C. § 922(g) and § 924(a)(2), the government must not only prove that the defendant knew he possessed a firearm, but also that he knew he belonged to the relevant category of persons barred from possessing a firearm. Nalen Williams' conviction and sentence for Felon In Possession of a Firearm (Count 1) under 18 U.S.C. § 922(g)(1) cannot stand pursuant to *Rehaif*, decided days after the panel issued its memorandum decision in Williams' case. The question of interpreting and applying *Rehaif* is a matter of first impression in the Ninth Circuit, impacting thousands of individuals convicted under 18 U.S.C. § 922(g).

¹ Pursuant to this Court's June 10, 2019 order, appellant's petition for rehearing en banc is due on or before August 5, 2019. *See* Addendum B.

2. Review of the sentence is warranted because the district court and the panel misapprehended a critical portion of the state court record relating to the petitioner's Washington State second degree murder conviction. The district court's finding and the panel's conclusion that Nalen Williams was motivated by a "drug deal gone bad" are irrefutably contrary to the Washington Court of Appeals' opinion set forth in the sentencing record addressing the murder conviction.

II. ARGUMENT

A. The Ninth Circuit Panel's Memorandum Decision.

The panel's June 7, 2019 memorandum decision affirmed the sentence, but remanded the case with the limited purpose of allowing the district court to correct the Statement of Reasons form. *See* Addendum A, pp. 2, 4-5.

B. En Banc Review Is Necessary To Address A Critical Matter Of First Impression Regarding How To Interpret And Apply The United States Supreme Court's Recent Decision In *United States v. Rehaif*, 139 S. Ct. 2191 (2019).

The panel issued its memorandum opinion in the case at bar on June 7, 2019. Days later, on June 21, 2019, the Supreme Court in *Rehaif v. United States*, 139 S. Ct. 2191, 2200 (2019), held that the phrase "knowingly violates" in 18 U.S.C. § 924(a)(2) applies to prosecutions under 18 U.S.C. § 922(g), and requires proof beyond a reasonable doubt that the defendant not only knew he possessed a firearm, but also that he knew he belonged to the relevant category of persons barred from possessing a firearm. In other words, *Rehaif* held that the word

“knowingly” in § 924(a)(2) applies both to the defendant’s conduct and to the defendant’s status. *Id.* at 2194. The Supreme Court’s decision in *Rehaif* makes clear that this *mens rea* requirement applies to the nine categories of individuals, including convicted felons, set forth in § 922(g). *Id.* at 2195-99.

1. Argument.

Williams’ conviction for Felon In Possession of a Firearm (Count 1),² in violation of 18 U.S.C. § 922(g)(1), must be vacated because it is contrary to the Supreme Court’s decision in *Rehaif v. United States*, 139 S. Ct. 2191, 2194, 2200 (2019), requiring proof that the defendant knew he fit within the prohibited category of § 922(g)(1). *Rehaif* established that there is no prosecutable, stand-alone violation of § 922(g). In light of *Rehaif*, the grand jury must charge, and the government must prove beyond a reasonable doubt, that the defendant knew at the time of his firearm possession that he had been previously “convicted of a crime punishable by imprisonment for a term exceeding one year.” *See* 18 U.S.C. § 922(g)(1).

In Williams’ case, there was no knowledge-of-status allegation in the indictment. Significantly, although Count 1 of the indictment against Williams cites 18 U.S.C. § 922(g)(1), it does not specify that Mr. Williams *knew* that he was a person “who has been convicted in any court of, a crime punishable by

² ER 1; ER 395-396.

10a

imprisonment for a term exceeding one year.” *See* § 922(g)(1). Williams’ conviction cannot stand because there can be no assurance that the grand jury found the crucial knowledge-of-status element.

Further, the plea agreement does not specify that knowledge of a prohibited status under § 922(g)(1) constitutes an element of the offense. ER 385-394. Nor does the plea colloquy reflect knowledge of a prohibited status as an element of the offense under Count 1, or that the government bore the burden of proof in that regard. *See* Addendum C, pp. 17, 19 (transcript of the change of plea hearing). In light of *Rehaif*, it must be concluded that in violation of the Due Process Clause, Count 1 of the indictment charged an incomplete offense which falls short of constituting a prosecutable violation of United States law.

18 U.S.C. § 924(a)(2) states that “[w]hoever *knowingly* violates subsection (a)(6), (d), (g), (h), (i), (j), or (o) of section 922 shall be fined as provided in this title, imprisoned not more than 10 years, or both.” Emphasis added. Although the correct prosecution according to the Supreme Court in *Rehaif* is under both § 924(a)(2) and § 922(g)(1), the indictment in Williams’ case did not cite § 924(a)(2). ER 395-396. Accordingly, the conduct charged by the grand jury under § 922(g)(1) alone constitutes an incomplete offense, and therefore, a “non-offense” under federal law.

The principal criteria measuring an indictment's sufficiency are whether the indictment contains the elements of the offense, sufficiently apprises the defendant of the charges he must be prepared to meet, and preserves double jeopardy protections. *Russell v. United States*, 369 U.S. 749, 763-64 (1962). Because Count 1 of the indictment did not allege that Mr. Williams knew he was a convicted felon at the time of the possession, it failed to state an essential element of the offense. This error violates Mr. Williams' Fifth Amendment right guaranteeing that a "grand jury found probable cause to support all the necessary elements of the crime," and Sixth Amendment right guaranteeing that he be informed "of the nature and cause of the accusation." *Id.* See also *Stirone v. United States*, 361 U.S. 212, 217, 219 (1960) (conviction on a charge the grand jury never made against a defendant is "fatal error").

These errors are plain pursuant to *Rehaif*. See *Henderson v. United States*, 568 U.S. 266, 269 (2013) (holding that error may be plain at the time of appellate review).

2. There Are Extraordinary Circumstances Justifying Review Of The *Rehaif* Claim, Raised For The First Time In Nalen Williams' Rehearing Petition.

On June 7, 2019, the panel issued its memorandum decision in Williams' appeal. See Addendum A. Fourteen days later, on June 21, 2019, the Supreme Court decided *Rehaif v. United States*, 139 S. Ct. 2191, 2194 (2019). Although

Williams did not raise either before the district court or in his opening and reply briefs the issue addressed in *Rehaif*, there are extraordinary circumstances warranting review.

As a general rule, this Court will not consider issues that a party raises for the first time in a petition for rehearing. *Varney v. Sec'y of Health & Human Servs.*, 859 F.2d 1396, 1397 (9th Cir.1988). However, the Ninth Circuit recognized an exception to this general rule for cases involving extraordinary circumstances. *United States v. Mageno*, 786 F.3d 768, 775 (9th Cir. 2015). While recognizing that the principle of finality serves important interests, this Court also recognized that “there are times when they are outweighed by the interest in achieving a just result” or serving “the interests of justice.” *Id.* This Court further explained that before issuance of the mandate, the interest in finality is not absolute. *Id.* In Williams’ case, the mandate has not been issued.

This Court also considers whether the party’s “failure to present the issue at the proper time was inadvertent or negligent rather than willful.” *See Escobar Ruiz v. I.N.S.*, 813 F.2d 283, 286 (9th Cir. 1987). In addition, this Court considers whether the issue raised would impact other cases. *See id.* *See also Coe v. Thurman*, 922 F.2d 528, 533 n.1 (9th Cir. 1990) (exercising discretion to review because if the government’s contention is correct, “that would have profound implications for the conduct of numerous cases in the Ninth Circuit”).

Williams' claim should be reviewed because the question of how *Rehaif* should be interpreted and applied is a matter of first impression and an issue of great importance impacting thousands of cases. *See United States v. Geyler*, 949 F.2d 280, 282 (9th Cir. 1991) (review a matter of first impression). *See also Varney v. Sec'y of Health & Human Servs.*, 859 F.2d 1396, 1398 (9th Cir. 1988) (review "an important issue of more than limited applicability"). In his dissenting opinion in *Rehaif*, Justice Alito noted that tens of thousands of prisoners are serving sentences for violating 922(g), and asserted that the majority opinion's "practical effects will be far reaching and cannot be ignored." *Rehaif*, 139 S. Ct. at 2200, 2212-13 (Alito, J., dissenting).

Further warranting review is that Williams did not willfully delay raising the claim. *See Varney*, 859 F.2d at 1398 ("we see no indication that the petitioner's failure to raise this issue initially was willful"). Indeed, the Supreme Court did not issue *Rehaif* until after the panel issued its memorandum decision, and the Supreme Court did not grant a writ of certiorari in *Rehaif* until January 11, 2019, after Williams filed his opening brief on November 12, 2018.³ *See United States v. Rehaif*, Sup. Ct. Docket, No. 17-9560.

Significantly, prior to this panel's memorandum decision in Williams' case, the law in this circuit, and in every other circuit, was clear that in a § 922(g)

³ Dkt. #12.

prosecution the government need not prove the defendant's knowledge of his prohibited status. Justice Alito protested that the *Rehaif* majority "casually overturns the long-established interpretation of an important criminal statute, 18 U.S.C. § 922(g), an interpretation that has been adopted by every single Court of Appeals to address the question." *Rehaif*, 139 S. Ct. at 2201. *Rehaif* overruled Ninth Circuit precedent holding that the mens rea element in § 922(g)(1) and § 924(a)(2) applied only to the possession element, not to status. *United States v. Enslin*, 327 F.3d 788, 798 (9th Cir. 2003) (citing *United States v. Miller*, 327 F.3d 788 (9th Cir. 1997)). In sum, the interests of justice strongly favor review because *Rehaif* establishes that Williams' felon-in-possession conviction is no longer valid.

C. The Panel Misapprehended A Critical Portion Of The Record In Concluding That The District Court Correctly Found That Nalen Williams' Prior Offense For Second Degree Murder Resulted From "A Drug Deal Gone Bad."

1. The Appellant's Claim Asserting Procedural Error Based On An Objectively Incorrect Factual Finding At Sentencing.

Nalen Williams claimed on appeal that the district court's incorrect factual findings regarding Williams' second degree murder conviction constitute procedural error. (Opening Br., pp. 12-25) (Reply Br., pp. 1-14). He argued that his 1994 murder conviction played a central role in the sentencing determination, and that among the court's findings lacking support in the record is the finding that

Nalen Williams and his brother Charles “were pretty upset with somebody over a drug deal gone bad. ER 54.” Opening Br., pp. 8-9, 19-20.

2. The Panel’s Memorandum Decision Denying The Procedural Error Claim.

Addressing Williams’ claim alleging incorrect or unsupported factual findings at sentencing, the panel’s memorandum decision states, in part:

1. The district did not make improper factual findings when fashioning the defendant’s sentence. First, the district court’s observation that the defendant and his brother “aggressively and violently killed another human being” is supported by the record. Regardless of who dealt the deadly blow, it’s undisputed that the defendant and his brother used crude weapons—a shovel and a pitchfork—to target and attack another person. Defense counsel even agreed with this high-level description of the defendant’s conduct. Similarly, the district court’s second observation—that the attack was the result of a drug deal gone bad and that the defendant and his brother had options other than attacking the victim—is supported by the record, including an opinion by the Court of Appeals of Washington upholding the defendant’s murder conviction. *See State v. Williams*, 97 Wash. App. 1002 (1999).

See Addendum A, p. 2 (emphasis added).

In his opening and reply briefs, Williams not only asserted that the district court committed procedural error by finding that the second degree murder conviction arose from a “drug deal gone bad,” but also by finding that (1) Mr. Wade produced a knife only after Nalen and his brother started to pursue Mr. Wade aggressively with a pitchfork and a shove, and (2) Nalen Williams acted without cause in a wonton, aggressive, and intentionally violent manner, and that

Nalen dealt the fatal blow with a shovel. *See* Opening Br., pp. 8-9, 12-26. *See also* Reply Br., pp. 1-14. While Nalen Williams seeks further review regarding all of the district court's erroneous factual findings, appellant's petition for rehearing focuses on the objectively incorrect factual finding that Nalen Williams was motivated to commit murder because of a "drug deal gone bad."

3. The Washington Court Of Appeals' Opinion Addressing Nalen Williams' Second Degree Murder Conviction Directly Contradicts The District Court's Finding And The Ninth Circuit Panel's Conclusion That Williams Was Motivated By "A Drug Deal Gone Bad."

Rehearing is warranted because both the district court and the panel's readings of critical portions of the record are objectively incorrect. Indeed, there is no basis to conclude that the record supported the factual finding that as to Nalen Williams the incident resulting in the death of Joseph Wade arose from "a drug deal gone bad." While it may be true that Mr. Wade and Nalen Williams' brother Charles had a discussion about drugs, there is nothing in the record to support the finding that Nalen Williams was motivated by a "drug deal gone bad," or that he even knew of a failed drug deal.

The record irrefutably establishes that Nalen Williams had no idea of the drug deal when he came upon the scene and as the events in question unfolded. Indeed, the Washington State Court of Appeals' opinion, *State v. Williams*, 97

Wash. App. 1002 (1999), cited by the panel,⁴ details that the state trial court had issued a limiting jury instruction specifying that Nalen Williams had nothing to do with the alleged drug deal. ER 271. In addition, the Washington Court of Appeals expressly found that Nalen Williams had nothing to do with any drug deal. ER 271. The Washington Court of Appeals' opinion provides that Charles followed Wade down the street asking if he wanted to buy some "soup." ER 265, 267. Significantly, however, the opinion makes no reference to Nalen being privy to the conversation between Wade and Charles.

The state prosecution asserted that Nalen had no connection or knowledge of any drug deal. The Washington Court of Appeals' opinion detailed:

As the State argues, there was absolutely no contention that Nalen was involved in the attempted drug transaction. Not only was it clear from the defendants' statements to the police that Nalen was not present when Charles asked Wade about buying "soup," but it is equally clear that Nalen did not happen upon the scene until the altercation between Charles and Wade was already in progress.

ER 271. Here, contrary to the panel's conclusion, the Washington Court of Appeals specified that (1) "there was absolutely no contention that Nalen was involved in the attempted drug transaction," (2) "it was clear" from Nalen and Charles Williams' statements that "Nalen was not present when Charles asked Wade about buying 'soup,'" and (3) "it is equally clear that Nalen did not happen

⁴ See Addendum A, p. 2.

upon the scene until the altercation between Charles and Wade was already in progress.” ER 271.

The Washington Court of Appeals’ opinion also detailed:

The trial court further issued a limiting instruction, instructing the jury that “[a]ny evidence of drug dealing or attempted drug dealing has nothing to do with NALEN WILLIAMS. *It is undisputed that NALEN WILLIAMS had no knowledge of drug dealing or attempted drug dealing on October 14, 1990.... You are instructed to disregard any evidence of drug dealing or attempted drug dealing with respect to NALEN WILLIAMS in this case.”*

ER 271 (emphasis added). In light of the Washington Court of Appeals’ clear and explicit statements, as well as the trial court’s clear and explicit instruction, it must be concluded that the panel’s interpretation of the record is objectively incorrect.

While the alleged drug dealing attempt by Charles Williams may have been relevant to determining Charles’ motivations or culpability, there is no basis to attribute to Nalen Williams the alleged actions or motivations of his brother. Yet, the district court incorrectly assumed that Nalen Williams was involved in the alleged drug deal, and that the failed deal motivated Nalen to murder Mr. Wade:

In my questioning of your lawyer, I explained that there are big differences between your approach and your explanation to how that murder conviction took place. Now, we can go through a lot of different discussions and revisiting of history about how the murder took place. But as I’ve already articulated to your lawyer, *at least from what I can see from the reports*, because that’s all that I have to rely upon, is, *you and your brother were pretty upset with somebody over a drug deal gone bad*. And before that person got a knife, you guys were already in movement, in action, to go after him. And the type of weapons that were used, there may not have been a lot of

options, in terms of your desire to protect your brother; but at the same time, when two grown men have a pitchfork and a shovel, and someone has a knife, there's some options that could have been taken, at that point in time. So there's definitely responsibility that you must bear, at this point in time.

ER 54 (emphasis added). In stating that “you [Nalen] and your brother were pretty upset with somebody over a drug deal gone bad,” the district court made clear that it understood that *both* Nalen and Charles were angry over the “drug deal gone bad,” and that this anger motivated them to kill Mr. Wade. Simply put, it was clear error for the district court to conclude that Nalen Williams was involved in, and motivated by, a “drug deal gone bad.”

The sentencing record reflects that in concluding that Nalen Williams was involved in the drug deal and motivated by a “drug deal gone bad,” the court not only ignored the express language in the Washington Court of Appeals’ opinion, but also misconstrued the presentence report, which states, in part:

Wade was leaving, but Charles asked him to buy crack cocaine from him. Charles continued to follow Wade, and his brother Nalen Williams arrived at about that time. There was a nearby landscaping truck and Charles took a shovel from the truck. He handed the shovel to Nalen and Charles took a pitchfork from the truck, and they continued to pursue Wade as he was departing.

PSR, ¶34 (emphasis added). Here, the presentence report does not specify that Nalen Williams was present during the initial interactions between Wade and Charles. Nor does the presentence report specify that Nalen knew of the drug deal, or that he was motivated by a drug deal gone bad.

4. The Panel Misapprehended The Degree Of Prejudice Arising From The District Court's Incorrect Factual Findings.

The panel misapprehended the record and the law in downplaying the prejudice arising from the district court's incorrect findings as to what happened on the night in question. The panel refers to the district court's statement as a mere "observation." *See* Addendum A, p. 2. But the district court's statements were central to the sentencing determination, rather than a mere "observation," aside, or off-hand remark. Significantly, the district court made its remark as it imposed sentence. ER 54, 59. Even before pronouncing sentence, the court, in addressing defense counsel's disparity analysis, focused on the events relating to the murder conviction. ER 38-39. The plainly incorrect finding was prejudicial also because in imposing sentence the district court gave weight to Nalen Williams' history of drug dealing, and because Williams' underlying conviction in district court included possession with intent to distribute heroin (Count 2). ER 55-57; ER 1.

The court's understanding regarding how Joseph Wade's death took place necessarily impacted the length of the sentence imposed. Indeed, the second degree murder conviction is the most serious offense in Williams' criminal history.⁵ *See* PSR. Obviously, there is a significant difference in the culpability of a person who wantonly killed a man over a drug deal, and the culpability of a

⁵ Probation's sentencing recommendation states, "[p]robably the most noteworthy aspect of Mr. Williams' personal history is the fact that that he was in prison for nearly 10 years for murder (1993-2002)."

person who sought to defend himself and his brother against a highly intoxicated man wielding a large combat knife.

Recognizing the importance of the homicide conviction, Nalen Williams and his counsel repeatedly asserted that Nalen acted in self-defense and defense of his brother in the face of a highly intoxicated man wielding a combat knife. Williams' letter to the court stated that the homicide was "an accident," and that he never meant it to happen. ER 154. The presentence report provides that "Mr. Williams maintains he acted in self-defense and that the deceased man had attacked him with a knife." PSR 7 ¶34. The presentence report also notes that Nalen Williams "has a 1' scar on his right forearm, and a 2' scar on his left forearm," and that Williams "indicates both of these injuries relate to his past murder case." PSR 13 ¶65. Defense counsel's sentencing memorandum, citing *In re Personal Restraint Petition of Andress*, 147 Wash.2d 602, 603, 56 P.3d 981, 982 (2002), asserted that Williams had been institutionalized "as a result of what may have been a wrongful conviction with a legitimate defense for the murder case." ER 76, 80.

The panel's memorandum decision states "the district court made these observations in the context of discussing the defendant's history of violence," and that "[t]o the extent the district court did engage in fact finding, a preponderance of the evidence supported the findings of facts related to the defendant's sentencing."

See Addendum A, pp. 2-3. Here, it appears the panel concluded that because the

district court's incorrect factual findings relate to a prior conviction rather than the underlying offense, there was no procedural or prejudicial error. The law does not support such a conclusion. Indeed, in *United States v. Carty*, 520 F.3d 984, 993 (9th Cir.2008) (en banc), the Ninth Circuit, sitting en banc, did not make such a distinction in holding that it is a “significant procedural error” for a sentencing judge to “choose a sentence based on clearly erroneous facts.” Moreover, downplaying the importance of factual findings relating to criminal history undermines Rule 32 of the Federal Rules of Criminal Procedure, which specifies a process for the parties to object to the presentence report and for the court to make determinations. Fed. R. Crim. P. 32(f) & (i)(3).

CONCLUSION

Williams respectfully requests that the petition for rehearing with suggestion for rehearing en banc be granted.

DATED this 30th day of July, 2019.

Respectfully submitted,

LAW OFFICE OF JONATHAN S. SOLOVY

s/ Jonathan S. Solovy

Jonathan S. Solovy
Attorney for Appellant Nalen Pierre Williams

**CERTIFICATE OF COMPLIANCE
PURSUANT TO CIRCUIT RULES 35-4 AND 40-1**

I certify that pursuant to Circuit Rule 35-4 or 40-1, the attached Petition For Rehearing With Suggestion For Rehearing En Banc is proportionately spaced, has a typeface of 14 points or more and contains 3,924 words.

DATED this 30th day of July, 2019.

LAW OFFICE OF JONATHAN S. SOLOVY, PLLC

/s/ *Jonathan S. Solovy*

Jonathan S. Solovy
Attorney for Appellant Nalen Williams

CERTIFICATE OF SERVICE

I hereby certify that on July 30, 2019, I electronically filed the foregoing *Appellant's Petition for Rehearing With Suggestion for Rehearing En Banc* with the Clerk of the Court for the United States of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

DATED this 30th day of July, 2019.

LAW OFFICE OF JONATHAN S. SOLOVY, PLLC

/s/ *Jonathan S. Solovy*

Jonathan S. Solovy
Attorney for Appellant Nalen Williams

ADDENDUM A

FILED

NOT FOR PUBLICATION

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.

NALEN PIERRE WILLIAMS,

Defendant-Appellant.

No. 18-30089

D.C. No.
2:17-cr-00138-RAJ-1

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Richard A. Jones, District Judge, Presiding

Submitted June 3, 2019**
Seattle, Washington

Before: D.W. NELSON, RAWLINSON, and BEA, Circuit Judges.

Defendant-Appellant Nalen William was convicted of being a felon in possession of a firearm, and for possession of heroin with intent to distribute. He appeals the district court's sentence of 52 months—15 months above the high end of the U.S. Sentencing Guidelines (U.S.S.G. or “the Guidelines”) range—and

* 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).

seeks remand for resentencing. We review the district court's factual findings for clear error, *United States v. Kaplan*, 839 F.3d 795, 804 (9th Cir. 2016). Because we find the defendant's arguments unpersuasive, we affirm the district court's sentence of 52 months. We remand for the limited purpose of allowing the district court to correct the Statement of Reasons form.

1. The district did not make improper factual findings when fashioning the defendant's sentence. First, the district court's observation that the defendant and his brother "aggressively and violently killed another human being" is supported by the record. Regardless of who dealt the deadly blow, it's undisputed that the defendant and his brother used crude weapons—a shovel and a pitchfork—to target and attack another person. Defense counsel even agreed with this high-level description of the defendant's conduct. Similarly, the district court's second observation—that the attack was the result of a drug deal gone bad and that the defendant and his brother had options other than attacking the victim—is supported by the record, including an opinion by the Court of Appeals of Washington upholding the defendant's murder conviction. *See State v. Williams*, 97 Wash. App. 1002 (1999).

Finally, the district court made these observations in the context of discussing the defendant's history of violence. It was this history of violence that informed the district court's decision to fashion a sentence 15 months above the

Guidelines range. To the extent the district court did engage in fact finding, a preponderance of the evidence supported the findings of facts related to the defendant's sentencing. *See United States v. Treadwell*, 593 F.3d 990, 1000 (9th Cir. 2010) (The district court did not commit clear error).

2. The district court did not err when it included the defendant's second-degree murder conviction to calculate his criminal history score. First, the defendant did not raise this issue during the sentencing hearing. We review issues raised on appeal that were not presented to the district court for plain error. *See United States v. Lloyd*, 807 F.3d 1128, 1139–40 (9th Cir. 2015). Second, a defendant cannot attack a state court conviction during a federal sentencing proceeding unless the claim is that the conviction is the result of a violation of the defendant's right to appointed counsel. *See Custis v. United States*, 511 U.S. 485 (1994); USSG § 4A1.2 Application Note 6. That is not the case here. Rather, the defendant claims that we should ignore his state court conviction because an intervening Washington Supreme Court decision held, as a matter of statutory interpretation, that the language of the second-degree murder statute under which he was convicted precludes assault as a predicate felony for second-degree murder. *See In re Personal Restraint Petition of Shawn Andress*, 147 Wash. 2d 602 (2002). While the defendant's underlying argument as to the validity of this state court conviction likely has merit, his remedy lies in state court. The district court,

therefore, did not commit plain error because its decision did not seriously affect the fairness, integrity, or public reputation of the proceedings. *Lloyd*, 807 F.3d at 1139.

3. During the sentencing hearing, the district court announced a total offense level of 15, a criminal history category of IV, and a Guidelines range of 30 to 37 months. The defendant did not object, nor did he ask for a downward departure under USSG § 4A1.3. Accordingly, this was the district court's final Guidelines calculation. Any discussion about the appropriate sentence after this announcement was made pursuant to the district court's responsibility to consider the factors in 18 U.S.C. § 3553(a). After considering the Section 3553(a) factors, the district court found that the defendant's history of violence warranted a 15-month upward variance. The defendant has not persuaded us that this sentence was unreasonable. *See United States v. Ellis*, 641 F.3d 411, 421 (9th Cir. 2011).

4. The oral pronouncement of a sentence controls if there is a discrepancy between the oral pronouncement and the written judgment. *See United States v. Hernandez*, 795 F.3d 1159, 1169 (9th Cir. 2015). An error in the written judgment does not warrant remand for resentencing. *Id.* Moreover, the Statement of Reasons form is not part of the judgment. *See* 28 U.S.C. § 994(w)(1)(B); *see also* Pub. L. No. 111-174, § 4, 124 Stat. 1216, 1216 (May 27, 2010). Since an error in the written judgment does not warrant resentencing, neither does a discrepancy on the

Statement of Reasons form. Accordingly, we remand so that the district court can make the Statement of Reasons form consistent with the oral pronouncement.

Hernandez, 795 F.3d at 1169.

We **REMAND** with an instruction to amend the Statement of Reasons form to conform with the oral pronouncement of the sentence; otherwise, we **AFFIRM**.

ADDENDUM B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JUN 10 2019

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

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
NALEN PIERRE WILLIAMS,
Defendant-Appellant.

No. 18-30089

D.C. No.
2:17-cr-00138-RAJ-1
Western District of Washington,
Seattle

ORDER

Before: D.W. NELSON, RAWLINSON, and BEA, Circuit Judges.

Appellant's Unopposed Motion to Extend Time to File the Petition for
Rehearing with Suggestion for Rehearing En Banc is **GRANTED**.

The Petition for Rehearing with Suggestion for Rehearing En Banc shall be
filed on or before August 5, 2019.

SO ORDERED.

ADDENDUM C

5 UNITED STATES OF AMERICA,)
6 Plaintiff,) No. CR17-138 RAJ
7 v.)
8 NALEN WILLIAMS,)
9 Defendant.)
10)

12 PLEA HEARING
13 Before the Honorable James P. Donohue
14 October 30, 2017

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23 Transcribed by: Reed Jackson Watkins
24 Court Approved Transcription
25 206.624.3005

35a

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APPEARANCES

2

3 PRESIDING JUDGE: JAMES P. DONOHUE

4

5 FOR THE UNITED STATES:

6 JESSICA MANCA

7 U.S. Attorney's Office

8 700 Stewart Street

9 Suite 5220

10 Seattle, Washington 98101

11

12

13 FOR THE DEFENDANT:

14 GREGORY GEIST

15 Federal Public Defender

16 1601 Fifth Avenue

17 Suite 700

18 Seattle, Washington 98101

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20

21

22 Also present: Nalen Pierre Williams, Defendant

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October 30, 2017

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4 THE CLERK: All rise. United States District Court for
5 the Western District of Washington is now in session. The
6 Honorable James P. Donohue presiding.

7 THE COURT: Good morning. Please be seated.

8 THE CLERK: Your Honor, the matter before the Court this
9 morning is a plea in Case CR17-138 assigned to Judge Jones,
10 United States of America vs. Nalen Williams.

11 Counsel, please make your appearances.

12 MR. MANCA: Good morning, Your Honor. Jessica Manca for
13 the United States.

14 THE COURT: Good morning, Ms. Manca.

15 MR. GEIST: Good morning, Your Honor. Greg Geist from the
16 Federal Public Defender's Office. I'm at counsel table with
17 Mr. Williams.

18 THE COURT: Good morning, Mr. Geist.

19 And good morning, Mr. Williams.

20 Mr. Geist, do I understand correctly that Mr. Williams is
21 prepared to enter a plea today?

22 MR. GEIST: That's correct, Your Honor.

23 THE COURT: Then Mr. Williams, I'll ask you at this point
24 to stand and raise your right hand so that you can be sworn
25 in.

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1 THE CLERK: Do you solemnly swear or affirm that the
2 testimony you're about to give will be the truth, the whole
3 truth and nothing but the truth?

4 MR. WILLIAMS: I do.

5

6 NALEN PIERRE WILLIAMS, Witness herein, having first been
7 duly sworn on oath, was examined and
8 testified as follows:

9

10 THE COURT: Thank you. Please be seated.

11 Mr. Williams, I want to remind you that you're now under
12 oath. I'm going to ask you a series of questions, and it is
13 important that you understand the question and that you
14 answer the question truthfully. If you don't understand my
15 question, let me know and I'll try to rephrase it in a way
16 so that you do understand it. If you answer any of my
17 questions falsely, then the answers that you provide today
18 could be used against you in a later prosecution for perjury
19 or for making a false statement.

20 Do you understand?

21 MR. WILLIAMS: Yes.

22 THE COURT: Would you state your full true name, please.

23 MR. WILLIAMS: Nalen Pierre Williams.

24 THE COURT: And Mr. Williams, how old are you?

25 MR. WILLIAMS: Forty-eight years old.

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1 THE COURT: And how much education have you received?

2 MR. WILLIAMS: The 12th grade.

3 THE COURT: Mr. Williams, have you been treated recently
4 for any mental illness or addiction to narcotic drugs?

5 MR. WILLIAMS: Depression.

6 THE COURT: Are you currently under the influence of any
7 alcoholic beverage or narcotic drug?

8 MR. WILLIAMS: No.

9 THE COURT: Are you currently under the influence of any
10 medicine that could make it difficult to understand me?

11 MR. WILLIAMS: No.

12 THE COURT: And Mr. Geist, to the best of your knowledge,
13 is Mr. Williams competent to enter into these proceedings?

14 MR. GEIST: Yes, Your Honor.

15 THE COURT: Thank you.

16 Mr. Williams, have you had a chance to review the
17 indictment? The indictment is the written document that
18 contains the charges that have been returned against you by
19 the grand jury.

20 MR. WILLIAMS: Yes.

21 THE COURT: And have you had a chance to speak with
22 Mr. Geist about the indictment and the charges contained in
23 it?

24 MR. WILLIAMS: Yes.

25 THE COURT: Then at this point, I'm going to ask the

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1 Assistant United States Attorney to review the charges to
2 which you're expected to plead guilty, and also the possible
3 penalties that you could face if you do plead guilty.

4 MR. MANCA: Mr. Williams is anticipated to enter a plea of
5 guilty to Count 1, Felon in Possession of a Firearm, which
6 carries a maximum term of imprisonment of up to 10 years, a
7 fine of up to \$250,000, a period of supervision following
8 release from prison of up to three years, and a mandatory
9 special assessment of \$100.

10 Additionally, he is expected to plead guilty to Count 2,
11 Possession with Intent to Distribute Heroin, in violation of
12 Title 21 U.S.C. Sections 841(a)(1) and 841(b)(1)(C). This
13 crime carries a maximum penalty of up to 20 years in prison,
14 a fine of up to \$1 million, a period of supervision
15 following release of at least three years, and a mandatory
16 \$100 special assessment.

17 THE COURT: Thank you.

18 And Mr. Geist, would you agree with the summary of the
19 charges and the possible penalties that could be imposed?

20 MR. GEIST: Yes, Your Honor.

21 THE COURT: Mr. Williams, do you understand the charges
22 and the possible penalties that could be imposed if you
23 decide to plead guilty?

24 MR. WILLIAMS: Yes.

25 THE COURT: You have the right if you wish to enter your

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1 guilty plea before Judge Jones. Judge Jones is the district
2 judge to whom your case had been assigned. If you wish,
3 however, you may also enter your guilty plea before me
4 today. I'm a magistrate judge. If you enter your guilty
5 plea before me today, you will still appear before Judge
6 Jones for sentencing, but it will be at a later date than
7 today.

8 Do you understand how this process works?

9 MR. WILLIAMS: Yes.

10 THE COURT: And do you wish to enter your guilty plea
11 before me today?

12 MR. WILLIAMS: Yes.

13 THE COURT: Is this your signature on the Consent to
14 Proceed before a United States Magistrate Judge?

15 MR. WILLIAMS: Yes.

16 THE COURT: And Mr. Geist, did you discuss the consent
17 with your client and do you believe that he understands it?

18 MR. GEIST: Yes, Your Honor.

19 THE COURT: Thank you.

20 Mr. Williams, are you satisfied with the representation
21 and the advice that you've received from Mr. Geist, your
22 attorney in this case?

23 MR. WILLIAMS: Yes.

24 THE COURT: And have you discussed with him all the facts
25 surrounding the charges against you?

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1 MR. WILLIAMS: Yes, Your Honor.

2 THE COURT: Now, I've been provided with a written Plea
3 Agreement.

4 Did you carefully review the written Plea Agreement?

5 MR. WILLIAMS: Yes.

6 THE COURT: Did you discuss it thoroughly with Mr. Geist?

7 MR. WILLIAMS: Yes.

8 THE COURT: Do you need any additional time to consider
9 the written Plea Agreement?

10 MR. WILLIAMS: No.

11 THE COURT: Is this your signature on the last page of the
12 written Plea Agreement?

13 MR. WILLIAMS: It is.

14 THE COURT: I'd like to ask you some questions about your
15 written Plea Agreement. And Mr. Williams, the reason I go
16 through this process is that I want to make sure that the
17 written Plea Agreement accurately sets forth all the
18 agreements that you've made with the United States.

19 It indicates in Section 1 that you intend to plead guilty
20 to two separate charges: One of being a Felon in Possession
21 of a Firearm, and a second charge of Possession with Intent
22 to Distribute Heroin.

23 Is that your understanding as well?

24 MR. WILLIAMS: Yes.

25 THE COURT: Now, with respect to any sentence that may be

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1 imposed, do you understand that your sentencing judge -- in
2 this case, Judge Jones -- will make reference to the United
3 States Sentencing Guidelines?

4 MR. WILLIAMS: Yes.

5 THE COURT: And have you had a chance to talk with
6 Mr. Geist about how the Sentencing Guidelines might impact
7 your case?

8 MR. WILLIAMS: Yes.

9 THE COURT: At the outset of the sentencing process, the
10 Court will begin by determining a Sentencing Guideline
11 range.

12 Do you understand this?

13 MR. WILLIAMS: Yes.

14 THE COURT: And then, after considering all the guidelines
15 and all the factors set out in Section 5 of your Plea
16 Agreement, the Court can impose any sentence up to the
17 maximum term that we've talked about.

18 Do you understand this?

19 MR. WILLIAMS: Yes.

20 THE COURT: That means that the sentence that is imposed
21 can be above or below the Sentencing Guideline range that
22 the Court determines at the outset of the process.

23 Do you understand?

24 MR. WILLIAMS: Yes.

25 THE COURT: When it comes time for sentencing, the Court

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1 will listen to guideline calculation recommendations from
2 your attorney and from the attorney representing the United
3 States. The Court will also listen to specific sentencing
4 recommendations from your attorney and the attorney
5 representing the United States, and from you if you wish to
6 make such a recommendation.

7 Do you understand, however, that none of these
8 recommendations is binding on the Court?

9 MR. WILLIAMS: Yes.

10 THE COURT: Do you also understand that you may not
11 withdraw from your guilty plea based solely on the sentence
12 the Court imposes?

13 MR. WILLIAMS: Yes.

14 THE COURT: Has anybody promised you what sentence the
15 Court will impose?

16 MR. WILLIAMS: No.

17 THE COURT: You've reached agreement on a number of issues
18 that could have an impact on your sentence. For example, in
19 Section 8 of your Plea Agreement, you and the United States
20 have agreed that there should be a 4-level upward adjustment
21 to the base offense level pursuant to Section 2K2.1(b) (6) (B)
22 because you possessed a firearm in connection with another
23 felony offense, or with knowledge, intent or reason to
24 believe that it would be used or possessed in connection
25 with another felony offense.

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1 Is that your understanding?

2 MR. WILLIAMS: Yes.

3 THE COURT: And you and the United States are free to
4 argue the application of any and all other provision of the
5 Sentencing Guidelines.

6 Is that your understanding?

7 MR. WILLIAMS: Yes.

8 THE COURT: You and the United States do not agree on the
9 base offense level, but you understand that the United
10 States will argue that the base offense level should be 24
11 pursuant to Section 2K2.1(a)(2) of the guidelines.

12 Is that your understanding?

13 MR. WILLIAMS: Yes.

14 THE COURT: And do you also understand that ultimately
15 it's up to the Court to do the calculation of the Sentencing
16 Guidelines, and that the Court can apply upward or downward
17 adjustments as thought to be appropriate in your individual
18 case?

19 MR. WILLIAMS: Yes.

20 THE COURT: In Section 9 of your Plea Agreement, the
21 United States has acknowledged that you've assisted it by
22 your timely decision to plead guilty. And when it comes
23 time for sentencing, if you continue to accept
24 responsibility, then the United States will recommend that
25 your base offense level be reduced by three levels to

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1 reflect your acceptance.

2 Is that your understanding?

3 MR. WILLIAMS: Yes.

4 THE COURT: And do you also understand that, again, the
5 Court is free to accept or reject any such motion by the
6 United States?

7 MR. WILLIAMS: Yes.

8 THE COURT: In Section 10 of the Plea Agreement, the
9 United States has indicated that it will recommend a
10 sentence no higher than 84 months of imprisonment, to be
11 followed by three years of supervision. And you're free to
12 recommend any appropriate sentence.

13 Is that your understanding?

14 MR. WILLIAMS: Yes.

15 THE COURT: And, again, do you understand that it's up to
16 the Court, the Court can impose a sentence that is higher
17 than the United States recommends or lower than what you
18 might recommend?

19 Do you understand this?

20 MR. WILLIAMS: Yeah.

21 THE COURT: In Section 11 of your Plea Agreement, the
22 United States has agreed that it will move to dismiss
23 Count 3 of the indictment at time of sentencing, and that it
24 will not prosecute you for any other offenses that it knows
25 about at this time, that are based on evidence in its

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1 possession at this time, and that arose out of the conduct
2 that led to the investigation.

3 Is that your understanding?

4 MR. WILLIAMS: Yes.

5 THE COURT: And do you understand that the United States
6 is doing this solely in exchange for the promises you've
7 made in the written Plea Agreement?

8 MR. WILLIAMS: Right, yeah.

9 THE COURT: In Section 12 of your Plea Agreement, you've
10 agreed that if the United States has seized any firearms or
11 illegal contraband, that you will forfeit whatever right,
12 title and interest you might have had to any of that
13 contraband.

14 Is that your understanding?

15 MR. WILLIAMS: Yes.

16 THE COURT: In Section 14 of your Plea Agreement, you've
17 agreed as part of the Plea Agreement to give up your appeal
18 rights to the full extent of the law on condition that the
19 Court impose a custodial sentence that is within or below
20 the sentencing guideline range that the Court determines at
21 the outset of the sentencing process.

22 Is that your understanding?

23 MR. WILLIAMS: Yes.

24 THE COURT: And specifically, if that condition is met,
25 you'd give up the right to appeal the actual sentence that

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1 is imposed and you'd give up the right to bring any kind of
2 a collateral attack against your conviction and sentence,
3 except as it may relate to effectiveness of legal
4 representation.

5 Is that your understanding?

6 MR. WILLIAMS: Yes.

7 THE COURT: I'm sorry?

8 MR. WILLIAMS: Yes.

9 THE COURT: Mr. Williams, does the written Plea Agreement
10 contain all of the agreements that you've made with the
11 United States?

12 MR. WILLIAMS: Yes.

13 THE COURT: Was anything left out?

14 MR. WILLIAMS: No.

15 THE COURT: Put in a slightly different way, has anybody
16 made any promises to you other than what is set out in the
17 written Plea Agreement?

18 MR. WILLIAMS: No.

19 THE COURT: Has anybody put pressure on you or threatened
20 you or tried to force you in any way to plead guilty?

21 MR. WILLIAMS: No.

22 THE COURT: Is the decision to plead guilty in this case
23 your decision?

24 MR. WILLIAMS: Yes.

25 THE COURT: And is it solely your decision?

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1 MR. WILLIAMS: Yes.

2 THE COURT: Mr. Williams, are you a citizen of the United
3 States?

4 MR. WILLIAMS: Yes.

5 THE COURT: If you plead guilty or if you're convicted of
6 the charges in this case, you will lose valuable civil
7 rights. They include the right to vote, the right to serve
8 on a jury, the right to hold public office and the right to
9 possess any kind of a firearm. In addition, you could
10 become ineligible for certain food stamp and Social Security
11 benefits.

12 Do you understand this?

13 MR. WILLIAMS: Yes.

14 THE COURT: Let me talk to you about some of the rights
15 that you have but rights that you'll be giving up if you
16 decide to plead guilty.

17 You have the plead not guilty to any charge brought
18 against you and to continue to plead not guilty.

19 Do you understand this?

20 MR. WILLIAMS: Yes.

21 THE COURT: If you did plead not guilty, you would then
22 have the right to a trial by jury. And during your trial,
23 you would have the right to effective assistance of an
24 attorney for your defense. You would be presumed to be
25 innocent and the United States would have to prove your

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1 guilt beyond a reasonable doubt. You would have the right
2 to see and to hear all witnesses, and to have those
3 witnesses cross-examined in your defense. You could testify
4 yourself or you could remain silent, and if you decided to
5 remain silent and not put on any evidence, these facts could
6 not be used against you.

7 Do you understand that you have all of these rights?

8 MR. WILLIAMS: Yes.

9 THE COURT: You would have the right to have the Court
10 issue subpoenas to compel witnesses to appear at your trial
11 to testify in your defense.

12 At trial, as I mentioned, the United States would have the
13 burden of proving that you are guilty beyond a reasonable
14 doubt. Before you could be convicted, all 12 jurors must be
15 convinced that the United States has met that burden. If
16 you're found guilty after a trial, you would have the right
17 to appeal your conviction to a higher court, and if you
18 could not afford to pay the costs of an appeal, those costs
19 would be paid for you.

20 Do you understand that you have all of these rights?

21 MR. WILLIAMS: Yes.

22 THE COURT: Do you also understand that if you plead
23 guilty, and if the plea is accepted by the Court, then there
24 will be no trial, and you will have given up your right to a
25 trial, and you will also have given up all of the other

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1 rights associated with a trial that we've just talked about?

2 MR. WILLIAMS: Yes.

3 THE COURT: Then at this point, I'm going to ask the
4 Assistant United States Attorney to review the essential
5 elements of the offense.

6 Mr. Williams, these are the requirements that the United
7 States would have to prove if your case went to trial, and
8 for your benefit, they are set out in Section 2 of your
9 written Plea Agreement.

10 MR. MANCA: As to Count 1, Felon in Possession of a
11 Firearm: Element 1, the defendant knowingly possessed a
12 firearm; Element 2, at the time he possessed the firearm,
13 the defendant had previously been convicted of a crime
14 punishable by imprisonment for a term exceeding one year;
15 and Element 3, the firearm had been shipped or transported
16 in interstate or foreign commerce.

17 As to Count 2, Possession with Intent to Distribute
18 Heroin: Element 1, the defendant knowingly or intentionally
19 possessed heroin, which is a controlled substance; and
20 Element 2, the defendant intended to distribute the heroin
21 to others.

22 THE COURT: And Mr. Geist, do you disagree in any respect
23 with the summary of the essential elements?

24 MR. GEIST: No, Your Honor.

25 THE COURT: Mr. Williams, do you understand that if your

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1 case went to trial, the United States would be required to
2 present evidence sufficient to prove each of these elements
3 beyond a reasonable doubt?

4 MR. WILLIAMS: Yes.

5 THE COURT: And do you also understand that by pleading
6 guilty, you will be giving up your right to require the
7 Government to do this?

8 MR. WILLIAMS: Yes.

9 THE COURT: Then at this point, I'm going to ask the
10 Assistant United States Attorney to review the facts that
11 the Government believes that it could prove if your case
12 went to trial. And for your benefit, they will be coming
13 out of Section 7 of the written Plea Agreement.

14 MR. MANCA: On September 15th, 2016, in King County within
15 the Western District of Washington, detectives with the King
16 County Sheriff's Office executed a search warrant on
17 Mr. Williams' residence.

18 Mr. Williams told the detectives that they would find
19 heroin and a gun under the chair and a shotgun in the
20 bedroom, and he admitted that he intended to distribute the
21 heroin to others.

22 The detectives found 8 grams of heroin and \$942 cash in a
23 box under the chair. Next to the box, they found a Norinco
24 Model 213 .9 millimeter caliber semiautomatic pistol; and in
25 Mr. Williams' bedroom, they found a Marlin Model 60 .22

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1 caliber rifle. Detectives searched Mr. Williams' cell phone
2 and found numerous text messages in which people asked to
3 purchase drugs from him.

4 The .9 millimeter caliber pistol and .22 caliber rifle had
5 been transported in interstate or foreign commerce. At the
6 time Mr. Williams possessed these firearms, he had
7 previously been convicted of the felony crimes of Murder in
8 the Second Degree and Delivery of Cocaine.

9 The parties agree that the Court may consider additional
10 facts contained in the Presentence Report or presented by
11 the parties at sentencing.

12 THE COURT: Mr. Williams, are all of these facts true?

13 MR. WILLIAMS: Yes.

14 THE COURT: Then at this point, I'll ask you to stand.

15 Mr. Williams, as to the charge contained in Count 1 of the
16 indictment of being a Felon in Possession of a Firearm, in
17 violation of Title 18 U.S.C. Section 922(g)(1), how do you
18 plead, guilty or not guilty?

19 MR. WILLIAMS: Guilty.

20 THE COURT: And as to the charge contained in Count 2 of
21 the indictment of Possession with Intent to Distribute
22 Heroin, in violation of Title 21 U.S.C. Sections 841(a)(1)
23 and 841(b)(1)(C), how do you plead, guilty or not guilty?

24 MR. WILLIAMS: Guilty.

25 THE COURT: Thank you. You may be seated.

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1 Mr. Geist, are you aware of any reason why the Court
2 should not accept the pleas of guilty?

3 MR. GEIST: No, Your Honor.

4 THE COURT: It is the finding of this Court in the case of
5 the United States of America vs. Nalen Pierre Williams that
6 the defendant, Mr. Williams, is fully competent and capable
7 of entering an informed plea, that he is aware --

8 MR. GEIST: Your Honor, Mr. Williams is just asking me a
9 question. If we may have a moment?

10 THE COURT: Yes.

11 (Attorney-Client privileged conversation)

12 MR. GEIST: Thank you, Your Honor.

13 THE COURT: Can we go ahead and proceed?

14 MR. GEIST: Yes, please.

15 THE COURT: Okay.

16 That Mr. Williams is aware of the charges and of the
17 consequences of the plea, and that the pleas of guilty are
18 made knowingly, intelligently and voluntarily, and that the
19 pleas are supported by an independent basis in fact
20 contained in each of the essential elements of the offense.

21 I therefore sign the Report and Recommendation concerning
22 plea of guilty. Subject to the Court's consideration of the
23 Plea Agreement and pursuant to Federal Rule Criminal
24 Procedure 11, I recommend that the Court find the defendant
25 guilty on each count and impose sentence.

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1 The clerk will provide copies of the Report and
2 Recommendation to both counsel. Objections to it are waived
3 unless filed and served within 14 days.

4 Now, Mr. Williams, at this point, our probation office
5 will become involved. A probation officer will interview
6 you and will do some further background investigation about
7 you and about the facts of this case. That background
8 information, together with the probation officer's analysis
9 as to how the Sentencing Guidelines might impact your case,
10 will all be summarized in the form of what is called a
11 Presentence Report. You and your attorney and the attorney
12 for the United States will have the opportunity to review
13 the Presentence Report and to file written objections to the
14 report.

15 In addition, you, and your attorney and the attorney for
16 the United States will have the opportunity to speak with
17 the sentencing judge prior to the time that sentence is
18 imposed.

19 Do we have a sentencing date?

20 THE CLERK: Yes, Your Honor. Judge Jones has scheduled
21 sentencing for January 5th, 2018, at 1:30 in the afternoon.

22 THE COURT: Mr. Williams, you'll remain in custody while
23 you await sentencing. You will, however, be credited with
24 the time that you are in custody and awaiting sentencing
25 against any sentence that the Court imposes.

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1 Ms. Manca, is there anything further at this time for the
2 United States?

3 MR. MANCA: No, Your Honor.

4 THE COURT: Mr. Geist is there anything further for

5 Mr. Williams?

6 MR. GEIST: No. Thank you.

7 THE COURT: We'll be at recess.

8 THE CLERK: All rise. Court is in recess.

9 (October 30, 2017 hearing concluded)

120 *Journal of Health Politics, Policy and Law* / March 2007

14 Count Approved Transaction Companies

15 1326 Fifth Avenue Suite 710

16 Seattle Washington 98101

17 206 634 3005

18

1 2

8

1

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JUN 10 2019

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

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
NALEN PIERRE WILLIAMS,
Defendant-Appellant.

No. 18-30089
D.C. No.
2:17-cr-00138-RAJ-1
Western District of Washington,
Seattle

ORDER

Before: D.W. NELSON, RAWLINSON, and BEA, Circuit Judges.

Appellant's Unopposed Motion to Extend Time to File the Petition for
Rehearing with Suggestion for Rehearing En Banc is **GRANTED**.

The Petition for Rehearing with Suggestion for Rehearing En Banc shall be
filed on or before August 5, 2019.

SO ORDERED.

FILED

NOT FOR PUBLICATION

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.

NALEN PIERRE WILLIAMS,

Defendant-Appellant.

No. 18-30089

D.C. No.
2:17-cr-00138-RAJ-1

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Richard A. Jones, District Judge, Presiding

Submitted June 3, 2019**
Seattle, Washington

Before: D.W. NELSON, RAWLINSON, and BEA, Circuit Judges.

Defendant-Appellant Nalen William was convicted of being a felon in possession of a firearm, and for possession of heroin with intent to distribute. He appeals the district court's sentence of 52 months—15 months above the high end of the U.S. Sentencing Guidelines (U.S.S.G. or “the Guidelines”) range—and

* 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).*

seeks remand for resentencing. We review the district court's factual findings for clear error, *United States v. Kaplan*, 839 F.3d 795, 804 (9th Cir. 2016). Because we find the defendant's arguments unpersuasive, we affirm the district court's sentence of 52 months. We remand for the limited purpose of allowing the district court to correct the Statement of Reasons form.

1. The district did not make improper factual findings when fashioning the defendant's sentence. First, the district court's observation that the defendant and his brother "aggressively and violently killed another human being" is supported by the record. Regardless of who dealt the deadly blow, it's undisputed that the defendant and his brother used crude weapons—a shovel and a pitchfork—to target and attack another person. Defense counsel even agreed with this high-level description of the defendant's conduct. Similarly, the district court's second observation—that the attack was the result of a drug deal gone bad and that the defendant and his brother had options other than attacking the victim—is supported by the record, including an opinion by the Court of Appeals of Washington upholding the defendant's murder conviction. *See State v. Williams*, 97 Wash. App. 1002 (1999).

Finally, the district court made these observations in the context of discussing the defendant's history of violence. It was this history of violence that informed the district court's decision to fashion a sentence 15 months above the

Guidelines range. To the extent the district court did engage in fact finding, a preponderance of the evidence supported the findings of facts related to the defendant's sentencing. *See United States v. Treadwell*, 593 F.3d 990, 1000 (9th Cir. 2010) The district court did not commit clear error.

2. The district court did not err when it included the defendant's second-degree murder conviction to calculate his criminal history score. First, the defendant did not raise this issue during the sentencing hearing. We review issues raised on appeal that were not presented to the district court for plain error. *See United States v. Lloyd*, 807 F.3d 1128, 1139–40 (9th Cir. 2015). Second, a defendant cannot attack a state court conviction during a federal sentencing proceeding unless the claim is that the conviction is the result of a violation of the defendant's right to appointed counsel. *See Custis v. United States*, 511 U.S. 485 (1994); USSG § 4A1.2 Application Note 6. That is not the case here. Rather, the defendant claims that we should ignore his state court conviction because an intervening Washington Supreme Court decision held, as a matter of statutory interpretation, that the language of the second-degree murder statute under which he was convicted precludes assault as a predicate felony for second-degree murder. *See In re Personal Restraint Petition of Shawn Andress*, 147 Wash. 2d 602 (2002). While the defendant's underlying argument as to the validity of this state court conviction likely has merit, his remedy lies in state court. The district court,

therefore, did not commit plain error because its decision did not seriously affect the fairness, integrity, or public reputation of the proceedings. *Lloyd*, 807 F.3d at 1139.

3. During the sentencing hearing, the district court announced a total offense level of 15, a criminal history category of IV, and a Guidelines range of 30 to 37 months. The defendant did not object, nor did he ask for a downward departure under USSG § 4A1.3. Accordingly, this was the district court's final Guidelines calculation. Any discussion about the appropriate sentence after this announcement was made pursuant to the district court's responsibility to consider the factors in 18 U.S.C. § 3553(a). After considering the Section 3553(a) factors, the district court found that the defendant's history of violence warranted a 15-month upward variance. The defendant has not persuaded us that this sentence was unreasonable. *See United States v. Ellis*, 641 F.3d 411, 421 (9th Cir. 2011).

4. The oral pronouncement of a sentence controls if there is a discrepancy between the oral pronouncement and the written judgment. *See United States v. Hernandez*, 795 F.3d 1159, 1169 (9th Cir. 2015). An error in the written judgment does not warrant remand for resentencing. *Id.* Moreover, the Statement of Reasons form is not part of the judgment. *See* 28 U.S.C. § 994(w)(1)(B); *see also* Pub. L. No. 111-174, § 4, 124 Stat. 1216, 1216 (May 27, 2010). Since an error in the written judgment does not warrant resentencing, neither does a discrepancy on the

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Statement of Reasons form. Accordingly, we remand so that the district court can make the Statement of Reasons form consistent with the oral pronouncement.

Hernandez, 795 F.3d at 1169.

We **REMAND** with an instruction to amend the Statement of Reasons form to conform with the oral pronouncement of the sentence; otherwise, we **AFFIRM**.

APPENDIX B

UNITED STATES DISTRICT COURT
Western District of Washington

UNITED STATES OF AMERICA

v.

NALEN PIERRE WILLIAMS

JUDGMENT IN A CRIMINAL CASE

Case Number: 2:17CR00138RAJ-001

USM Number: 48393-086

Gregory Geist

Defendant's Attorney

THE DEFENDANT:

- pleaded guilty to count(s) 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. §922(g)(1) | Felon in Possession of a Firearm | 9/15/2016 | 1 |
| 21 U.S.C. §§841(a)(1) and 841(b)(1)(C) | Possession with Intent to Distribute Heroin | 9/15/2016 | 2 |

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) 3 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.

Assistant United States Attorney

Jessica Manca

Date of Imposition of Judgment

April 13, 2018

Signature of Judge

The Honorable Richard A. Jones
United States District Judge

Name and Title of Judge

Date

April 13, 2018

DEFENDANT: **NALEN PIERRE WILLIAMS**
CASE NUMBER: **2:17CR00138RAJ-001**

IMPRISONMENT

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

52 months

The court makes the following recommendations to the Bureau of Prisons:

Placement at FDC SeaTac

- 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: **NALEN PIERRE WILLIAMS**
CASE NUMBER: 2:17CR00138RAJ-001

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of :

3 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 make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. You must 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 you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. You must participate in an approved program for domestic violence. *(check if applicable)*

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

DEFENDANT: **NALEN PIERRE WILLIAMS**
CASE NUMBER: 2:17CR00138RAJ-001

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. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at www.uscourts.gov.

Defendant's Signature

Date

DEFENDANT: **NALEN PIERRE WILLIAMS**
CASE NUMBER: **2:17CR00138RAJ-001**

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall participate as instructed by the U.S. Probation Officer in a program approved by the probation office for treatment of narcotic addiction, drug dependency, or substance abuse, which may include testing to determine if defendant has reverted to the use of drugs or alcohol. The defendant shall also abstain from the use of alcohol and/or other intoxicants during the term of supervision. Defendant must contribute towards the cost of any programs, to the extent defendant is financially able to do so, as determined by the U.S. Probation Officer. In addition to urinalysis testing that may be a part of a formal drug treatment program, the defendant shall submit up to eight (8) urinalysis tests per month.
2. The defendant shall provide the probation officer with access to any requested financial information including authorization to conduct credit checks and obtain copies of the defendant's federal income tax returns.
3. The defendant shall participate as directed in a mental health program approved by the United States Probation Office. The defendant must contribute towards the cost of any programs, to the extent the defendant is financially able to do so, as determined by the U.S. Probation Officer.
4. The defendant shall participate as directed in the Moral Reconation Therapy program approved by the United States Probation and Pretrial Services Office. The defendant must contribute towards the cost of any programs, to the extent the defendant is financially able to do so, as determined by the U.S. Probation Officer.
5. The defendant shall submit his or her person, property, house, residence, storage unit, vehicle, papers, computers (as defined in 18 U.S.C. §1030(e)(1)), other electronic communications or data storage devices or media, or office, to a search conducted by a United States probation officer, at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of supervision. Failure to submit to a search may be grounds for revocation. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition.

DEFENDANT: **NALEN PIERRE WILLIAMS**
CASE NUMBER: 2:17CR00138RAJ-001

CRIMINAL MONETARY PENALTIES

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

| | <u>Assessment</u> | <u>JVTA Assessment*</u> | <u>Fine</u> | <u>Restitution</u> |
|--------|-------------------|-------------------------|-------------|--------------------|
| TOTALS | \$ 200 | N/A | Waived | N/A |

- The determination of restitution is deferred until _____, An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such 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 nonfederal 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> |
|----------------------|--------------------|----------------------------|-------------------------------|
| TOTALS | \$ 0.00 | \$ 0.00 | |

- 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:
- The court finds the defendant is financially unable and is unlikely to become able to pay a fine and, accordingly, the imposition of a fine is waived.

* 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: **NALEN PIERRE WILLIAMS**
CASE NUMBER: 2:17CR00138RAJ-001

SCHEDULE OF PAYMENTS

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

- PAYMENT IS DUE IMMEDIATELY.** Any unpaid amount shall be paid to Clerk's Office, United States District Court, 700 Stewart Street, Seattle, WA 98101.
- During the period of imprisonment, no less than 25% of their inmate gross monthly income or \$25.00 per quarter, whichever is greater, to be collected and disbursed in accordance with the Inmate Financial Responsibility Program.
- During the period of supervised release, in monthly installments amounting to not less than 10% of the defendant's gross monthly household income, to commence 30 days after release from imprisonment.
- During the period of probation, in monthly installments amounting to not less than 10% of the defendant's gross monthly household income, to commence 30 days after the date of this judgment.

The payment schedule above is the minimum amount that the defendant is expected to pay towards the monetary penalties imposed by the Court. The defendant shall pay more than the amount established whenever possible. The defendant must notify the Court, the United States Probation Office, and the United States Attorney's Office of any material change in the defendant's financial circumstances that might affect the ability to pay restitution.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program are made to the United States District Court, Western District of Washington. For restitution payments, the Clerk of the Court is to forward money received to the party(ies) designated to receive restitution specified on the Criminal Monetaries (Sheet 5) page.

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

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

VERBATIM REPORT OF PROCEEDINGS
BEFORE THE HONORABLE JUDGE RICHARD A. JONES
UNITED STATES DISTRICT COURT

APPEARANCES:

FOR THE PLAINTIFF: JESSICA MURPHY MANCA
U.S. Attorney's Office
700 Stewart Street, Suite 5220
Seattle, WA 98101
jessica.manca@usdoj.gov

FOR THE DEFENDANT: GREGORY GEIST
Federal Public Defender's Office
1601 Fifth Avenue, Suite 700
Westlake Center Office Tower
Seattle, WA 98101
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Andrea Ramirez, CRR, RPR
Official Court Reporter
United States District Court
Western District of Washington
700 Stewart Street, Suite 17205
Seattle, WA 98101
andrea_ramirez@wawd.uscourts.gov

Reported by stenotype, transcribed by computer

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1 THE CLERK: We are here for sentencing in the matter
2 of the United States vs. Nalen Pierre Williams, Cause
3 Number CR17-138, assigned to this Court.

4 Counsel and Probation Officer, please rise and make your
5 appearances for the record.

6 MS. MANCA: Good afternoon, Your Honor. Jessica
7 Manca, for the United States.

8 THE COURT: Good afternoon, Counsel.

9 MR. GEIST: Good afternoon, Your Honor. Greg Geist,
10 from the Federal Public Defender's office. I'm at counsel
11 table with Nalen Williams.

12 THE COURT: Good afternoon, both of you.

13 MR. COWAN: Good afternoon, Your Honor. Rick Cowan,
14 from the U.S. Probation Office.

15 THE COURT: Good afternoon. Thank you for being
16 here.

17 As indicated, we are here for the sentencing of
18 Mr. Williams. It's this Court's standard practice to begin the
19 sentencing proceeding by identifying all the documents that
20 I've received and reviewed. And those documents include the
21 following: The presentence report prepared by Probation
22 Officer Richard Cowan, and attachments; the government's
23 sentencing memorandum with Exhibits 1 through 11; the
24 defendant's sentencing memorandum with Exhibits 1 through 12;
25 and the plea agreement.

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1 Counsel for the government, are you aware of any
2 additional documents that I did not state for the record?

3 MS. MANCA: No, Your Honor.

4 THE COURT: Counsel for the defense, same question.

5 MR. GEIST: No, Your Honor.

6 THE COURT: And I take it you reviewed the
7 presentence report with your client?

8 MR. GEIST: Yes, Your Honor.

9 THE COURT: Then the next question, Counsel, is to
10 whether or not there are any outstanding objections in the
11 presentence report.

12 MS. MANCA: Your Honor, the government objects to the
13 base level of 14, as stated in our sentencing memorandum.

14 THE COURT: Do you wish to make any further argument,
15 Counsel?

16 MS. MANCA: No, Your Honor.

17 THE COURT: Counsel for the defense?

18 MR. GEIST: Your Honor, we just had one factual
19 objection to Paragraph 14 of the PSR --

20 THE COURT: Just one second. Okay.

21 MR. GEIST: -- as it relates to what E.P. told the
22 agents about -- I believe the objection was to the ads for
23 prostitution posted on Backpage, and that she believes the
24 pictures were used in Backpage ads. We're asking for that to
25 be stricken. We did provide a couple of statements, from

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1 someone else who was living there. And we also just believe
2 that something that's based off of what someone thinks is not
3 enough, and is not reliable enough to be placed in a probation
4 report.

5 I think we also have the fact of the phone dump of
6 Mr. Williams didn't indicate that he was involved, at least
7 what's stated here, with any type of prostitution, or posting
8 any types of ads. So for factual clarity, we're asking that
9 that be stricken from the final probation report.

10 THE COURT: Let me ask you a question, Counsel,
11 because I believe this is talking about the same statement that
12 was provided, or declaration, by the woman -- Mizen?

13 MR. GEIST: Sarah Mizen, yes.

14 THE COURT: And she gave a different statement in the
15 declaration that was provided to your investigator, compared to
16 what she gave to law enforcement, and that the basic tenor of
17 what she provided in your declaration is that she was coerced
18 and she was forced to give that statement to be released by law
19 enforcement officers; is that correct?

20 MR. GEIST: That is correct. I think here we're
21 talking about E.P.'s statement, rather than Sarah Mizen's
22 statement.

23 THE COURT: Okay. All right. And Probation, do you
24 wish to provide -- because that wasn't provided as a specific
25 objection. It was provided in the presentence report to the

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1 Court.

2 Is that something derived from police reports?

3 MR. COWAN: Yes, Your Honor. I don't remember if it
4 was a sworn complaint. I think that there was, to that
5 information. I mean, it's a sworn complaint. It's also
6 consistent with everything else that was seen. There isn't any
7 inconsistencies. The idea that there's prostitution going on,
8 and that someone's taking pictures, of a sexual nature, that
9 would be on Backpage is not a big leap. So it all seems
10 consistent to me. And that's the statements that we got in the
11 discovery materials, and police reports, and in the complaint.

12 THE COURT: Thank you.

13 Counsel for the government, do you have any input on the
14 source of that information?

15 MS. MANCA: I agree that the information came from
16 statements that were made by Ms. Mizen and E.P. to law
17 enforcement. The substance of those statements is contained in
18 an affidavit that the Court -- that the government submitted as
19 Exhibit 11. So I'd ask the Court to use that affidavit as the
20 best evidence in support of these statements. They did provide
21 videotaped statements that were used as the basis for the
22 officer's assertions in the affidavit.

23 THE COURT: All right, then. That particular
24 objection is overruled. The presentence report, Paragraph 14,
25 as represented, the Court will leave that in place as it

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1 currently reads.

2 Any additional objections by counsel for the defense?

3 MR. GEIST: No. Thank you, Your Honor.

4 THE COURT: Any additional objections by counsel for
5 the government?

6 MS. MANCA: No, Your Honor.

7 THE COURT: All right, then. Counsel, the Court will
8 do the following. The Court will announce its conclusions as
9 to the appropriate offense level and criminal history category.

10 The government's briefing essentially challenges the base
11 offense level and the Court's calculations of the -- or the
12 treatment of the prior convictions for the murder, as well as
13 for the drug distribution case.

14 Two points the Court will make is, the *Valdivia* case has
15 caused an enormous amount of consternation for the courts, in
16 terms of how to make an analysis of prior convictions. I read
17 through all the materials that both sides presented. There are
18 cases that the government provides for the Court's edification.
19 However, as the defense points out, many of those cases predate
20 *Valdivia*, and aren't of much value or assistance to the Court.

21 I read through Judge Lasnik's transcript. And Judge
22 Lasnik said this is essentially a conundrum, because he can't
23 really figure out what's going on. And it leaves this Court at
24 a gross disadvantage to make an assessment and come to the
25 conclusion that an offense such as Murder in the Second Degree,

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1 and conviction for drug distribution, would not count as drug
2 dealing or a crime of violence.

3 Nonetheless, the Court finds that because of the outcome
4 of the *Valdivia Flores* case, that case essentially directs the
5 Court that it really should be more of a legislative problem to
6 be corrected. It also suggests to the Court that there are a
7 limited number of states that undergo the methodology of
8 calculation as Washington does. And that number looks like
9 it's about five or six other jurisdictions or states. That
10 causes a major problem for this Court, that perhaps the true
11 remedy is with the legislature, and not with the courts. This
12 Court has to follow precedent. And the precedent that's now
13 before this Court, and as big a state of confusion at the
14 present exists, the Court must abide by it.

15 In that regard, as to the drug conviction, the Court finds
16 that he was convicted either as a distributor or an accomplice.
17 But either way, the Court can't make a determination with
18 certainty how the outcome should be, and does not -- finds that
19 it does not fit a controlled substance offense, under
20 Section 4B1.2(b) of the guidelines.

21 And the Court will also note, as to the murder conviction,
22 the Court adopts the analysis that was provided by the defense,
23 because I believe that's an accurate assessment of the state of
24 the law, in terms of the manner of how he was convicted, as
25 well as the requisite mens rea, what's necessary to establish

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1 the basis for the conviction. So for those reasons, the Court
2 will not treat that as a crime of violence, or drug dealing.

3 So using the 2016 Guidelines Manual, for the offense of
4 felon in possession of a firearm, the Court begins as
5 follows -- also, Count 2 is possession with intent to
6 distribute heroin.

7 The Court finds that the offense involved multiple counts
8 of conviction. Therefore, the grouping rules must be applied,
9 in accordance with Guideline Section 3D1.2. Therefore, the
10 guidelines will be based on the firearms count as, absent the
11 application of the career offender guideline, the firearms
12 guideline results in the higher sentence, when compared with
13 the drug offense. That gives us the base offense level of 14.
14 This is pursuant to a violation of 18 U.S.C. Section 922(g)1.
15 And that's found at Guideline Section 2K2.1. And the defendant
16 was prohibited from firearms possession due to past
17 convictions.

18 Next, the Court looks at specific offense characteristics.
19 Mr. Williams has agreed that he possessed the firearms in
20 connection with another felony offense, possession with intent
21 to distribute heroin. Therefore, a four-level upward
22 adjustment is applied.

23 There are no other adjustments for victim-related
24 adjustments, role in the offense, obstruction of justice. This
25 gives us an adjusted offense level subtotal of 18.

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1 I'm satisfied that, based upon the communication provided
2 by the defendant to this Court, as well as the defense
3 submissions, that he's adequately accepted responsibility.
4 He's also expressed sincere regret and remorse because of his
5 conduct. And also, the timeliness of his plea has given the
6 government the opportunity to efficiently utilize its
7 resources. Therefore, he qualifies for the three-level
8 downward adjustment for acceptance of responsibility.

9 Without Chapter 4 enhancements, the total offense level
10 remains at 15. He has a criminal history category of 4, an
11 imprisonment range of 30 to 37 months. On Count 1, the
12 supervised release range is no more than three years. And on
13 Count 2, it's three years to life. Probation, he's ineligible.
14 And the fine range is \$30,000 to \$1,250,000.

15 Counsel for the government, how do you wish to respond to
16 the Court's calculations?

17 MS. MANCA: Your Honor, the government objects, as
18 stated, but understands the Court's position, and respects it.

19 THE COURT: Counsel for the defense?

20 MR. GEIST: No objection, Your Honor.

21 THE COURT: I'll hear from the parties in the
22 following order: First, counsel for the government, then
23 probation, then counsel for the defense. And then the
24 defendant will have the last opportunity to address the Court
25 before I impose sentence.

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1 Counsel for the government?

2 MS. MANCA: Thank you, Your Honor, and may it please
3 the Court.

4 I'd like to address sort of three topics. The first is,
5 the ways in which I believe that the guidelines are currently
6 failing all of us. And that includes Mr. Williams, it includes
7 the Court, and I believe it includes the public, in terms of
8 community safety. The second is addressing arguments regarding
9 sentencing disparity. And third is discussing the facts of
10 this offense.

11 The Sentencing Commission intended that a person should
12 receive a higher sentence for possessing a firearm after
13 committing a violent crime, and after dealing drugs, and while
14 using a firearm in connection with dealing drugs, all of which
15 apply to Mr. Williams.

16 There's no crime more violent than murder. And so the
17 idea that we are now in a position, based on Ninth Circuit
18 precedent, Supreme Court precedent, and sort of convoluted
19 interpretations of the guidelines, where the killing of a human
20 being is no longer a crime of violence really is unfathomable
21 to me. And the fact that Mr. Williams also was convicted of
22 delivery of cocaine, a state crime prohibiting the distribution
23 of a controlled substance, and we end up in a place where
24 that's not a distribution offense is hard to understand, but I
25 understand how the Court gets there.

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1 What then happens, if murder were a crime of violence, and
2 if his conviction for delivery of cocaine was a controlled
3 substance offense, we would then get to a career offender
4 guideline, that everyone agrees is too high -- it was 151 to
5 188 months -- and based on evidence that suggests that
6 drug-trafficking offenses are not a good predictor of future
7 violence. The guidelines give no sort of understanding or
8 appreciation for crimes of domestic violence, which an analysis
9 from Washington State Institute for Public Policy determined
10 that domestic violence is the single greatest predictor of
11 future violence among men. The guidelines don't think of that
12 at all. And the guidelines don't account for, now, a situation
13 where delivery of cocaine could be a hundred kilos, or it could
14 be, you know, .2 grams to an undercover officer at a bus stop.

15 I mean, so we really are getting to a place where, I feel
16 like, the parameters of the guidelines are doing a disservice
17 to pretty much everyone involved, with respect to these cases.
18 And it becomes incumbent upon the Court to exercise its
19 authority, under 3553(a), to look at the underlying conduct and
20 make a determination about what that conduct means for the
21 facts and circumstances of the offense, for the individual and
22 his history, public safety, and deterrence, and sentencing
23 disparity.

24 So I asked the Court to depart upward from a range that I
25 believe is -- and the government believes is too low, to 84

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1 months. And I recognize that there was an error in my
2 sentencing memorandum, which I apologize for, suggesting that
3 we were joining probation's recommendation. Probation's
4 recommendation is for 60 months, which is an upward variation,
5 but the government's is for higher than that. It's 84 months,
6 which we arrived at assuming a base offense level of 24, so
7 what the guidelines would be if murder were a crime of violence
8 and a drug distribution -- delivery of cocaine were a drug
9 distribution offense. Whether that's still too high, relative
10 to the individual conduct of the offenses in this case, is for
11 the Court to determine.

12 The second comment I wanted to make was regarding
13 sentencing disparity. It's important to recognize that
14 sentencing disparity is a national inquiry among federal
15 defendants. It's not, you know, one defendant to one
16 defendant, or even within the Western District of Washington.

17 In another case that was before this Court, I believe Your
18 Honor expressed some concern about sentences and
19 recommendations seeming like they're somewhat all over the map
20 in felon in possession cases. And at that time, I said to the
21 Court, and I still believe this, having looked at the case law
22 from *Booker*, you know, coming forward, that there was a lot of
23 concern about how making the guidelines discretionary would
24 contribute to disparity. And we can understand how that would
25 happen. Because if the guidelines are meant to be the

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1 mechanism that prevents disparity among defendants, and then we
2 start getting into discretionary sentencing where each judge,
3 for different reasons, applies the 3553(a) factors differently,
4 and has a different understanding of what factors are
5 appropriate, you start to see extreme variances. And those
6 variances become exacerbated over time when the guidelines
7 themselves stop making sense, and stop providing sort of an
8 anchor for people to avoid sentencing disparity. So I have a
9 real concern about that.

10 THE COURT: Well, let me ask you this, Counsel.

11 If that's the challenge, they used to be mandatory. And
12 that was designed to try and create at least the appearance of
13 consistency straight across the board. And, in fact, the
14 impact of mandatory guidelines were, it was creating gross
15 disparity in sentencing.

16 MS. MANCA: Yeah.

17 THE COURT: And so if we flip to the proposal that
18 you're making, there is no rational approach to sentencing, as
19 it currently exists.

20 Is that what you're arguing?

21 MS. MANCA: Your Honor, I appreciate exactly what
22 you're saying. Because, you know, you have -- let's take, for
23 example, this case. If the guidelines were mandatory, and the
24 mandatory sentence in this case were somewhere between 151 to
25 188 months, I think we would all agree that that was a

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1 miscarriage of justice. And that's sort of how we ended up in
2 a discretionary *Booker* sentencing.

3 I think my concern is more that -- I believe in the
4 Court's discretion, and the appropriateness of discretion,
5 particularly in alleviating a lot of the disparities that we've
6 seen in our system over time. I have concerns about different
7 applications of those factors, in different courtrooms, and how
8 we deal with disparity in that. And then I have a concern
9 about, when the guidelines sort of stop being an anchor, that
10 we end up in a situation where we don't really know where we
11 are. What is the anchor point, at a certain point, when we're
12 trying to decide where cases should be falling? And who
13 decides where that anchor is?

14 So I agree that a legislative fix -- that's more just a
15 frustration and a concern, from a global eye on justice, than
16 it is a recommendation as to what to do in a particular case.

17 THE COURT: And if you could slow down some, Counsel.

18 MS. MANCA: Oh, sorry.

19 In the submissions I supplied to the Court, I was just
20 interested in understanding what the national averages are for
21 felon in possession and drug-trafficking cases. They're
22 somewhere between 60 and 48 months.

23 One of the other concerns that I have is that it's the
24 government's job to consider a case both from sort of a
25 big-picture, institutional perspective, and then an

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1 individualized perspective. And when we make arguments, both
2 of those are factors that we consider.

3 And from the big picture, I look at a case like this with
4 Mr. Williams, and all the uniqueness of his case, and the facts
5 and circumstances of his prior convictions, and the excellent
6 work that Mr. Geist has done to sort of dig into those prior
7 convictions and what they meant, and I have a strong suspicion
8 that one or two months ago -- one or two months from now, all
9 of those nuances are going to be stripped away, and in a
10 sentencing memorandum, you know, submitted to this Court, or
11 another, we're going to be reading about the case of *United*
12 *States vs. Nalen Williams*, in which, you know, a defendant was
13 convicted of murder in the second degree, and was dealing
14 heroin, and possessed a firearm, and received a sentence of
15 "X." And therefore, you know, a defendant who had never
16 been -- had never committed a murder and possessed a firearm
17 should be sentenced to a lesser sentence of "Y." And that's
18 what happens sort of, in a big-picture perspective, as we're
19 trying to understand what the guidelines are, and where people
20 fall, and why certain people should be sentenced relative to
21 others.

22 And again, that's not an answer for the Court. This Court
23 is fully capable of making those very difficult decisions, with
24 vastly more experience than I have. But those are really grave
25 concerns that I have, that I don't think they should ever

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1 override the importance of individually sentencing
2 Mr. Williams. The institutional concerns that we have should
3 never override the individuality of an appropriate sentence in
4 this case. But it is something to consider, that -- the number
5 of times we see, in memorandums of a specific case, that says,
6 you know, this person, with his violent history, received a
7 sentence of "X." And that's supposed to be a guideline for
8 this Court in sentencing other people.

9 With respect to the offense conduct in this case, I just
10 wanted to briefly touch on how this case came to federal court,
11 not because I think it's germane to the sentence in this case,
12 but because I believe in transparency. The representation of
13 the facts that Mr. Geist received from Mr. Williams' state
14 defense attorney is grossly inaccurate. And I don't fault
15 Mr. Geist for that. I think he received bad information.

16 But basically, Mr. Williams received an offer in state
17 court, which the U.S. Attorney's Office endorsed. Mr. Williams
18 rejected that offer and set his case for trial. A couple days
19 after that, he held a bond hearing. The bail was denied.
20 Before filing this case, I reached out to the state prosecutor
21 and said, you know, "One more time, is this" -- you know, "Is
22 he really rejecting the state offer, with the understanding
23 that this case is subject to federal prosecution?" And the
24 state prosecutor said, you know, "Yes. He's rejecting the
25 offer." So there were multiple opportunities for Mr. Nalen

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1 [sic] to accept the offer in state court, which my
2 understanding was that he rejected.

3 I understand that there may have been communication
4 failures between Mr. Williams and his state defense attorney,
5 that I was not aware of. But I want to assure the Court that
6 nobody was filing a federal case without people knowing about
7 it, or because someone set a bond hearing, which I would find
8 to be abhorrent.

9 The amount of heroin that Mr. Williams possessed is not
10 aggravating, and would not, in and of itself, justify, I think,
11 a federal case. What is aggravating is that Mr. Williams was
12 dealing heroin and other drugs frequently. You see that from
13 his text message conversations. He was dealing in somewhat
14 small quantities, to desperate addicts, and he would accept a
15 variety of payments. And one of the text message
16 conversations -- again, this is Exhibit 11. And it's -- text
17 messages 422, 423, 424, and 425 talk about the exchange of a
18 shotgun for some product, which presumably is a drug. And the
19 fact that it references a shotgun was interesting to me,
20 because there was a rifle recovered from the bedroom, and
21 Mr. Williams referred to it as a shotgun. And that suggested
22 to me that that could be related to that text message
23 conversation.

24 In his conversation with police, Mr. Williams described a
25 steady source of heroin supply. There were four CIs who

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1 identified Mr. Williams as a person from whom they could buy
2 drugs, and there were five controlled buys in this case. And
3 there were multiple women in Mr. Williams' trailer who said
4 that there was -- prostitution was occurring in and around
5 drugs -- in and around Mr. Williams' trailer, in exchange for
6 drugs. How extensively Mr. Williams was involved in this, you
7 know, I really can't say. But the evidence suggests, at a
8 minimum, he was aware that this was occurring. He knew how he
9 was getting this money, and he didn't care. And at worst, he
10 really was actively encouraging it. And the text message
11 conversations sort of support this idea of these desperate
12 addicts, who are coming to him in exchange for drugs.

13 And finally, that Mr. Williams possessed firearms and
14 ammunition in connection with that drug dealing, even after
15 having served over ten years for murdering someone. So
16 Mr. Williams is not the most dangerous person this Court has
17 ever sentenced, and these facts are not the most egregious. I
18 candidly admit that. But it's also not true that these facts
19 are no big deal, particularly the concern about the desperation
20 of the addicts, and Mr. Williams' willingness to accept a wide
21 variety of payments.

22 And I also want to assure the Court that I recognize that
23 this case is not an abstract, intellectual exercise. I think
24 we can get into problems with that as well. I understand that
25 the Court is sentencing Mr. Williams for his conduct in a

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1 particular case; that we're talking about his life; that we're
2 talking about the lives of the people that his conduct affected
3 and endangered, including the addicts that he sold to.

4 This Court has a mandate to impose a sentence that is
5 sufficient but not greater than necessary to fulfill the goals
6 of sentencing in this case. And that is, quite simply, what
7 I'm asking the Court to do.

8 Thank you, Your Honor.

9 THE COURT: Thank you, Counsel.

10 Mr. Cowan?

11 MR. COWAN: Thank you, Your Honor.

12 I, by and large, completely join in Ms. Manca's comments
13 about this case. As Your Honor has already noted, the *Valdivia*
14 decision -- and this sentencing, I think, is a little bit of a
15 test case. It's one of the first sentencing about a really
16 serious crime of violence, such as murder, and a defendant who
17 clearly would have been a career offender. This is, I think,
18 the first one in our court since the *Valdivia* decision.

19 But my thought is that that decision really just makes
20 this area of law, this area of the guidelines, next to
21 impossible to apply. It takes the meaning of that guideline,
22 of the firearms guideline, and turns it on its head. The
23 intention was that we want to more seriously punish someone
24 when they have a firearm, when they have a prior history of
25 violent offense. And there is no more violent offense than

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1 murder.

2 One of the things that I don't think anybody has touched
3 on in their papers or -- but I just find a great irony is, a
4 crime of violence is defined in the guidelines, in 4B1.2,
5 Application Note 1: Crime of violence and controlled substance
6 offense includes the offenses of aiding and abetting,
7 conspiring, and attempting to commit these offenses. That's
8 what the *Valdivia* case is all about. Washington's criminal
9 code includes -- doesn't require -- you could be an aider and
10 abettor. And so as the state prosecutor in the murder case
11 noted, well, we don't really care who hit him over the head
12 with a shovel, if he was an aider or abettor. And that's why
13 we have this overbroadness problem.

14 The guidelines don't care about it either. If he was an
15 aider or abettor -- ironically, I think that maybe if he was
16 charged as an aider or abettor in Washington, this would be a
17 crime of violence, the crime of murder. I don't need to
18 belabor that, because he wasn't. But it is an interesting
19 academic exercise, and it makes this area of law, in my view,
20 almost impossible to apply.

21 That said, we are at a base offense level of 14. And
22 Mr. Williams has essentially the same kind of guideline range
23 as another defendant would have with a prior distribution of a
24 small amount of drugs, or even possession of a small amount of
25 heroin. That person would have -- you know, with a very

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1 minimal criminal history would have the same guideline range as
2 Mr. Williams. That isn't what the Sentencing Commission
3 intended. And I think it -- it also shows an interplay between
4 the guidelines themselves and the 3553(a) factors, which is
5 where I kind of tended to focus here.

6 So setting the guidelines completely aside, the 3553(a)
7 factors include the guidance to avoid sentencing disparity. A
8 defendant sentenced in this court, with the same background as
9 Mr. Williams, ought to get about the same sentence as a
10 defendant with a prior murder conviction and serious conviction
11 as someone in Utah, or Iowa, or Oklahoma. But that's not the
12 case anymore. We don't -- at least if you just follow the
13 guidelines. If you sought to avoid sentencing disparity, you
14 still get there through 3553(a).

15 We're also instructed to consider the personal history and
16 characteristics of the defendant. And so here, you have a
17 defendant with a prior murder conviction. It's part of his
18 personal history. It ought to be considered in sentencing.
19 And it isn't captured in the guidelines. Included in the
20 personal history also is the fact that Mr. Williams got out of
21 prison in 2002, started committing crimes in 2003, 2006, two
22 assaults in 2007, assault in 2010, cocaine delivery in 2011.
23 He hasn't worked in a decade. This is the personal history of
24 the defendant. And the guideline range in this case doesn't
25 capture those facts. It ought to be considered, and was the

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1 reason that we strongly recommend a sentence that is above the
2 guideline range, which is unhelpful, in this case.

3 THE COURT: Thank you, Mr. Cowan.

4 Mr. Geist?

5 MR. GEIST: Thank you, Your Honor.

6 I believe I did touch on what Mr. Cowan mentioned, as far
7 as aiding and abetting being in the commentary in 4B1.2.
8 That's the federal definition of aiding and abetting and
9 exactly what the point of *Valdivia Flores* was, is looking at
10 the federal definition, the federal analogue, and determining
11 whether that aiding and abetting was the same or less
12 encompassing or more encompassing than Washington. So I think
13 the fact that aiding and abetting is in 4B1.2 further proves
14 the point that *Valdivia Flores* really instructs us the way that
15 the Court has already ruled as far as the calculations.

16 I think it's interesting -- we are in a new era right now.
17 And I do believe that this is a test case. I think it's --
18 we -- I think, in Washington, we now fully understand, and I
19 know that my office has raised this before, that -- the issue
20 with accomplice liability. And as long as the State of
21 Washington, or the States of Indiana, Iowa, Massachusetts,
22 Nebraska, and I think interestingly, Mr. Cowan mentioned
23 Oklahoma as well, that's another one of those states where
24 they've decided, you know what, it should be easier for us to
25 get convictions. And if that's the case, then I think we need

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1 to be looking to this small set of other states to determine
2 where the disparity is. To compare a conviction in Washington
3 with all of those other jurisdictions, the District of Columbia
4 and all the other states except for the ones that I mentioned,
5 that would be unfair. And that's what would be creating a
6 disparity.

7 I think what the government and what the probation
8 recommendation -- what they're asking for, and what they want,
9 is to have it both ways. Let's have it easier to get a
10 conviction in the state of Washington. And then once that
11 conviction is achieved, and a person has served their sentence,
12 and under unfortunate circumstances where they receive a
13 federal conviction, let's also use that conviction that was
14 easier to obtain against them in the form of a higher sentence.

15 And I think looking at Mr. Williams' murder case, and his
16 conviction, I really think that that -- that was a serious,
17 unfortunate event. Was Mr. Williams apologetic? Absolutely.
18 I think I highlighted, in one of the exhibits, the remorse that
19 Mr. Williams had toward the victim, Mr. Wade. But I also think
20 that there's a possibility that if that conviction -- or if
21 that case was brought in a different state, like Oregon, or in
22 Idaho, or many other states that -- I believe 45 other states,
23 there's a possibility that ten years of Mr. Williams' life --
24 and vital years of his life -- wouldn't have gone toward
25 spending time in prison.

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1 So I think when we're looking at and talking about
2 disparity, I think it's important to look at how Washington,
3 the State of Washington, obtains convictions compared to other
4 states, and really use that as a counterbalance to saying: A
5 murder is a murder, a drug conviction is a drug conviction,
6 it's all the same, and here's what the Sentencing Commission
7 intended.

8 Nalen is 48 years old. He's a drug addict. And I think
9 from the beginning of his life, he's really been searching for
10 a home and searching for a family. He was adopted as an
11 infant. He had younger siblings who he needed to take care of
12 when he was very young. He was expected to raise them, to
13 watch them, change their diapers, and to feed them. And he
14 took on those responsibilities as an eight-year-old. And he
15 basically gave up a large portion of his childhood to help his
16 siblings. And he still has a strong loyalty toward those
17 siblings, and he hopes to regain connections with them.

18 It's also important to look at when he was six years old,
19 he was sexually abused. And when he went to his mother to tell
20 her, she just didn't believe him. So what does he have left,
21 outside of the home, outside of family? It's really school.
22 And that proved that it wasn't an escape from his adult
23 responsibilities as a young boy.

24 Starting in the fourth grade, I believe, he was bussed
25 into different neighborhoods for school. And even there,

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1 because of going to a different neighborhood, where he looked
2 different, was from a different neighborhood, he felt out of
3 place there as well. I recall, in the sentencing memo, he was
4 called names because of how he looked. And when he's at school
5 and then when he goes home, he's getting beatings from his
6 mother.

7 I also recounted one incident that Mr. Williams told me,
8 where he was a young man, carrying his violin to go to a
9 recital, and a truck of white kids taunted him, chased him,
10 until someone else could come rescue him. So that's kind of
11 what was happening with Mr. Williams' life, at home and then at
12 school. I think it's interesting that later in his life, he
13 made connections with some of the teachers who really helped
14 him, when he was in school.

15 I think it's also important to look at Mr. Williams. He's
16 a talented musician. He learned to play nine instruments.

17 But even with that trouble at home, he found himself
18 moving out, and kind of disconnected from his family. So he
19 moved out of the family home when he was about 16 or 17. He
20 continued attending high school in North Seattle. And that's
21 around the time where he started using drugs. And he's been a
22 drug addict since then.

23 Right around the time of the unfortunate circumstances
24 that led to Mr. Wade's death, around 1990, Mr. Williams got a
25 job in sales and advertising. It was a great job. He was

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1 making \$5,000 a month working for Worldwide Industries. They
2 sent him to California. When he wasn't working there, he was
3 working in construction in Alaska.

4 So he obtained that murder conviction. He served his
5 time. He got out. And with the help of his grandfather, who
6 Mr. Williams is very close -- he is very close with his
7 grandfather. He looked for guidance. And I think for the
8 first time -- or one of the first times in his life, he really
9 had things going well for himself. Between 2002 and 2007, he
10 owned Innovative Merchandise Marketing. He had nine contracts.
11 I listed the businesses that he had the contracts with. One of
12 them was with The Bon Marche, right here, downtown.

13 I think a big part of Mr. Williams' life has been learning
14 to deal and cope with loss. So when his grandfather passed
15 away in 2006, he coped in a way that many drug addicts do, and
16 he turned to drugs. He lost his home, he lost his business,
17 and his wife, within a year. And now at that point, in about
18 2006, 2007, he's a homeless drug addict. And that's in that
19 context how we see Nalen ends up selling drugs out of a
20 trailer. He had sunk so low that as a drug addict, he saw that
21 this was his way out.

22 There's obviously been a very fortunate intervention here.
23 Mr. Williams has serious health issues. He has congestive
24 heart failure. And luckily, I think, for him, he was pulled
25 out of that situation, and charged. Because who knows where he

1 would be if he wasn't pulled out, and if there wasn't that
2 intervention.

3 So he -- from my understanding -- and I talked with
4 Ms. Manca before court, just to get a full understanding of
5 what occurred with that 40-month offer with the county case.
6 It's my understanding, from Mr. Williams, that he would have
7 served far less than 40 months. But, you know, whether it was
8 setting it for a bond hearing or setting it for trial, usually
9 what occurs is -- or at least what's occurred recently is that
10 if there's a potential charge that someone will receive in
11 federal court, my office will be contacted to give advice and
12 to counsel someone on the nature of the deal that they're
13 receiving in the county, and what they'd be looking at, as far
14 as going forward in federal court. I don't think that that
15 happened in this case, at least with me. There's another
16 lawyer in my office who represented Mr. Williams before me.

17 So as far as that 40-month offer, I think it is important
18 that Ms. Manca was able to give what occurred to the Court.
19 But I also think it's important as far as whether Mr. Williams
20 was making an informed decision or not. It would have been
21 important for either myself, or someone from my office, to be
22 involved with him making that decision. And I don't believe
23 that we were, at least I wasn't.

24 I think there's -- we're talking a lot about Mr. Williams'
25 murder conviction, and his prior drug conviction. I think that

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1 there are a lot of mitigating circumstances about the murder
2 conviction. It was obviously a major turning point in his
3 life. And he had a couple of minor convictions prior to that
4 murder conviction.

5 But in talking with Mr. Williams, and reading the reports,
6 reading the transcripts, the case decisions, it seems to me
7 that Mr. Williams, Nalen, was not going out looking for
8 trouble. He wasn't looking to be violent. He came upon a
9 circumstance where it seems like his brother Charles was either
10 involved or created, or Mr. Wade was involved or created --
11 either way, he comes upon a circumstance where there's a man
12 with a knife, who was drunk, and his brother. And he comes
13 across an argument. And as someone who grew up as the
14 protector, and in some ways almost like a parent to his younger
15 siblings, I think that protect mode came in.

16 And so that's the -- it's crazy that Mr. Williams had to
17 show up at that exact moment, and that -- by a set of
18 circumstances where there would be a shovel and a pitchfork,
19 lying around nearby, and unfortunate circumstance that Mr. Wade
20 did get killed. But I think that what Nalen was trying to do
21 was to step in and to help. And I think, from his statements
22 that he made at the time, and now, I think he would have done
23 things far differently to save, I think, over a decade of his
24 life.

25 But when he gets out of prison, yes, he did have a

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1 conviction, as Mr. Cowan pointed out, in 2003. But really that
2 period between 2002 and 2007, we don't -- we do see an assault
3 conviction at the very end, December 29 of 2006. But I think
4 what we have here is, we can see Mr. Williams, Nalen, at his
5 best. He has his own business. He has a home. He has a wife.
6 And he's doing well. And I think we can recapture that now. I
7 really do. And Mr. Williams believes that he can recapture
8 that as well.

9 I think that it's important to also talk about the drug
10 delivery conviction. I think I've covered that in the
11 sentencing memo probably well enough. But Mr. Williams is
12 sitting at a bus stop, and two undercover officers come up to
13 him. They ask him if he has any drugs. He doesn't. They ask
14 if he can get drugs. He says, yes. He's a drug addict. You
15 know, this is in 2011. He's a drug addict. I think he's
16 living on the streets, at that point, just scraping by. And I
17 think his defense attorney described it as a "cluck," where
18 he's just trying to get either drugs or money to make this
19 transaction go through.

20 So I do think that that is largely mitigating. We're also
21 talking about a very small amount of drugs involved in that
22 case. Obviously, you know, illegal; he pled guilty. And it's
23 properly scored as criminal history points. And that factors
24 into the guidelines, just like Mr. Williams' murder conviction
25 scores as three criminal history points, even though it

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1 occurred almost -- or at least he was released from prison, you
2 know, at this point, 15-and-a-half years ago.

3 I think it wouldn't be a Friday if Ms. Manca and I weren't
4 in here discussing sentencing disparities. We were here last
5 Friday, and we're here again talking about disparities. And I
6 think, like I said before, we're entering a new era with
7 *Valdivia Flores*, where we're realizing that Washington has made
8 it easier to obtain state convictions. So we don't have many
9 sentences to compare.

10 And as far as the disparity, I think making the -- a
11 comparison based on national averages, when we know that other
12 states, like Alabama, Texas, and Missouri, places like that,
13 enter into the equation, I think those states have long --
14 long-term and then also recent histories of injustices towards
15 certain people who are citizens of our population, including
16 African-Americans. So I think including the national average,
17 when we know that Washington is different, I don't think that
18 that would be appropriate in determining what Mr. Williams'
19 sentence should be. I do think that we have to look at those
20 other states to determine what that disparity should be.

21 We're dealing here with a guideline range of 30 to 37
22 months. The government talks about the *Vederoff* case. He also
23 had a prior second degree felony murder conviction. I think,
24 citing from the government's sentencing memo in that case,
25 Docket 27, Page 3, it says that *Vederoff* fired a gun that he

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1 knew he should not have, in the middle of the day, in an active
2 area of the downtown Seattle corridor, where people are living,
3 walking, working, and driving. Vederoff's activity could have
4 had deadly consequences, whether he intended them or not. The
5 fact that Vederoff possessed a firearm while he was high on
6 methamphetamine adds another layer of concern. So I think that
7 has to be taken into context, that a firearm was discharged.

8 I think what should also be taken into consideration is
9 that one of -- Mr. Vederoff's case went up on appeal. One of
10 his prior convictions, obviously, was a felony murder. The
11 other was an Assault 2. So I believe that that case will get
12 sent back for resentencing, because Assault 2 has been
13 determined not to be a crime of violence. And it's our
14 position that neither is felony murder.

15 THE COURT: Let me ask you a question, Counsel,
16 because using the Vederoff case to compare to Mr. Williams'
17 prior conviction, that causes the Court some concern and reason
18 to pause. Because in that particular -- Vederoff's case, he
19 wasn't intending to hurt any particular person.

20 Do you agree?

21 MR. GEIST: I think -- I think I would agree to -- in
22 the aspect that I don't think the Court made a determination as
23 to whether or not Mr. Vederoff intended to kill, himself. But
24 I think, generally, I would agree with that.

25 THE COURT: Because what I'm looking at, Counsel, is,

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1 when I compare the facts of a case where someone wasn't
2 targeting a particular individual to say, "I want to shoot you,
3 I want to kill you, I want to cause harm to you," that wasn't
4 really specifically directed, if we even look at the mens rea
5 component, in terms of who was he trying to harm.

6 And don't you see that dramatically different from your
7 client's situation, where at least from the reports and the
8 summaries that I've had a chance to see, that his brother
9 Charles took a shovel from the truck, and he handed the shovel
10 to Nalen, and Charles took a pitchfork from the truck, and they
11 continued to pursue Wade? And then from there, that's when
12 Wade produced a knife. And then from there, Williams hit Wade
13 with a full swing from the shovel, Wade fell to the ground, and
14 then Nalen rummaged through the victim's clothing. So there's
15 a lot of violent and aggressive actions towards a targeted
16 individual. That individual appeared, at least from the
17 reports, to arm themselves after the fact of seeing someone
18 coming after them with a pitchfork and a shovel. So I see the
19 degree of violence, and intentional violence, dramatically
20 different from your client.

21 So when we talk about disparity, isn't there disparity
22 between the type of conduct between Vederoff and the type of
23 conduct that your client was involved in?

24 MR. GEIST: Well, I'm not familiar with
25 Mr. Vederoff's prior murder conviction. I definitely would not

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1 disagree with the Court that Mr. Vederoff firing a gun -- and
2 discharging a gun is part of a 922(g) -- that doesn't hit
3 anyone, is far different -- I would agree with the Court,
4 that's far different than what occurred with Nalen's murder
5 conviction.

6 I think it's also important to look at Charles writing a
7 note and basically saying, half of the trial, that he was the
8 one who had used the shovel. I think also, at the time of the
9 trial, I think, 1994, the two trials, a lot of the testimony is
10 based off of eyewitnesses viewing something that happened in
11 the dark. And I think we've learned a lot since then about the
12 reliability of eyewitness statements and being able to perceive
13 things in moments like that. Because I think we did have, in
14 that case, many different statements that were inconsistent
15 from the witnesses. So that's the best that I can present to
16 the Court as far as that.

17 THE COURT: But even with the inconsistencies,
18 Counsel, you can't deny the fact that your client and your
19 client's brother, both had weapons of a pitchfork and a shovel,
20 aggressively and violently killed another human being.

21 MR. GEIST: I agree, Your Honor. Yes.

22 THE COURT: All right. Please continue.

23 MR. GEIST: So I think when that Vederoff case comes
24 back -- and I apologize for not having the facts of the prior
25 murder conviction for Mr. Vederoff. But I think, when that

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1 case comes back for resentencing, like Mr. Williams, he'll have
2 a guideline range of 30 to 37 months.

3 I know that the Court is familiar with Mr. Flemings' case.
4 I raised it in the sentencing memo. I raised it last week as
5 well. He received a 24-month sentence. His prior murder
6 conviction was far more violent, and did not contain the
7 mitigating circumstances of Nalen's prior murder conviction.
8 Mr. Vederoff -- excuse me -- Mr. Flemings said that he was
9 going to go out and shoot a woman -- or go shoot someone, or go
10 do someone. And he shot a mother of three, and killed her.
11 Later, he gets out, and with a gun, he hits his girlfriend in
12 the face, breaking her nose, holds the gun up to her face, up
13 to her head, pulls the trigger while the safety is on. And
14 then subsequent to that, he picks up a federal drug-trafficking
15 conviction, where I believe he served 100 months in federal
16 prison. He gets out. And then while he's on supervised
17 release, he has a gun on his nightstand, apparently ready to
18 use if he needed to. And those facts are taken from the
19 government's -- from the government's sentencing memo in that
20 case.

21 In that case, there was a joint recommendation for 36
22 months. I think that Mr. Flemings -- and that was from the
23 government. I believe probation joined in that recommendation.
24 And the Court sentenced Mr. Flemings to 24 months.

25 THE COURT: One question I had, Counsel, that wasn't

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1 clearly articulated in the briefing, is, we don't have a joint
2 recommendation in this case. And oftentimes, a joint
3 recommendation can result from a variety of factors, including
4 cooperation, providing testimony, 5K motions. There's a
5 variety of factors that can go in. Because I think you'd have
6 to agree, it's untypical for the government to come in on a
7 joint recommendation, with that type of history, for a 36-month
8 recommendation, or 30-month.

9 Wouldn't you agree, Counsel?

10 MR. GEIST: I would agree. I would. But whether
11 it's atypical or not, I think, if we're talking about
12 disparity, as far as what the government makes a recommendation
13 for, I think there's a great disparity here, for someone like
14 Mr. Flemings and someone like Mr. Williams, where we're talking
15 about a three-year recommendation or a seven-year
16 recommendation.

17 THE COURT: Well, let me ask you this, Counsel.

18 Let's ignore all the other states that have long histories
19 of racist behavior and racist conduct, in terms of the approach
20 to African-Americans in sentencing and prosecution. Let's just
21 focus on the State of Washington. Let's focus in the Western
22 District of Washington. Let's focus on those cases.

23 So what cases can you give me by way of example, for
24 purposes of disparity discussion or argument, that will be
25 helpful to the Court?

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1 MR. GEIST: I think right now it's difficult to give
2 exact cases, because we are seeing the way that *Valdivia Flores*
3 treats priors in Washington. The best that I could do is
4 Mr. Flemings. And I think, looking at Mr. Vederoff, we can't
5 read what's going to happen in the future with him, but it's
6 rare that there are cases like this, where there are prior
7 murder convictions. But I think this is a new kind of era that
8 we're looking at, where we've realized it's easier to obtain
9 convictions in Washington, and the states like it, and now we
10 have to kind of reassess, you know, when someone loses ten
11 years of their life for potentially a conviction that wouldn't
12 have occurred in another state, I think that's the balance that
13 we have to create.

14 So Your Honor has the very difficult decision to make,
15 because there really aren't that many other cases that we can
16 look at anymore. You know, even as Ms. Manca pointed out,
17 before we came to this realization, before the Ninth Circuit
18 instructed us, it's possible -- although we would have made the
19 argument that murder was not a prior crime of violence, it's
20 possible that Mr. Williams could have been facing a far higher
21 guideline range.

22 So it is difficult for the Court, at this point in time,
23 to determine what is that fair sentence. But we believe,
24 looking at Mr. Flemings' case -- and Nalen is going to be going
25 back to that same prison. Looking at Mr. Flemings' case and

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1 comparing it with Mr. Williams', we believe that they're not
2 too far off.

3 So I apologize for not having a better answer. I do have
4 a number of other cases that I use -- cases of my own, that
5 I've received sentences for my clients in the past couple of
6 years, that I normally use for sentencing disparity. But I
7 think the challenge here is, we're looking for people who have
8 similar criminal history and similar offenses.

9 I think looking at the nature of the offense, there's a
10 low level of drugs. I think Nalen was just trying to get by.
11 And he's an addict who is dealing drugs.

12 I think it's important to look at, also, whether these
13 firearms were actually used. One of the firearms was a rifle,
14 that Nalen thought was a shotgun. So I don't think he was very
15 familiar with that firearm, and I don't believe that there was
16 any ammunition that would go with that firearm in the trailer.

17 The other firearm, I've included in the exhibits
18 statements from Sarah Mizen, how that gun came into the home.
19 One of Ms. Mizen's friend's children shot the gun off, inside
20 the home, and that friend wanted to get rid of it, gave it to
21 Ms. Mizen. And unknown to Nalen, she brought the gun into the
22 home, and then Nalen learned that that gun was in the home. He
23 was cooperative when the officers -- when they arrested him.
24 He told them where that gun was. He told them where the rifle
25 was. And when the gun was discovered, I don't believe that the

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1 clip was in it. I think there was one round in the chamber.

2 So I think we do have a difficult decision here, Your
3 Honor. It's our position that 18 months is a sufficient
4 sentence. Mr. Williams is a drug addict. It seems like his
5 homelessness and his drug addiction led him down a path from
6 being a business owner, and a husband, and a homeowner to the
7 point where he was in such a place of desperation that he felt
8 like he needed to commit these crimes. I think with sufficient
9 terms of supervision, we can get Nalen back to where he was in
10 2002, being a productive member of society.

11 Thank you, Your Honor. I know that Nalen would like to
12 speak.

13 THE COURT: Thank you, Counsel.

14 Mr. Williams, your lawyer has spoken for you. He's also
15 filed written materials, all of which I've read. You're not
16 required to say anything, if you choose not to speak, because I
17 have read the details of the letter that you provided to the
18 Court. But if you wish to add something, or say anything,
19 please step to the microphone, and share your thoughts from
20 that location.

21 THE DEFENDANT: First, giving honor to God;
22 Judge Jones, my lawyer, the prosecutor, friends and family.

23 I really am truly sorry that we are here today on behalf
24 of my mistakes that I've made over my life. It's kind of sad
25 that I got to still keep going back over something that

1 happened years ago, with me and my brother. That was something
2 that I would not want anybody else to ever have to deal with,
3 seeing one of your loved ones in the situation where their life
4 was in jeopardy, and you're doing -- you know, you're in a
5 situation where you'd have to make a split decision, and the
6 person that you're talking to is not even trying to hear you.

7 Growing up as a kid, I was -- I tried to do everything I
8 could to please my mother. And in that situation, when my
9 brother's life was at stake, that's the first person I thought
10 about. If something would have happened to him, we would
11 never, ever be able to be a family. You know, that's pretty
12 much all I ever really wanted to do, was please my mom. And
13 because it was tough, and it was rough, and there was eight
14 kids, and I was the -- like, the brunt of everything, since
15 everybody else was connected, and I wasn't, I got most of the
16 beatings for everybody.

17 But I was able to, you know, keep my head together and,
18 you know, didn't complain. And I tried to do the best I could
19 in everything that I could do. My grandfather seen that a lot,
20 and he took a lot of mercy on me. And I loved that man. And I
21 got into drugs at a young age, and he took me out of that.
22 He's the one that helped me get that advertisement job. So
23 when I got out of prison, and I went to go try to get jobs, but
24 I had that record, and they were doing background checks, and I
25 kept getting, no, no, no, then my grandfather said, "Well, you

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1 know what to do. We'll take you down to the Public Safety
2 Building, we'll get you a license, and you start your own
3 business."

4 At first, I didn't believe in myself, and he kept telling
5 me that. And I did. And I succeeded and for five years. I
6 was going real strong until the day that he died. Once he
7 died, it was like I lost me. And so I went back. I went
8 backwards. And I didn't have the right support group around
9 me. I had some pretty good friends, but I really didn't trust
10 anybody, because my grandfather was my life. And it's, like,
11 now, I look out, and I see my girlfriend is over here, and I
12 see a friend of mine, Gerald. And I've got a pretty good
13 support group out there of a couple other friends, Steve that
14 want me to work with him. I can get my life back together
15 again.

16 The drugs, I know I'm not supposed to be around them. The
17 guns, I wasn't supposed to be around. Those items, like I
18 said, that rifle was my girlfriend's father's. I'd never done
19 anything with it, never even thought about it. Had I would
20 have thought, you know, about me being a felon, I wouldn't have
21 had that gun in the house. And I wouldn't have even -- I would
22 have explained to her then, so she wouldn't have ever brought
23 the other one in the house. I've never really been a person to
24 use guns. I don't know anything about them. I tried to steer
25 away from them.

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1 Like I said, my whole thing is, I'm just trying to be --
2 I'm trying to do the best I can. This -- it isn't easy. You
3 know, I got a lot of mental problems. I've got a lot of health
4 problems. I've got a lot of, you know, self-worth-issue
5 problems, you know. And I just -- all I ever wanted was a
6 chance to try to just succeed, you know. And it seems like
7 ever since that situation happened in '92, it's been uphill
8 battle for me. And I don't complain. And I don't -- I don't
9 try to go out and do anything to hurt anybody, or anything like
10 that.

11 The day that I got that drug charge, what they don't tell
12 you is, I was sitting at a bus stop. I had just got off of
13 work. I was sitting in front of Labor Ready. And they came
14 and asked me when I first got off of work. And I said, no, I
15 didn't have anything. And so they came back, four hours later,
16 and asked me, after I had been drinking. But I had got off of
17 work. You know, I was trying to work to get myself off the
18 streets. I had been homeless since my grandfather died. I
19 went from a house with my wife, because I couldn't deal with
20 everything, to a condo, and then from a condo to apartment,
21 from apartment to the streets. And it was, like, man, I just
22 let the drugs come back and consume me, because I didn't have
23 the strength around me that my grandfather used to give me.

24 My mom and my dad, my dad was an alcoholic. My mom was
25 very abusive. And half the time, she didn't believe anything I

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1 said. She believed the rest of my brothers and sisters,
2 because they came from her body. I was adopted, so I got beat
3 a lot of times. I never -- I never used that as an excuse. I
4 just kept going, and kept going. And even now, I'm still -- I
5 keep going. I mean, everybody's saying all this stuff about
6 drugs, and me, and all this. They don't know anything about
7 me. They don't know how I feel.

8 You know, and I'm trying. I can't do anything. I have a
9 record. And I can't get away from it, no matter what I do. I
10 can try as hard as I can try, and I'm still going to be looked
11 at, still going to be looked down. And it just makes me feel
12 like -- or reminds me of when I was in school, and I was young,
13 in the fourth grade. I'd never done anything to those white
14 kids for them to call me those names and treat me the way they
15 did. And it's, like, now I'm being looked at in the same way
16 again.

17 So all I'm asking the Court for is mercy right now. Like
18 I said, I wrote that letter to you, because I didn't get a
19 chance to argue the presentencing report. Half the stuff that
20 they -- that he was talking about, he's right. I don't like to
21 use guns. I shouldn't have guns around me. You're absolutely
22 right. And I don't, you know. I try to -- pretty much, I've
23 been in prison -- for 11 years, I didn't even have a fight.
24 I'm not a violent person. So --

25 THE COURT: Well, I have a couple questions.

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1 You say you're not a violent person. When I look at the
2 presentence report, there's two different assault convictions.
3 One of those was when you were 38. And it said that they told
4 officers that Williams had strangled Jay and held her against
5 the wall. And I see another conviction when you were -- at 40.
6 And it says: He placed his hands around Jackson's neck for no
7 more than five seconds as he was lying on his bed.

8 So I get different circumstances, and different types of
9 violent conduct by yourself, as well as a combination of what
10 you did and what you served time for already. That paints a
11 slightly different picture of the degree of violence that's
12 been involved in your life, compared to what you're just
13 telling me right now.

14 So what picture am I supposed to see of the man that's in
15 front of me?

16 THE DEFENDANT: Your Honor, all I can say is,
17 everybody makes mistakes. I've made mine's. And I'm sorry for
18 those. And I'm asking you not to judge me on what those are,
19 to judge me who I am and who I want to be. I want to be like
20 my grandfather.

21 THE COURT: Mr. Williams, there's an old saying:
22 Your actions speak louder than words. And so it's one thing to
23 have perception of who you want to be. It's a whole different
24 ball game, in terms of performing, to make that become a
25 reality. Now, you had good stretches in your background. You

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1 had good stretches where you had your own business that you
2 were operating, one of which was a big client, working with
3 Macy's.

4 And I agree with your lawyer. I think everybody wants you
5 to get back to that type of lifestyle, and that environment.
6 But it seems like you continue to return back to what seems
7 like a zone of comfort for you. That's drug dealing and being
8 involved in activity where you've got guns and you've got more
9 drug dealing.

10 So how do we get to a situation where I can be comfortable
11 that that person's different? Because I keep seeing repeat
12 conduct, over the course of many years. And despite your
13 representations that's somebody different, here you are now, at
14 age 48, and you're still doing some of the same stuff you've
15 been doing. Because at some point in time, you have to stop
16 blaming, I've had a bad life. Everybody that comes before me
17 on Friday for sentencing has had some degree of a bad life.
18 Some people change. Some people don't.

19 So what are you going to tell me that's going to
20 dramatically change my perspective of who you are as a person,
21 and that you will be dramatically different when you get out?

22 THE DEFENDANT: Because I made all my mistakes when I
23 was younger. I know who I am now. My grandfather is not here
24 anymore. He's inside of me. The person that I wanted to be, I
25 can be. I know I can be. Because every day of my life now, I

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1 hear those -- I lost my dad, I lost my grandmother, lost my
2 grandfather. But that connection is still with me. And I can
3 still make them proud, because I still hear them, every day.

4 I'm in my -- in the cell right now, I help a couple of
5 bilingual people to help them get their GED. A couple of the
6 younger cats around here, I've recommended books and whatnot.
7 I've went over some of the business stuff that I know, as far
8 as independent contractors, with some of the cats in there. I
9 know what I want to do when I get out. I know who I am. And I
10 know, if I had the chance, and just the drive and
11 determination, I know I can do it. This man right back here,
12 I've spoken at -- when I was in King County back then. And
13 he's always wanted to try to get me to help the youth and
14 everything else. I know what I want to do now.

15 Like I said, I was caught up in the fact that when my
16 grandfather died, emotionally, I couldn't take it. But that's
17 been almost six years now. And eventually, I'm going to have
18 to come out of this shade, this cloud, and be who I am, and be
19 the man that he wanted me to be. That's what -- exactly what
20 I'm ready to do now.

21 THE COURT: All right. Thank you, sir.

22 If there's nothing further to come before this Court,
23 Mr. Williams, this Court is mandated to calculate the
24 appropriate guideline range, and then to look at any
25 traditional variances or departures that might be applicable in

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1 view of the facts and circumstances. This Court is also
2 charged with the responsibility of looking at all the Section
3 3553(a) factors of the sentencing guidelines, and identify
4 those features of those guidelines that serve as the basis of
5 the sentence that I will impose.

6 Sir, I go through each of the characteristics so that you
7 have a clear understanding of how I got to the sentence I'm
8 going to impose, so that there's no question in your mind.

9 When I look at your history and characteristics, I see
10 aggravating and mitigating circumstances. The mitigating
11 circumstances are many, some of which your lawyer has pointed
12 out today, and some you pointed out in your letter, and have
13 been reaffirmed by argument before this Court today. And that
14 includes the abuse that you suffered as a child; the struggle
15 that you've had with addiction, primarily with heroin and
16 cocaine; and the fact of how you were raised as an individual,
17 and feeling the challenges of being significantly treated
18 differently from others in your family.

19 When I look at the aggravating factors, I have to look at
20 things that you wish weren't a part of your history. And that
21 includes the fact that you have multiple prior convictions. I
22 recognize that many are dated. And I know you may feel, "Why
23 am I strapped with these prior convictions?" They're part of
24 your history. And the Court, nonetheless, has to look at what
25 your history has involved.

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1 And I recognize that the contacts that you've had with law
2 enforcement, some -- and many of those contacts were dismissed.
3 They were allegations, and charged, and dismissed. I'm not
4 sentencing you for anything that you've already served in the
5 past. That's here. That's gone. But, nonetheless, it's a
6 factor for me to look at in assessing who you are as an
7 individual that comes before me.

8 In my questioning of your lawyer, I explained that there
9 are big differences between your approach and your explanation
10 to how that murder conviction took place. Now, we can go
11 through a lot of different discussions and revisiting of
12 history about how the murder took place. But as I've already
13 articulated to your lawyer, at least from what I can see from
14 the reports, because that's all that I have to rely upon, is,
15 you and your brother were pretty upset with somebody over a
16 drug deal gone bad. And before that person got a knife, you
17 guys were already in movement, in action, to go after him. And
18 the type of weapons that were used, there may not have been a
19 lot of options, in terms of your desire to protect your
20 brother; but at the same time, when two grown men have a
21 pitchfork and a shovel, and someone has a knife, there's some
22 options that could have been taken, at that point in time. So
23 there's definitely responsibility that you must bear, at this
24 point in time.

25 The Court also looks at the fact, as I've asked you a

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1 couple questions about, two different assaults that you were
2 convicted of, which demonstrates to the Court that you have had
3 a history of continued violent activity. Now, I'm not
4 representing to you, and I wasn't factoring that that was
5 involving a weapon or firearm. But nonetheless, it gives me
6 some idea of who you are as an overall person.

7 When I look at the nature and circumstances of the current
8 offense, first, I note that these were low amounts, or small
9 amounts, of controlled buys. They were, in some ways,
10 insignificant amounts of drugs that were sold. But
11 nonetheless, the drugs were being sold. I'm troubled by the
12 fact of you were cooperating with law enforcement officers, but
13 then when they asked you questions about why you were selling
14 the drugs, your response was that you were helping people.

15 Sir, I sentence people every Friday, as I've already
16 indicated, for horrible and severe drug addictions. I've got
17 another woman in the program, she's been addicted to drugs
18 since she was 11 years old. She's 46 years old now. Someone
19 had to continue to feed her drugs over the course of her
20 lifetime. Now, many people see the feeding of heroin and
21 cocaine to somebody as not a violent offense. But trust me,
22 when you're on this side of the bench, and you see the violence
23 that that does to other people's lives, and the devastation it
24 does to their families and their children, it clearly is a
25 dangerous situation. And I recognize that you were an addict

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1 yourself, and I've already identified that as a mitigating
2 circumstance. But nonetheless, it's a factor that the Court
3 has to look at and consider.

4 Now, there's been different explanations about the firearm
5 and how it was found in your home. You say it wasn't yours.
6 Ms. Mizen says it was hers, and she has explanations. But she
7 gave an explanation that said that she was coerced by law
8 enforcement officers to give that statement, in order for her
9 to be released. But at the same time, when I look at the text
10 messages, you're negotiating with other people about drugs for
11 firearms. Those types of conversations are taking place.

12 So it's clear to the Court that you had a mentality and
13 understanding about accessing firearms, knowing that you were a
14 felon. That's not predicated upon Ms. Mizen knowing that you
15 were a felon, or that you should have told her that you were a
16 felon and not having guns in your possession. It still
17 demonstrates to the Court that you knew you weren't supposed to
18 have a gun; but nonetheless, you were still involved in
19 negotiations with drugs and firearms, at least that's what the
20 text messages demonstrate to the Court.

21 When I look at the need for the sentence to reflect the
22 seriousness of the offense, again, with the background that
23 you've had, the continued activities associated with drugs, as
24 well as some of the violence, that I've already demonstrated
25 for the Court, it's clear that in your case, that these are

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1 serious offenses. And I'm not talking about the small amounts.
2 Just the fact of your history, the convictions, and the fact
3 that you weren't supposed to sell drugs or possess a firearm,
4 these constitute serious violations.

5 The Court also needs to promote respect for the law and to
6 provide just punishment. Again, when I look at your overall
7 history, not a single conviction, but your continued pattern
8 and involvement, over the course of time, of being involved in
9 drug activity and other acts of violence.

10 The Court also needs to provide adequate deterrence to
11 criminal conduct. Now, whether you tell me, "This is my last
12 contact with the criminal justice system," and you want to go
13 back to a better life, and be able to have a more productive
14 life, I don't disagree with that, and I hope that that's what
15 your life looks like. But the only person that's going to make
16 that happen is you, not based upon a promise to me, your
17 lawyer, to the government. It's based upon what you do and
18 what your reality could become. And, again, that's based upon
19 who you see you can become somewhere down the road.

20 The Court also needs to promote an opportunity to protect
21 the public from further crimes. And I've already referenced
22 the past that you've had, and the need to protect society from
23 you involved in violence of any type, whether it be with a
24 firearm or not.

25 The Court also has grave concerns about sentencing

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1 disparity. Now, the government has given the Court an enormous
2 amount of material about sentencing disparity around the
3 country. And in some ways, I have to discount much of that and
4 try and look at what's done regionally, by way of what we have
5 control and what we have access to. I think this circumstance,
6 in terms of -- with one particular case that we discussed
7 previously has caused a lot of challenges for courts, in terms
8 of what's fair, what's appropriate. How that's going to have
9 impact down the road, I can't tell you. And I don't think
10 anybody will know until there's more case law, case authority,
11 that's developed.

12 But nonetheless, this Court has to look at trying to make
13 sure that what I do in this particular case is designed around
14 what you did, your behavior, your past, and the circumstances
15 of this particular offense. And that's why I'm imposing the
16 sentence that I will.

17 So with that, first, you'll be placed on a three-year term
18 of supervised release. There are special and standard
19 conditions. Every single one of them applies. If you violate
20 any one of those, probation can report you, and you'll be
21 coming back to this Court for sanctions, which could include
22 additional incarceration. So please make sure that you
23 understand every single one of those conditions.

24 The Court also finds that there are statutory fines that
25 could be fined in this case, from \$30,000 to \$1.25 million.

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1 The Court finds that you don't have the ability to pay a fine,
2 and none will be imposed. However, the \$200 special assessment
3 fine for each of the counts is due immediately, for a total of
4 \$200.

5 Restitution is not appropriate, and none will be ordered.

6 The only remaining issue is the amount of custodial time.
7 In this regard, I find that the proper amount of time to be
8 imposed is a sentence of 52 months. In this regard, I believe
9 the overall sentence imposed is reasonable, sufficient, but no
10 more than necessary to carry out the objectives of sentencing.

11 Counsel, subject to any objections that you had regarding
12 calculations or other factors, any other basis to challenge the
13 Court's determination?

14 MS. MANCA: No, Your Honor.

15 THE COURT: Counsel for the defense?

16 MR. GEIST: No, Your Honor.

17 THE COURT: Counsel for the government, I'll ask that
18 you hold off on presenting any paperwork to the defense while I
19 give him his rights on appeal.

20 Mr. Williams, it's the Court's understanding that in
21 Paragraph 14 of the plea agreement, you waived your rights to
22 an appeal, and any rights you had on appeal are exactly as
23 stated in that document.

24 In addition to those rights, I also wish to advise you
25 that you have the right to challenge your lawyer's

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1 effectiveness. Now, if you wish to appeal the sentence, it's
2 very important that you tell your lawyer that's exactly what
3 you wish to do. He can explain to you any issues that are
4 appealable and any issues that might survive.

5 Now, if you wish to appeal your sentence and you cannot
6 afford the filing fee for the Court of Appeals, you can ask me
7 to waive it, and I'll direct the court clerk to prepare and
8 file a notice of appeal upon your request, at no cost to you.
9 Please understand that with very few exceptions, any notice of
10 appeal must be filed within 14 days of the entry of judgment.

11 And lastly, the waiver does not preclude you from bringing
12 an appropriate motion, pursuant to Title 28 United States Code
13 Section 2241, to address the conditions of your confinement or
14 the decisions of the Bureau of Prisons regarding the execution
15 of your sentence.

16 Do you understand each of these rights, sir?

17 THE DEFENDANT: Yes.

18 THE COURT: Counsel, you may approach.

19 MR. GEIST: Your Honor, Mr. Williams would like to at
20 least receive the recommendation to serve his time at FDC
21 Sea-Tac.

22 THE COURT: The Court will make that recommendation.

23 I hope you understand, Mr. Williams, that I don't control
24 the Bureau of Prisons. It's up to them, in terms of where your
25 actual designation will be. I will certainly include that

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1 recommendation.

2 I'll also let you know that because of the amount of time
3 that you are facing, the likelihood that you'll serve it at FDC
4 is pretty slim. Usually, if individuals have sentencing
5 requirements that exceed one year, they're sent to a different
6 location.

7 MR. GEIST: Your Honor, the judgment conforms with
8 Your Honor's rulings.

9 THE COURT: Show it to probation.

10 MR. GEIST: May I approach, Your Honor?

11 THE COURT: You may.

12 Is the government moving to dismiss Count 3?

13 MS. MANCA: We are, Your Honor. Thank you.

14 THE COURT: Any objection, Counsel?

15 MR. GEIST: No, Your Honor.

16 THE COURT: It's dismissed.

17 I have reviewed the judgment. It does reflect my ruling.
18 I've signed it. This concludes this proceeding.

19 Good luck, Mr. Williams. We'll be in recess.

20 (Adjourned)

21

22

23

24

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1 (End of requested transcript)

2 * * *

3 I certify that the foregoing is a correct transcript from
4 the record of proceedings in the above matter.

5
6 Date: 4/13/18

/s/ Andrea Ramirez

7
8 Signature of Court Reporter

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12 PLEA HEARING
13 Before the Honorable James P. Donohue
14 October 30, 2017

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23 Transcribed by: Reed Jackson Watkins
24 Court Approved Transcription
25 206.624.3005

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1 APPEARANCES

2

3 PRESIDING JUDGE: JAMES P. DONOHUE

4

5 FOR THE UNITED STATES:

6 JESSICA MANCA

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9 Suite 5220

10 Seattle, Washington 98101

11

12

13 FOR THE DEFENDANT:

14 GREGORY GEIST

15 Federal Public Defender

16 1601 Fifth Avenue

17 Suite 700

18 Seattle, Washington 98101

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21

22 Also present: Nalen Pierre Williams, Defendant

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24

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October 30, 2017

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4 THE CLERK: All rise. United States District Court for
5 the Western District of Washington is now in session. The
6 Honorable James P. Donohue presiding.

7

THE COURT: Good morning. Please be seated.

8

THE CLERK: Your Honor, the matter before the Court this
9 morning is a plea in Case CR17-138 assigned to Judge Jones,
10 United States of America vs. Nalen Williams.

11

Counsel, please make your appearances.

12

MR. MANCA: Good morning, Your Honor. Jessica Manca for
13 the United States.

14

THE COURT: Good morning, Ms. Manca.

15

MR. GEIST: Good morning, Your Honor. Greg Geist from the
16 Federal Public Defender's Office. I'm at counsel table with
17 Mr. Williams.

18

THE COURT: Good morning, Mr. Geist.

19

And good morning, Mr. Williams.

20

Mr. Geist, do I understand correctly that Mr. Williams is
21 prepared to enter a plea today?

22

MR. GEIST: That's correct, Your Honor.

23

THE COURT: Then Mr. Williams, I'll ask you at this point
24 to stand and raise your right hand so that you can be sworn
25 in.

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1 THE CLERK: Do you solemnly swear or affirm that the
2 testimony you're about to give will be the truth, the whole
3 truth and nothing but the truth?

4 MR. WILLIAMS: I do.

5

6 NALEN PIERRE WILLIAMS, Witness herein, having first been
7 duly sworn on oath, was examined and
8 testified as follows:

9

10 THE COURT: Thank you. Please be seated.

11 Mr. Williams, I want to remind you that you're now under
12 oath. I'm going to ask you a series of questions, and it is
13 important that you understand the question and that you
14 answer the question truthfully. If you don't understand my
15 question, let me know and I'll try to rephrase it in a way
16 so that you do understand it. If you answer any of my
17 questions falsely, then the answers that you provide today
18 could be used against you in a later prosecution for perjury
19 or for making a false statement.

20 Do you understand?

21 MR. WILLIAMS: Yes.

22 THE COURT: Would you state your full true name, please.

23 MR. WILLIAMS: Nalen Pierre Williams.

24 THE COURT: And Mr. Williams, how old are you?

25 MR. WILLIAMS: Forty-eight years old.

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1 THE COURT: And how much education have you received?

2 MR. WILLIAMS: The 12th grade.

3 THE COURT: Mr. Williams, have you been treated recently
4 for any mental illness or addiction to narcotic drugs?

5 MR. WILLIAMS: Depression.

6 THE COURT: Are you currently under the influence of any
7 alcoholic beverage or narcotic drug?

8 MR. WILLIAMS: No.

9 THE COURT: Are you currently under the influence of any
10 medicine that could make it difficult to understand me?

11 MR. WILLIAMS: No.

12 THE COURT: And Mr. Geist, to the best of your knowledge,
13 is Mr. Williams competent to enter into these proceedings?

14 MR. GEIST: Yes, Your Honor.

15 THE COURT: Thank you.

16 Mr. Williams, have you had a chance to review the
17 indictment? The indictment is the written document that
18 contains the charges that have been returned against you by
19 the grand jury.

20 MR. WILLIAMS: Yes.

21 THE COURT: And have you had a chance to speak with
22 Mr. Geist about the indictment and the charges contained in
23 it?

24 MR. WILLIAMS: Yes.

25 THE COURT: Then at this point, I'm going to ask the

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1 Assistant United States Attorney to review the charges to
2 which you're expected to plead guilty, and also the possible
3 penalties that you could face if you do plead guilty.

4 MR. MANCA: Mr. Williams is anticipated to enter a plea of
5 guilty to Count 1, Felon in Possession of a Firearm, which
6 carries a maximum term of imprisonment of up to 10 years, a
7 fine of up to \$250,000, a period of supervision following
8 release from prison of up to three years, and a mandatory
9 special assessment of \$100.

10 Additionally, he is expected to plead guilty to Count 2,
11 Possession with Intent to Distribute Heroin, in violation of
12 Title 21 U.S.C. Sections 841(a)(1) and 841(b)(1)(C). This
13 crime carries a maximum penalty of up to 20 years in prison,
14 a fine of up to \$1 million, a period of supervision
15 following release of at least three years, and a mandatory
16 \$100 special assessment.

17 THE COURT: Thank you.

18 And Mr. Geist, would you agree with the summary of the
19 charges and the possible penalties that could be imposed?

20 MR. GEIST: Yes, Your Honor.

21 THE COURT: Mr. Williams, do you understand the charges
22 and the possible penalties that could be imposed if you
23 decide to plead guilty?

24 MR. WILLIAMS: Yes.

25 THE COURT: You have the right if you wish to enter your

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1 guilty plea before Judge Jones. Judge Jones is the district
2 judge to whom your case had been assigned. If you wish,
3 however, you may also enter your guilty plea before me
4 today. I'm a magistrate judge. If you enter your guilty
5 plea before me today, you will still appear before Judge
6 Jones for sentencing, but it will be at a later date than
7 today.

8 Do you understand how this process works?

9 MR. WILLIAMS: Yes.

10 THE COURT: And do you wish to enter your guilty plea
11 before me today?

12 MR. WILLIAMS: Yes.

13 THE COURT: Is this your signature on the Consent to
14 Proceed before a United States Magistrate Judge?

15 MR. WILLIAMS: Yes.

16 THE COURT: And Mr. Geist, did you discuss the consent
17 with your client and do you believe that he understands it?

18 MR. GEIST: Yes, Your Honor.

19 THE COURT: Thank you.

20 Mr. Williams, are you satisfied with the representation
21 and the advice that you've received from Mr. Geist, your
22 attorney in this case?

23 MR. WILLIAMS: Yes.

24 THE COURT: And have you discussed with him all the facts
25 surrounding the charges against you?

1 MR. WILLIAMS: Yes, Your Honor.

2 THE COURT: Now, I've been provided with a written Plea
3 Agreement.

4 Did you carefully review the written Plea Agreement?

5 MR. WILLIAMS: Yes.

6 THE COURT: Did you discuss it thoroughly with Mr. Geist?

7 MR. WILLIAMS: Yes.

8 THE COURT: Do you need any additional time to consider
9 the written Plea Agreement?

10 MR. WILLIAMS: No.

11 THE COURT: Is this your signature on the last page of the
12 written Plea Agreement?

13 MR. WILLIAMS: It is.

14 THE COURT: I'd like to ask you some questions about your
15 written Plea Agreement. And Mr. Williams, the reason I go
16 through this process is that I want to make sure that the
17 written Plea Agreement accurately sets forth all the
18 agreements that you've made with the United States.

19 It indicates in Section 1 that you intend to plead guilty
20 to two separate charges: One of being a Felon in Possession
21 of a Firearm, and a second charge of Possession with Intent
22 to Distribute Heroin.

23 Is that your understanding as well?

24 MR. WILLIAMS: Yes.

25 THE COURT: Now, with respect to any sentence that may be

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1 imposed, do you understand that your sentencing judge -- in
2 this case, Judge Jones -- will make reference to the United
3 States Sentencing Guidelines?

4 MR. WILLIAMS: Yes.

5 THE COURT: And have you had a chance to talk with
6 Mr. Geist about how the Sentencing Guidelines might impact
7 your case?

8 MR. WILLIAMS: Yes.

9 THE COURT: At the outset of the sentencing process, the
10 Court will begin by determining a Sentencing Guideline
11 range.

12 Do you understand this?

13 MR. WILLIAMS: Yes.

14 THE COURT: And then, after considering all the guidelines
15 and all the factors set out in Section 5 of your Plea
16 Agreement, the Court can impose any sentence up to the
17 maximum term that we've talked about.

18 Do you understand this?

19 MR. WILLIAMS: Yes.

20 THE COURT: That means that the sentence that is imposed
21 can be above or below the Sentencing Guideline range that
22 the Court determines at the outset of the process.

23 Do you understand?

24 MR. WILLIAMS: Yes.

25 THE COURT: When it comes time for sentencing, the Court

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1 will listen to guideline calculation recommendations from
2 your attorney and from the attorney representing the United
3 States. The Court will also listen to specific sentencing
4 recommendations from your attorney and the attorney
5 representing the United States, and from you if you wish to
6 make such a recommendation.

7 Do you understand, however, that none of these
8 recommendations is binding on the Court?

9 MR. WILLIAMS: Yes.

10 THE COURT: Do you also understand that you may not
11 withdraw from your guilty plea based solely on the sentence
12 the Court imposes?

13 MR. WILLIAMS: Yes.

14 THE COURT: Has anybody promised you what sentence the
15 Court will impose?

16 MR. WILLIAMS: No.

17 THE COURT: You've reached agreement on a number of issues
18 that could have an impact on your sentence. For example, in
19 Section 8 of your Plea Agreement, you and the United States
20 have agreed that there should be a 4-level upward adjustment
21 to the base offense level pursuant to Section 2K2.1(b) (6) (B)
22 because you possessed a firearm in connection with another
23 felony offense, or with knowledge, intent or reason to
24 believe that it would be used or possessed in connection
25 with another felony offense.

1 Is that your understanding?

2 MR. WILLIAMS: Yes.

3 THE COURT: And you and the United States are free to
4 argue the application of any and all other provision of the
5 Sentencing Guidelines.

6 Is that your understanding?

7 MR. WILLIAMS: Yes.

8 THE COURT: You and the United States do not agree on the
9 base offense level, but you understand that the United
10 States will argue that the base offense level should be 24
11 pursuant to Section 2K2.1(a)(2) of the guidelines.

12 Is that your understanding?

13 MR. WILLIAMS: Yes.

14 THE COURT: And do you also understand that ultimately
15 it's up to the Court to do the calculation of the Sentencing
16 Guidelines, and that the Court can apply upward or downward
17 adjustments as thought to be appropriate in your individual
18 case?

19 MR. WILLIAMS: Yes.

20 THE COURT: In Section 9 of your Plea Agreement, the
21 United States has acknowledged that you've assisted it by
22 your timely decision to plead guilty. And when it comes
23 time for sentencing, if you continue to accept
24 responsibility, then the United States will recommend that
25 your base offense level be reduced by three levels to

1 reflect your acceptance.

2 Is that your understanding?

3 MR. WILLIAMS: Yes.

4 THE COURT: And do you also understand that, again, the
5 Court is free to accept or reject any such motion by the
6 United States?

7 MR. WILLIAMS: Yes.

8 THE COURT: In Section 10 of the Plea Agreement, the
9 United States has indicated that it will recommend a
10 sentence no higher than 84 months of imprisonment, to be
11 followed by three years of supervision. And you're free to
12 recommend any appropriate sentence.

13 Is that your understanding?

14 MR. WILLIAMS: Yes.

15 THE COURT: And, again, do you understand that it's up to
16 the Court, the Court can impose a sentence that is higher
17 than the United States recommends or lower than what you
18 might recommend?

19 Do you understand this?

20 MR. WILLIAMS: Yeah.

21 THE COURT: In Section 11 of your Plea Agreement, the
22 United States has agreed that it will move to dismiss
23 Count 3 of the indictment at time of sentencing, and that it
24 will not prosecute you for any other offenses that it knows
25 about at this time, that are based on evidence in its

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1 possession at this time, and that arose out of the conduct
2 that led to the investigation.

3 Is that your understanding?

4 MR. WILLIAMS: Yes.

5 THE COURT: And do you understand that the United States
6 is doing this solely in exchange for the promises you've
7 made in the written Plea Agreement?

8 MR. WILLIAMS: Right, yeah.

9 THE COURT: In Section 12 of your Plea Agreement, you've
10 agreed that if the United States has seized any firearms or
11 illegal contraband, that you will forfeit whatever right,
12 title and interest you might have had to any of that
13 contraband.

14 Is that your understanding?

15 MR. WILLIAMS: Yes.

16 THE COURT: In Section 14 of your Plea Agreement, you've
17 agreed as part of the Plea Agreement to give up your appeal
18 rights to the full extent of the law on condition that the
19 Court impose a custodial sentence that is within or below
20 the sentencing guideline range that the Court determines at
21 the outset of the sentencing process.

22 Is that your understanding?

23 MR. WILLIAMS: Yes.

24 THE COURT: And specifically, if that condition is met,
25 you'd give up the right to appeal the actual sentence that

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1 is imposed and you'd give up the right to bring any kind of
2 a collateral attack against your conviction and sentence,
3 except as it may relate to effectiveness of legal
4 representation.

5 Is that your understanding?

6 MR. WILLIAMS: Yes.

7 THE COURT: I'm sorry?

8 MR. WILLIAMS: Yes.

9 THE COURT: Mr. Williams, does the written Plea Agreement
10 contain all of the agreements that you've made with the
11 United States?

12 MR. WILLIAMS: Yes.

13 THE COURT: Was anything left out?

14 MR. WILLIAMS: No.

15 THE COURT: Put in a slightly different way, has anybody
16 made any promises to you other than what is set out in the
17 written Plea Agreement?

18 MR. WILLIAMS: No.

19 THE COURT: Has anybody put pressure on you or threatened
20 you or tried to force you in any way to plead guilty?

21 MR. WILLIAMS: No.

22 THE COURT: Is the decision to plead guilty in this case
23 your decision?

24 MR. WILLIAMS: Yes.

25 THE COURT: And is it solely your decision?

1 MR. WILLIAMS: Yes.

2 THE COURT: Mr. Williams, are you a citizen of the United
3 States?

4 MR. WILLIAMS: Yes.

5 THE COURT: If you plead guilty or if you're convicted of
6 the charges in this case, you will lose valuable civil
7 rights. They include the right to vote, the right to serve
8 on a jury, the right to hold public office and the right to
9 possess any kind of a firearm. In addition, you could
10 become ineligible for certain food stamp and Social Security
11 benefits.

12 Do you understand this?

13 MR. WILLIAMS: Yes.

14 THE COURT: Let me talk to you about some of the rights
15 that you have but rights that you'll be giving up if you
16 decide to plead guilty.

17 You have the plead not guilty to any charge brought
18 against you and to continue to plead not guilty.

19 Do you understand this?

20 MR. WILLIAMS: Yes.

21 THE COURT: If you did plead not guilty, you would then
22 have the right to a trial by jury. And during your trial,
23 you would have the right to effective assistance of an
24 attorney for your defense. You would be presumed to be
25 innocent and the United States would have to prove your

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1 guilt beyond a reasonable doubt. You would have the right
2 to see and to hear all witnesses, and to have those
3 witnesses cross-examined in your defense. You could testify
4 yourself or you could remain silent, and if you decided to
5 remain silent and not put on any evidence, these facts could
6 not be used against you.

7 Do you understand that you have all of these rights?

8 MR. WILLIAMS: Yes.

9 THE COURT: You would have the right to have the Court
10 issue subpoenas to compel witnesses to appear at your trial
11 to testify in your defense.

12 At trial, as I mentioned, the United States would have the
13 burden of proving that you are guilty beyond a reasonable
14 doubt. Before you could be convicted, all 12 jurors must be
15 convinced that the United States has met that burden. If
16 you're found guilty after a trial, you would have the right
17 to appeal your conviction to a higher court, and if you
18 could not afford to pay the costs of an appeal, those costs
19 would be paid for you.

20 Do you understand that you have all of these rights?

21 MR. WILLIAMS: Yes.

22 THE COURT: Do you also understand that if you plead
23 guilty, and if the plea is accepted by the Court, then there
24 will be no trial, and you will have given up your right to a
25 trial, and you will also have given up all of the other

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1 rights associated with a trial that we've just talked about?

2 MR. WILLIAMS: Yes.

3 THE COURT: Then at this point, I'm going to ask the
4 Assistant United States Attorney to review the essential
5 elements of the offense.

6 Mr. Williams, these are the requirements that the United
7 States would have to prove if your case went to trial, and
8 for your benefit, they are set out in Section 2 of your
9 written Plea Agreement.

10 MR. MANCA: As to Count 1, Felon in Possession of a
11 Firearm: Element 1, the defendant knowingly possessed a
12 firearm; Element 2, at the time he possessed the firearm,
13 the defendant had previously been convicted of a crime
14 punishable by imprisonment for a term exceeding one year;
15 and Element 3, the firearm had been shipped or transported
16 in interstate or foreign commerce.

17 As to Count 2, Possession with Intent to Distribute
18 Heroin: Element 1, the defendant knowingly or intentionally
19 possessed heroin, which is a controlled substance; and
20 Element 2, the defendant intended to distribute the heroin
21 to others.

22 THE COURT: And Mr. Geist, do you disagree in any respect
23 with the summary of the essential elements?

24 MR. GEIST: No, Your Honor.

25 THE COURT: Mr. Williams, do you understand that if your

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1 case went to trial, the United States would be required to
2 present evidence sufficient to prove each of these elements
3 beyond a reasonable doubt?

4 MR. WILLIAMS: Yes.

5 THE COURT: And do you also understand that by pleading
6 guilty, you will be giving up your right to require the
7 Government to do this?

8 MR. WILLIAMS: Yes.

9 THE COURT: Then at this point, I'm going to ask the
10 Assistant United States Attorney to review the facts that
11 the Government believes that it could prove if your case
12 went to trial. And for your benefit, they will be coming
13 out of Section 7 of the written Plea Agreement.

14 MR. MANCA: On September 15th, 2016, in King County within
15 the Western District of Washington, detectives with the King
16 County Sheriff's Office executed a search warrant on
17 Mr. Williams' residence.

18 Mr. Williams told the detectives that they would find
19 heroin and a gun under the chair and a shotgun in the
20 bedroom, and he admitted that he intended to distribute the
21 heroin to others.

22 The detectives found 8 grams of heroin and \$942 cash in a
23 box under the chair. Next to the box, they found a Norinco
24 Model 213 .9 millimeter caliber semiautomatic pistol; and in
25 Mr. Williams' bedroom, they found a Marlin Model 60 .22

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1 caliber rifle. Detectives searched Mr. Williams' cell phone
2 and found numerous text messages in which people asked to
3 purchase drugs from him.

4 The .9 millimeter caliber pistol and .22 caliber rifle had
5 been transported in interstate or foreign commerce. At the
6 time Mr. Williams possessed these firearms, he had
7 previously been convicted of the felony crimes of Murder in
8 the Second Degree and Delivery of Cocaine.

9 The parties agree that the Court may consider additional
10 facts contained in the Presentence Report or presented by
11 the parties at sentencing.

12 THE COURT: Mr. Williams, are all of these facts true?

13 MR. WILLIAMS: Yes.

14 THE COURT: Then at this point, I'll ask you to stand.

15 Mr. Williams, as to the charge contained in Count 1 of the
16 indictment of being a Felon in Possession of a Firearm, in
17 violation of Title 18 U.S.C. Section 922(g)(1), how do you
18 plead, guilty or not guilty?

19 MR. WILLIAMS: Guilty.

20 THE COURT: And as to the charge contained in Count 2 of
21 the indictment of Possession with Intent to Distribute
22 Heroin, in violation of Title 21 U.S.C. Sections 841(a)(1)
23 and 841(b)(1)(C), how do you plead, guilty or not guilty?

24 MR. WILLIAMS: Guilty.

25 THE COURT: Thank you. You may be seated.

1 Mr. Geist, are you aware of any reason why the Court
2 should not accept the pleas of guilty?

3 MR. GEIST: No, Your Honor.

4 THE COURT: It is the finding of this Court in the case of
5 the United States of America vs. Nalen Pierre Williams that
6 the defendant, Mr. Williams, is fully competent and capable
7 of entering an informed plea, that he is aware --

8 MR. GEIST: Your Honor, Mr. Williams is just asking me a
9 question. If we may have a moment?

10 THE COURT: Yes.

11 (Attorney-Client privileged conversation)

12 MR. GEIST: Thank you, Your Honor.

13 THE COURT: Can we go ahead and proceed?

14 MR. GEIST: Yes, please.

15 THE COURT: Okay.

16 That Mr. Williams is aware of the charges and of the
17 consequences of the plea, and that the pleas of guilty are
18 made knowingly, intelligently and voluntarily, and that the
19 pleas are supported by an independent basis in fact
20 contained in each of the essential elements of the offense.

21 I therefore sign the Report and Recommendation concerning
22 plea of guilty. Subject to the Court's consideration of the
23 Plea Agreement and pursuant to Federal Rule Criminal
24 Procedure 11, I recommend that the Court find the defendant
25 guilty on each count and impose sentence.

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1 The clerk will provide copies of the Report and
2 Recommendation to both counsel. Objections to it are waived
3 unless filed and served within 14 days.

4 Now, Mr. Williams, at this point, our probation office
5 will become involved. A probation officer will interview
6 you and will do some further background investigation about
7 you and about the facts of this case. That background
8 information, together with the probation officer's analysis
9 as to how the Sentencing Guidelines might impact your case,
10 will all be summarized in the form of what is called a
11 Presentence Report. You and your attorney and the attorney
12 for the United States will have the opportunity to review
13 the Presentence Report and to file written objections to the
14 report.

15 In addition, you, and your attorney and the attorney for
16 the United States will have the opportunity to speak with
17 the sentencing judge prior to the time that sentence is
18 imposed.

19 Do we have a sentencing date?

20 THE CLERK: Yes, Your Honor. Judge Jones has scheduled
21 sentencing for January 5th, 2018, at 1:30 in the afternoon.

22 THE COURT: Mr. Williams, you'll remain in custody while
23 you await sentencing. You will, however, be credited with
24 the time that you are in custody and awaiting sentencing
25 against any sentence that the Court imposes.

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1 Ms. Manca, is there anything further at this time for the
2 United States?

3 MR. MANCA: No, Your Honor.

4 THE COURT: Mr. Geist is there anything further for

5 Mr. Williams?

6 MR. GEIST: No. Thank you.

7 THE COURT: We'll be at recess.

8 THE CLERK: All rise. Court is in recess.

9 (October 30, 2017 hearing concluded)

10

11 s/Kore Siegel, CETD/May 25, 2018

12 AAERT Certified Electronic Transcriber

13 Reed Jackson Watkins

14 Court Approved Transcription Company

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16 Seattle, Washington 98101

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OCT 30 2017

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

| NO. CR17-138 RAJ

PLEA AGREEMENT

v.

NALEN PIERRE WILLIAMS.

Defendant.

The United States of America, by and through Annette L. Hayes, United States Attorney for the Western District of Washington, and Jessica M. Manca, Special Assistant United States Attorney for said District, Defendant Nalen Pierre Williams, and his attorney, Gregory Geist, enter into the following Agreement, pursuant to Federal Rule of Criminal Procedure 11(c)(1)(A):

1. **The Charges.** Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enters a plea of guilty to the following charges contained in the Indictment:

Count One: *Felon in Possession of a Firearm*, in violation of Title 18, United States Code, Section 922(g)(1).

1 Count Two: *Possession with Intent to Distribute Heroin*, in violation of
2 Title 21, United States Code, Sections 841(a)(1) and
3 841(b)(1)(C).

4 The United States agrees to dismiss Count Three: *Possession of a Firearm in*
5 *Furtherance of a Drug Trafficking Crime*, in violation of Title 18, United States Code,
6 Section 924(c)(1)(A), at the time of sentencing.

7 By entering this plea of guilty, Defendant hereby waives all objections to the form
8 of the charging document. Defendant further understands that before entering his guilty
9 plea, he will be placed under oath. Any statement given by Defendant under oath may be
10 used by the United States in a prosecution for perjury or false statement.

11 2. **Elements of the Offenses.** The elements of the offenses are as follows:

12 Count One: *Felon in Possession of a Firearm*:

- 13 (1) The defendant knowingly possessed a firearm;
14 (2) At the time he possessed the firearm, the defendant had been
15 previously convicted of a crime punishable by imprisonment for a
16 term exceeding one year;
17 (3) The firearm had been shipped or transported in interstate or foreign
18 commerce.

19 Count Two: *Possession with Intent to Distribute Heroin*:

- 20 (1) The defendant knowingly or intentionally possessed heroin, which is
21 a controlled substance;
22 (2) The defendant intended to distribute the heroin to others.

23 3. **The Penalties.** Defendant understands that the statutory penalties for the
24 above-listed offenses are as follows:

- 25 • For Count I: *Felon in Possession of a Firearm*: a maximum term of
26 imprisonment of up to 10 years, a fine of up to \$250,000, a period of
27 supervision following release from prison of up to three (3) years, and a
28 mandatory special assessment of \$100 dollars.

- 1 • For Count II: *Possession with Intent to Distribute Heroin*: a maximum term
2 of imprisonment of up to 20 years, a fine of up to \$1,000,000, a period of
3 supervision following release from prison of at least three (3) years, and a
4 mandatory \$100 special assessment.

5 Defendant understands that supervised release is a period of time following
6 imprisonment during which he will be subject to certain restrictive conditions and
7 requirements. Defendant further understands that if supervised release is imposed and he
8 violates one or more of the conditions or requirements, Defendant could be returned to
9 prison for all or part of the term of supervised release that was originally imposed. This
10 could result in Defendant's serving a total term of imprisonment greater than the statutory
11 maximum stated above.

12 Defendant understands that as a part of any sentence, in addition to any term of
13 imprisonment and/or fine that is imposed, the Court may order Defendant to pay
14 restitution to any victim of the offense, as required by law.

15 Defendant further understands that a consequence of pleading guilty may include
16 the forfeiture of certain property either as a part of the sentence imposed by the Court, or
17 as a result of civil judicial or administrative process.

18 Defendant agrees that any monetary penalty the Court imposes, including the
19 special assessment, fine, costs, or restitution, is due and payable immediately and further
20 agrees to submit a completed Financial Statement of Debtor form as requested by the
21 United States Attorney's Office.

22 4. **Rights Waived by Pleading Guilty.** Defendant understands that by
23 pleading guilty, he knowingly and voluntarily waives the following rights:

- 24 a. The right to plead not guilty and to persist in a plea of not guilty;
25 b. The right to a speedy and public trial before a jury of his peers;
26 c. The right to the effective assistance of counsel at trial, including, if
27 Defendant could not afford an attorney, the right to have the Court
28 appoint one for him;

- d. The right to be presumed innocent until guilt has been established beyond a reasonable doubt at trial;
 - e. The right to confront and cross-examine witnesses against Defendant at trial;
 - f. The right to compel or subpoena witnesses to appear on his behalf at trial;
 - g. The right to testify or to remain silent at trial, at which trial such silence could not be used against Defendant; and
 - h. The right to appeal a finding of guilt or any pretrial rulings.

5. **United States Sentencing Guidelines.** Defendant understands and acknowledges that the Court must consider the sentencing range calculated under the United States Sentencing Guidelines and possible departures under the Sentencing Guidelines together with the other factors set forth in Title 18, United States Code, Section 3553(a), including: (1) the nature and circumstances of the offense; (2) the history and characteristics of the defendant; (3) the need for the sentence to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (4) the need for the sentence to afford adequate deterrence to criminal conduct; (5) the need for the sentence to protect the public from further crimes of the defendant; (6) the need to provide the defendant with educational and vocational training, medical care, or other correctional treatment in the most effective manner; (7) the kinds of sentences available; (8) the need to provide restitution to victims; and (9) the need to avoid unwarranted sentence disparity among defendants involved in similar conduct who have similar records. Accordingly, Defendant understands and acknowledges that:

- a. The Court will determine Defendant's applicable Sentencing Guidelines range at the time of sentencing;
 - b. After consideration of the Sentencing Guidelines and the factors in 18 U.S.C. 3553(a), the Court may impose any sentence authorized by law, up to the maximum term authorized by law;

- c. The Court is not bound by any recommendation regarding the sentence to be imposed, or by any calculation or estimation of the Sentencing Guidelines range offered by the parties or the United States Probation Department, or by any stipulations or agreements between the parties in this Plea Agreement; and
 - d. Defendant may not withdraw his guilty plea solely because of the sentence imposed by the Court.

6. **Ultimate Sentence.** Defendant acknowledges that no one has promised or guaranteed what sentence the Court will impose.

7. **Statement of Facts.** The parties agree on the following facts. Defendant admits he is guilty of the charged offenses of Count One: *Felon in Possession of a Firearm* and Count Two: *Possession with Intent to Distribute Heroin*.

- a. On September 15, 2016, in King County, within the Western District of Washington, King County Sheriff's Office detectives executed a search warrant on Nalen Williams' residence. Mr. Williams was sitting on a couch in the living area, next to a chair.
 - b. Mr. Williams told the detectives that they would find heroin and a gun under the chair, and a "shotgun" in the bedroom. Mr. Williams admitted that he intended to distribute the heroin to others.
 - c. The detectives found 8 grams of heroin and \$942 cash in a box under the chair. Next to the box, they found a Norinco model 213, 9mm-caliber semi-automatic pistol, bearing serial number 311701. In the bedroom, they found a Marlin model 60, .22-caliber rifle, bearing serial number 18537076.
 - d. Detectives searched Mr. Williams' cell phone and found numerous text messages in which people ask to purchase drugs from him.
 - e. The Norinco model 213, 9mm-caliber semi-automatic pistol and the Marlin model 60, .22-caliber rifle, had been transported in interstate or foreign commerce.
 - f. At the time Mr. Williams possessed the pistol and the rifle, he had previously been convicted of the following crimes punishable by imprisonment for a term exceeding one year:

- i. *Murder in the Second Degree*, under cause number 93-1-04779-3, in King County Superior Court, Washington, dated on or about January 14, 1994;
 - ii. *Violation of the Uniform Controlled Substances Act: Delivery of Cocaine*, under cause number 12-1-01325-6, in King County Superior Court, Washington, dated on or about December 7, 2012.

g. The parties agree that the Court may consider additional facts contained in the Presentence Report (subject to standard objections by the parties) and/or that may be presented by the United States or Defendant at the time of sentencing, and that the factual statement contained herein is not intended to limit the facts that the parties may present to the Court at the time of sentencing.

8. **Sentencing Factors.** The parties agree that the following Sentencing

Guidelines provisions apply to this case:

- A four-level upward adjustment is applicable, pursuant to USSG § 2K2.1(b)(6)(B), because Defendant possessed a firearm in connection with another felony offense, or with knowledge, intent, or reason to believe that it would be used or possessed in connection with another felony offense.

The parties agree they are free to present arguments regarding the applicability of any and all other provisions of the United States Sentencing Guidelines. The parties do not agree about the Base Offense Level that applies to the defendant's conduct.

Defendant understands that the United States will assert that the Base Offense Level is 24, pursuant to USSG § 2K2.1(a)(2).

Defendant understands that, at sentencing, the Court will determine the applicable Base Offense Level. He also understands that the Court is free to reject the parties' stipulated adjustment, and is further free to apply additional downward or upward adjustments in determining Defendant's Sentencing Guidelines range.

1 9. **Acceptance of Responsibility.** At sentencing, if the district court
2 concludes Defendant qualifies for a downward adjustment for acceptance of
3 responsibility pursuant to USSG § 3E1.1(a) and the defendant's offense level is 16 or
4 greater, the United States will make the motion necessary to permit the district court to
5 decrease the total offense level by three (3) levels pursuant to USSG §§ 3E1.1(a) and (b),
6 because Defendant has assisted the United States by timely notifying the United States of
7 his intention to plead guilty, thereby permitting the United States to avoid preparing for
8 trial and permitting the Court to allocate its resources efficiently.

9 10. **Sentencing Recommendation.** The United States will recommend a
10 sentence no higher than 84 months imprisonment, followed by three (3) years of
11 supervised release. Defendant is free to recommend any appropriate sentence. Defendant
12 understands that the Court is not bound by the recommendations of the parties and
13 Defendant may not withdraw his guilty plea based on the sentence imposed by the Court.

14 11. **Non-Prosecution of Additional Offenses.** As part of this Plea Agreement,
15 the United States Attorney's Office for the Western District of Washington agrees not to
16 prosecute Defendant for any additional offenses known to it as of the time of this
17 Agreement that are based upon evidence in its possession at this time, and that arise out
18 of the conduct giving rise to this investigation. The United States further agrees to
19 dismiss Count Three of the Indictment at the time of sentencing.

20 In this regard, Defendant recognizes the United States has agreed not to prosecute
21 all of the criminal charges the evidence establishes were committed by Defendant solely
22 because of the promises made by Defendant in this Agreement. Defendant agrees,
23 however, that for purposes of preparing the Presentence Report, the United States
24 Attorney's Office will provide the United States Probation Office with evidence of all
25 conduct committed by Defendant.

26 Defendant agrees that any charges to be dismissed before or at the time of
27 sentencing were substantially justified in light of the evidence available to the United
28 States, were not vexatious, frivolous or taken in bad faith, and do not provide Defendant

1 with a basis for any future claims under the "Hyde Amendment," Pub.L. No. 105-119
2 (1997).

3 **12. Forfeiture of Firearms or Contraband.** Defendant also agrees that if any
4 law enforcement agency seized any firearms or other illegal contraband that was in
5 Defendant's direct or indirect control, Defendant consents to the administrative forfeiture,
6 official use, and/or destruction of said firearms or contraband by any law enforcement
7 agency involved in the seizure of these items.

8 **13. Breach, Waiver, and Post-Plea Conduct.** Defendant agrees that if
9 Defendant breaches this Plea Agreement, the United States may withdraw from this Plea
10 Agreement and Defendant may be prosecuted for all offenses for which the United States
11 has evidence. Defendant agrees not to oppose any steps taken by the United States to
12 nullify this Plea Agreement, including the filing of a motion to withdraw from the Plea
13 Agreement. Defendant also agrees that if Defendant is in breach of this Plea Agreement,
14 Defendant has waived any objection to the re-institution of any charges in the Indictment
15 that were previously dismissed or any additional charges that had not been prosecuted.

16 Defendant further understands that if, after the date of this Agreement, Defendant
17 should engage in illegal conduct, or conduct that violates any conditions of release or the
18 conditions of his confinement, (examples of which include, but are not limited to,
19 obstruction of justice, failure to appear for a court proceeding, criminal conduct while
20 pending sentencing, and false statements to law enforcement agents, the Pretrial Services
21 Officer, Probation Officer, or Court), the United States is free under this Agreement to
22 file additional charges against Defendant or to seek a sentence that takes such conduct
23 into consideration by requesting the Court to apply additional adjustments or
24 enhancements in its Sentencing Guidelines calculations in order to increase the applicable
25 advisory Guidelines range, and/or by seeking an upward departure or variance from the
26 calculated advisory Guidelines range. Under these circumstances, the United States is
27 free to seek such adjustments, enhancements, departures, and/or variances even if
28 otherwise precluded by the terms of the plea agreement.

1 **14. Waiver of Appellate Rights and Rights to Collateral Attacks.**

2 Defendant acknowledges that by entering the guilty plea required by this plea
3 agreement, Defendant waives all rights to appeal from his conviction and any pretrial
4 rulings of the court. Defendant further agrees that, provided the court imposes a custodial
5 sentence that is within or below the Sentencing Guidelines range (or the statutory
6 mandatory minimum, if greater than the Guidelines range) as determined by the court at
7 the time of sentencing, Defendant waives to the full extent of the law:

- 8 a. Any right conferred by Title 18, United States Code, Section 3742,
9 to challenge, on direct appeal, the sentence imposed by the court,
10 including any fine, restitution order, probation or supervised release
11 conditions, or forfeiture order (if applicable); and
12 b. Any right to bring a collateral attack against the conviction and
13 sentence, including any restitution order imposed, except as it may
 relate to the effectiveness of legal representation.

14 This waiver does not preclude Defendant from bringing an appropriate motion
15 pursuant to 28 U.S.C. § 2241, to address the conditions of his confinement or the
16 decisions of the Bureau of Prisons regarding the execution of his sentence.

17 If Defendant breaches this Plea Agreement at any time by appealing or collaterally
18 attacking (except as to effectiveness of legal representation) the conviction or sentence in
19 any way, the United States may prosecute Defendant for any counts, including those with
20 mandatory minimum sentences, that were dismissed or not charged pursuant to this Plea
21 Agreement.

22 **15. Statute of Limitations.** In the event this Agreement is not accepted by the
23 Court for any reason, or Defendant has breached any of the terms of this Plea Agreement,
24 the statute of limitations shall be deemed to have been tolled from the date of the Plea
25 Agreement to: (1) thirty (30) days following the date of non-acceptance of the Plea
26 Agreement by the Court; or (2) thirty (30) days following the date on which a breach of
27 the Plea Agreement by Defendant is discovered by the United States Attorney's Office.

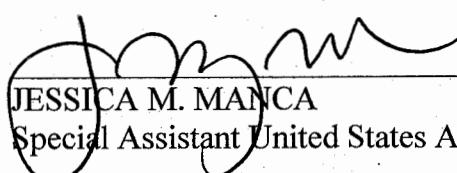
1 16. **Voluntariness of Plea.** Defendant agrees that he has entered into this Plea
2 Agreement freely and voluntarily and that no threats or promises, other than the promises
3 contained in this Plea Agreement, were made to induce Defendant to enter his plea of
4 guilty.

5 17. **Completeness of Agreement.** The United States and Defendant
6 acknowledge that these terms constitute the entire Plea Agreement between the parties.
7 This Agreement binds only the United States Attorney's Office for the Western District
8 of Washington. It does not bind any other United States Attorney's Office or any other
9 office or agency of the United States, or any state or local prosecutor.

10
11 Dated this 30th day of October, 2017.

12
13 
14 NALEN PIERRE WILLIAMS
15 Defendant

16 
17 GREGORY GEIST
18 Attorney for Defendant

19 
20 JESSICA M. MANCA
21 Special Assistant United States Attorney

22 
23 TODD GREENBERG
24 Assistant United States Attorney

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Presented to the Court by the foreman of the
 Grand Jury in open Court, in the presence of
 the Grand Jury and FILED in the U.S.
 DISTRICT COURT at Seattle, Washington.

By WILLIAM M. McCOOL, Clerk
 May 17, 2017
 Deputy

UNITED STATES DISTRICT COURT FOR THE
 WESTERN DISTRICT OF WASHINGTON
 AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff

v.

NALEN PIERRE WILLIAMS,

Defendant.

CR 17-138-RAJ

INDICTMENT

The Grand Jury charges that:

COUNT ONE

(Felon in Possession of a Firearm)

On or about September 15, 2016, in King County, within the Western District of Washington, the defendant, NALEN PIERRE WILLIAMS, having been convicted of the following crimes punishable by imprisonment for a term exceeding one year, to wit:

- a. *Murder in the Second Degree*, under cause number 93-1-04779-3, in King County Superior Court, Washington, dated on or about January 14, 1994;
- b. *Violation of the Uniform Controlled Substances Act: Delivery of Cocaine*, under cause number 12-1-01325-6, in King County Superior Court, Washington, dated on or about December 7, 2012;

1 did knowingly possess, in and affecting interstate and foreign commerce, the following
2 firearms, to wit: a Norinco model 213, 9mm-caliber semi-automatic pistol, bearing serial
3 number 311701, and a Marlin model 60, .22-caliber rifle, bearing serial number
4 18537076, each of which had been shipped and transported in interstate and foreign
5 commerce.

6 All in violation of Title 18, United States Code, Section 922(g)(1).

7 **COUNT TWO**

8 **(Possession with Intent to Distribute Heroin)**

9 On or about September 15, 2016, in King County, within the Western District of
10 Washington, NALEN PIERRE WILLIAMS, did knowingly and intentionally possess
11 with intent to distribute heroin, a Schedule I controlled substance under Title 21, United
12 States Code, Section 812.

13 All in violation of Title 21, United States Code, Sections 841(a)(1) &
14 841(b)(1)(C).

15 **COUNT THREE**

16 **(Possession of a Firearm in Furtherance of a Drug Trafficking Crime)**

17 On or about September 15, 2016, in King County, within the Western District of
18 Washington, NALEN PIERRE WILLIAMS, did knowingly and intentionally possess the
19 following firearms, to wit: a Norinco model 213, 9mm-caliber semi-automatic pistol,
20 bearing serial number 311701, and a Marlin model 60, .22-caliber rifle, bearing serial
21 number 18537076, in furtherance of a drug trafficking offense for which he may be

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Indictment - 2

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE
5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

1 prosecuted in a Court of the United States, to wit: *Possession with Intent to Distribute*
2 *Heroin*, as charged in Count Two, above.

3 All in violation of Title 18, United States Code, Section 924(c)(1)(A).

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5 A TRUE BILL:

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DATED: 5.17.17

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Signature of foreperson redacted
pursuant to the policy of the Judicial
Conference of the United States

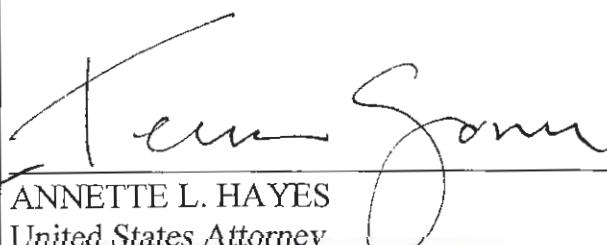
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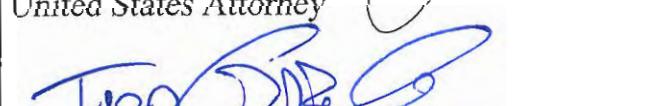
 FOREPERSON

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ANNETTE L. HAYES
United States Attorney


TODD GREENBERG
Assistant United States Attorney


JESSICA MANCA
Special Assistant United States Attorney

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Indictment - 3

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