

No. ____

IN THE
Supreme Court of the United States

DELVIN DEON TINKER,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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APPENDIX

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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 19-10835-GG

DELVIN DEON TINKER,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeals from the United States District Court
for the Southern District of Florida

Before: TJOFLAT, JORDAN, and GRANT, Circuit Judges.

BY THE COURT:

Delvin Tinker, a federal prisoner serving a 180-month sentence for being a felon in possession of a firearm, appeals the district court's denial of his 28 U.S.C. § 2255 motion to vacate his sentence. The government has moved for summary affirmance and to stay the briefing schedule.

Summary disposition is appropriate either where time is of the essence, such as "situations where important public policy issues are involved or those where rights delayed are rights denied," or where "the position of one of the parties is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case, or where, as is more frequently the case, the appeal is frivolous." *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

We review *de novo* whether a defendant’s prior convictions qualify as violent felonies under the Armed Career Criminal Act (“ACCA”). *United States v. Deshazior*, 882 F.3d 1352, 1354 (11th Cir. 2018), *cert. denied*, 139 S. Ct. 1255 (2019). Under the prior precedent rule, a prior panel’s holding is binding on all subsequent panels unless and until it is overturned or undermined to the point of abrogation by the Supreme Court or by us sitting *en banc*. *United States v. Archer*, 531 F.3d 1347, 1352 (11th Cir. 2008). An argument not raised in a party’s appellate brief is deemed abandoned. *Clark v. Dugger*, 901 F.2d 908, 910 (11th Cir. 1990).

The ACCA mandates a minimum sentence of 15 years’ imprisonment for any defendant convicted of being a felon in possession of a firearm and who has three previous convictions for a violent felony and/or a serious drug offense. *See* 18 U.S.C. § 924(e)(1). The ACCA defines a “violent felony” as any crime punishable by a term of imprisonment exceeding one year that “(i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or (ii) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another.” *Id.* § 924(e)(2)(B).

The first prong of this definition is referred to as the “elements clause,” while the second prong contains the “enumerated crimes” and, finally, what is commonly called the “residual clause.” *United States v. Owens*, 672 F.3d 966, 968 (11th Cir. 2012). In *Johnson v. United States*, the Supreme Court has held that the residual clause of the ACCA is unconstitutionally vague. *See* 135 S. Ct. 2551, 2563 (2015). The Supreme Court, however, did “not call into question application of the Act to the four enumerated offenses, or the remainder of the [ACCA’s] definition of a violent felony.” *Id.*

In *Beeman v. United States*, we explained that, to obtain relief under *Johnson*, a postconviction movant must prove that his sentence enhancement was due to the use of the residual

clause. 871 F.3d 1215, 1222 (11th Cir. 2017). “In other words, he must show that the clause actually adversely affected the sentence he received.” *Id.* at 1221. The movant must prove two things: (1) that “the sentencing court relied solely on the residual clause, as opposed to also or solely relying on either the enumerated offenses clause or elements clause,” and (2) that “there were not at least three other prior convictions that could have qualified under either of those two clauses as a violent felony, or as a serious drug offense.” *Id.* With respect to the first requirement, we added that, to prove a *Johnson* claim, the movant must show that, more likely than not, it was use of the residual clause that led to the sentencing court’s enhancement of his sentence. *Id.* at 1222. “If it is just as likely that the sentencing court relied on the elements or enumerated offenses clause, solely or as an alternative basis for the enhancement, then the movant has failed to show that his enhancement was due to use of the residual clause.” *Id.*

In *Turner v. Warden Coleman FCI (Medium)*, we held that Florida aggravated assault, Fla. Stat. § 784.021, qualifies as a violent felony under the ACCA’s elements clause “because by its definitional terms, the offense necessarily includes an assault, which is an intentional, unlawful threat by word or act *to do violence* to the person of another, coupled with an apparent ability to do so.” 709 F.3d 1328, 1338 (11th Cir. 2013) (quotation marks omitted). Therefore, we concluded, a conviction for aggravated assault “will always include as an element the . . . threatened use of physical force against the person of another.” *Id.* (quotation marks omitted). In *Deshazior*, we rejected the defendant’s argument that, because Florida aggravated assault could be accomplished with a *mens rea* of recklessness, it did not involve the “use of physical force,” and explained that, “even if *Turner* is flawed, that does not give us, as a later panel, the authority to disregard it.” 882 F.3d at 1355 (quoting *United States v. Golden*, 854 F.3d 1256, 1257 (11th Cir.), *cert. denied*, 138 S. Ct. 197 (2017)).

We have previously held that a prior conviction for resisting an officer with violence, Fla. Stat. § 843.01, categorically qualifies as a violent felony under the elements clause of the ACCA. *United States v. Hill*, 799 F.3d 1318, 1322 (11th Cir. 2015); *United States v. Romo-Villalobos*, 674 F.3d 1246, 1251 (11th Cir. 2012). This Court has rejected the argument that *de minimis* force is sufficient to establish violence under the statute, and reaffirmed that decision. *See Romo-Villalobos*, 674 F.3d at 1249 (stating that we could not conclude that Florida courts had held that the element of violence in § 843.01 could be satisfied by *de minimis* force); *Deshazior*, 882 F.3d at 1355 (reaffirming that decision).

Here, we grant the government's motion for summary affirmance because its position is clearly correct as a matter of law. *See Davis*, 406 F.2d at 1162. As an initial matter, Tinker has abandoned any challenge to his prior convictions for Florida robbery and aggravated battery by failing to raise it in his appellate brief. Thus, the only prior convictions at issue are those for Florida aggravated assault and resisting an officer with violence. As to the merits, Tinker failed to meet his burden under *Beeman* to demonstrate that the district court, more likely than not, used the ACCA's residual clause to enhance his sentence because he conceded that the record was silent as to which ACCA clause the district court used to enhance his sentence.

Further, both convictions qualify as violent felonies under the ACCA's elements clause under our binding precedent. In *Turner*, we held that Florida aggravated assault qualifies as a violent felony under the elements clause. *See Turner*, 709 F.3d at 1338. Although some members of our Court have expressed disagreement with the holding in *Turner*, it remains binding law in this Circuit unless and until it is overruled by the Supreme Court or by us sitting *en banc*. *See Archer*, 531 F.3d at 1352. Tinker argues that *Turner* was wrongly decided because aggravated assault can be accomplished with a *mens rea* of recklessness and does not necessarily involve the

use of physical force. We have rejected that argument and explained that “even if *Turner* is flawed, that does not give us . . . the authority to disregard it.” *See Deshazior*, 882 F.3d at 1355.

Finally, Tinker’s argument that his prior conviction for resisting an officer with violence is not a violent felony is also foreclosed by our binding precedent. In *Hill*, we held that a prior conviction for resisting an officer with violence categorially qualifies as a violent felony under the elements clause of the ACCA. *See Hill*, 799 F.3d at 1322. Tinker contends that *Hill* was wrongly decided because the least act criminalized by the statute does not necessarily involve the use of physical force and can be *de minimis* force. We have rejected that argument. In *Romo-Villalobos*, we concluded that Florida caselaw did not establish that *de minimis* force was sufficient to establish violence under the statute. *See* 674 F.3d at 1249-50. And, *Romo-Villalobos* is binding in this Circuit unless and until it is overruled by the Supreme Court or by us sitting *en banc*. *See Archer*, 531 F.3d at 1352.

Accordingly, the government’s motion for summary affirmance is GRANTED, and its motion to stay the briefing schedule is DENIED as moot.

APPENDIX B

UNITED STATES DISTRICT COURT
Southern District of Florida
Miami Division

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

Case Number: **14-20442-CR-LENARD**
 USM Number: **06531-104**

DELVIN DEON TINKER

Counsel For Defendant: **Kate Carmon**
 Counsel For The United States: **Robery Emery**
 Court Reporter: **Lisa Edwards**

The defendant pleaded guilty to count 1.

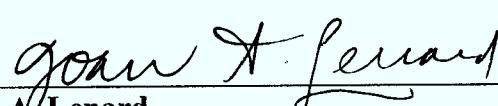
The defendant is adjudicated guilty of these offenses:

<u>TITLE & SECTION</u>	<u>NATURE OF OFFENSE</u>	<u>OFFENSE ENDED</u>	<u>COUNT</u>
18 U.S.C. § 922(g)(1) and 924(e)(1)	Possession of Firearm by Convicted Felon	01/22/2014	1

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

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.

Date of Imposition of Sentence: **2/2/2015**


Joan A. Lenard
 United States District Judge

Date: 2/4/15

DEFENDANT: DELVIN DEON TINKER
CASE NUMBER: 14-20442-CR-LENARD

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **180 months**. The sentence imposed in this case shall run concurrently with any sentence imposed in State of Florida case #F-141649.

The court makes the following recommendations to the Bureau of Prisons: Defendant be placed in a facility in Florida or as close to Florida as possible to be near family.

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

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

DEPUTY UNITED STATES MARSHAL

DEFENDANT: DELVIN DEON TINKER
CASE NUMBER: 14-20442-CR-LENARD

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **3 years**.

The defendant must report to the probation office in the district to which the defendant is released within 48 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

The defendant shall cooperate in the collection of DNA as directed by the probation officer.

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

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

STANDARD CONDITIONS OF SUPERVISION

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

DEFENDANT: DELVIN DEON TINKER
CASE NUMBER: 14-20442-CR-LENARD

SPECIAL CONDITIONS OF SUPERVISION

Mental Health Treatment - The defendant shall participate in an approved inpatient/outpatient mental health treatment program. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

Permissible Search - The defendant shall submit to a search of his/her person or property conducted in a reasonable manner and at a reasonable time by the U.S. Probation Officer.

Substance Abuse Treatment - The defendant shall participate in an approved treatment program for drug and/or alcohol abuse and abide by all supplemental conditions of treatment. Participation may include inpatient/outpatient treatment. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

DEFENDANT: **DELVIN DEON TINKER**
CASE NUMBER: **14-20442-CR-LENARD**

CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$100.00	\$0.00	\$0.00

* 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.

**Assessment due immediately unless otherwise ordered by the Court.

DEFENDANT: DELVIN DEON TINKER
CASE NUMBER: 14-20442-CR-LENARD

SCHEDULE OF PAYMENTS

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

A. Lump sum payment of \$100 due immediately.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

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

This assessment/fine/restitution is payable to the CLERK, UNITED STATES COURTS and is to be addressed to:

U.S. CLERK'S OFFICE
ATTN: FINANCIAL SECTION
400 NORTH MIAMI AVENUE, ROOM 08N09
MIAMI, FLORIDA 33128-7716

The assessment/fine/restitution is payable immediately. The U.S. Bureau of Prisons, U.S. Probation Office and the U.S. Attorney's Office are responsible for the enforcement of this order.

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

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
CASE NO. 14-20442-CRIMINAL-LENARD

UNITED STATES OF AMERICA, Miami, Florida

Plaintiff, February 2, 2015

vs. 3:05 p.m. to 3:21 p.m.

DELVIN DEON TINKER,

Defendant. Pages 1 to 13

SENTENCING HEARING

BEFORE THE HONORABLE JOAN A. LENARD,
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT: ROBERT J. EMERY, ESQ.
ASSISTANT UNITED STATES ATTORNEY
99 Northeast Fourth Street
Miami, Florida 33132

FOR THE DEFENDANT: KATHERINE CARMON, ESQ.
ASSISTANT FEDERAL PUBLIC DEFENDER
150 West Flagler Street
Miami, Florida 33130

FOR US PROBATION: THOMAS FELASCO
MERCEDES FORNOZA
YOLANDA RAWL

REPORTED BY: LISA EDWARDS, RDR, CRR
Official Court Reporter
United States District Court
400 North Miami Avenue
Twelfth Floor
Miami, Florida 33128
(305) 523-5499

1 THE COURT: Good afternoon. You may be seated.

2 United States of America versus Delvin Deon Tinker,
3 Case No. 14-20442.

4 Good afternoon, counsel. State your appearances,
5 please, for the record, as well as Probation.

6 MR. EMERY: Rob Emery on behalf of the United States.

7 THE COURT: Good afternoon.

8 MS CARMON: Good afternoon, your Honor. Katie Carmon,
9 assistant federal defender, for Mr. Tinker, who is present
10 before the Court.

11 THE COURT: Good afternoon.

12 THE PROBATION OFFICER: Good afternoon, your Honor.
13 Thomas Felasco on behalf of the US Probation Office.

14 I have two new probation officers who are for
15 observation and training purposes next to me observing the
16 proceedings, your Honor, Mercedes Fornoza and Yolanda Rawl.

17 THE COURT: Good afternoon.

18 Welcome.

19 Mr. Tinker is set for sentencing today.

20 Mr. Tinker, have you read the advisory presentence
21 investigation report and its addendums?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: And have you and your attorney discussed
24 the advisory presentence investigation report and its
25 addendums?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: My examination of the file indicates that
3 the Defendant has filed objections to the presentence
4 investigation report, Docket Entry 48. The Government
5 responded in Docket Entry 49. And in accordance with my order,
6 the Defendant filed a notice regarding the status of previously
7 filed objections in Docket Entry 52.

8 Do you wish to proceed?

9 MS CARMON: Yes, your Honor.

10 The defense filed two objections in this matter. And
11 we acknowledge that both of them are foreclosed by Supreme
12 Court precedent and the guidelines commentary at this time. So
13 we simply raise them for -- to preserve for appellate review.

14 The first objection is obviously Mr. Tinker's
15 characterization as an armed career criminal. Given the fact
16 that his prior convictions were not proven to a jury nor were
17 they admitted by him, and obviously the fact of those
18 convictions increase his maximum sentence, and thus it is our
19 position that those facts should be proven to a jury or
20 admitted by Mr. Tinker.

21 And although Supreme Court precedent *Almendarez-Torres*,
22 523 US 224, from 1998 forecloses that argument, we do wish to
23 preserve it for appellate review.

24 Similarly, we did object to the strict liability
25 nature, Judge, of the stolen gun enhancement under

1 2K2.1(b)(4)A). Given the fact that in the PSI there is no
2 evidence that Mr. Tinker was involved in the stealing of that
3 gun or knew it to be stolen, we do object to the strict
4 liability nature of its application.

5 However, we do note that the guidelines' commentary
6 under Note 8 forecloses that argument. And so we do preserve
7 it for appellate review.

8 THE COURT: Anything the Government wants to say in
9 response?

10 MR. EMERY: No, your Honor. Just that the Government
11 would stand by its response in Docket Entry 49; and as opposing
12 counsel stated, that the arguments that they have made are
13 solely to preserve for appellate purposes and are foreclosed by
14 Eleventh Circuit precedent as well as Supreme Court precedent
15 in *Almendarez-Torres*.

16 And also, the application note directly addresses the
17 Defendant's objection.

18 THE COURT: Anything further?

19 MS CARMON: No, your Honor. Thank you.

20 THE COURT: I'm going to overrule the objections by the
21 Defendant. Both of these objections are objections that cannot
22 stand because of the advisory guidelines and the applicable
23 case law.

24 Specifically, as to the prior felony conviction that
25 was neither alleged in the indictment nor proved at trial, the

1 case of *Almendarez-Torres*, 523 US 224, 1998, is contrary to the
2 position and is binding precedent unless and until it is ruled
3 otherwise.

4 Under *Almendarez-Torres*, the Government need not allege
5 in the indictment or prove beyond a reasonable doubt that a
6 defendant had a prior conviction in order for the Court to
7 utilize those convictions to enhance a sentence.

8 Additionally, I overrule the objection regarding
9 2K2.1(b) (4) in the advisory presentence investigation report
10 based upon the commentary for 2K2.1(b) (4) and the case law in
11 the Eleventh Circuit, *United States versus Richardson* 8 F.3d
12 769, a 1993 decision by the Eleventh Circuit. There is no
13 prohibition for this enhancement based upon the fact that the
14 Defendant did not steal the gun or that he had no knowledge or
15 reason to believe the gun was stolen.

16 Are those your only objections?

17 MS CARMON: Yes, your Honor. Other than that, we have
18 no objection to the guideline calculation as contained in the
19 PSI.

20 THE COURT: Does the Government make the motion for the
21 third level off under 3E1.1?

22 MR. EMERY: Yes, your Honor.

23 THE COURT: That motion is granted.

24 The Court will adopt the factual findings and guideline
25 applications as contained in the advisory presentence

1 investigation report.

2 Before going further, I would ask counsel to review
3 with me the major calculations in the advisory presentence
4 investigation report.

5 The offense level is 30; the criminal history category
6 is Roman numeral VI; the advisory guideline range is 180 to 210
7 months, two to five years' supervised release, \$15,000 to
8 \$150,000 fine and \$100 special assessment.

9 Is that correct in its totality?

10 MR. EMERY: Yes, your Honor.

11 MS CARMON: Yes, your Honor.

12 THE COURT: Mr. Tinker, you are in court today to
13 receive your sentence.

14 Before that happens, I must ask you if there's any
15 legal cause as to why the sentence of the law should not be
16 pronounced upon you.

17 MS CARMON: Your Honor, we're ready to proceed today.

18 THE COURT: No legal cause having been shown as to why
19 sentence should not be imposed -- I take it that's what you
20 meant?

21 MS CARMON: Yes, your Honor.

22 THE COURT: -- the Court will consider whatever you may
23 wish to say in mitigation.

24 MS CARMON: Thank you, your Honor.

25 Mr. Tinker is asking that the Court impose the lowest

1 sentence that it can in this cause, which is the 180 months.

2 I'll note for your Honor that without that minimum
3 mandatory sentence his advisory guideline range would be 168
4 months to 210 months, which puts that mandatory minimum sort of
5 right in the middle.

6 So we ask that your Honor impose the least sentence
7 possible in this case; and that's the 180 months.

8 I will note for your Honor that the facts of this case
9 don't involve any other criminal activity. They do not involve
10 a crime of violence. They do not involve any sort of dispatch
11 where police are advised that something is happening and then
12 find a gun on Mr. Tinker.

13 In this particular case, it is the mere possession that
14 finds Mr. Tinker before your Honor.

15 And so I would note to the Court that I think it's
16 important for you to consider that, unlike some other cases
17 where there's something else going on, a robbery, a burglary,
18 that's not the case here. And Mr. Tinker accepts full
19 responsibility for possessing the firearm on this date, but
20 that it was the possession only and not any other incidental
21 criminal activity.

22 I would also note for your Honor that in the last few
23 months of incarceration, Mr. Tinker has been medicated and he
24 is taking his medication and doing quite well. I'm sure your
25 Honor notes in the presentence investigation report there is a

1 history of mental health issues, sometimes medicated and
2 treated, sometimes not. And it's, I'm sure, obvious to the
3 Court and to Mr. Tinker himself that he operates better when he
4 is receiving his treatment, when he is receiving his
5 medication. And so he's made a commitment to continue that
6 today.

7 I will point out for your Honor that Ms. Clayton,
8 Mr. Tinker's mother, is present in the gallery. She's here to
9 support him. And she has expressed to me and wishes me to
10 express to you that although she does have another son, Delvin
11 has always been her rock and Delvin has always been there for
12 his mother. Her other son is not really around; and not
13 because he is living out of state, but because he chooses not
14 to.

15 And Delvin has been the one to take her to her medical
16 appointments, to be there for her. She's currently going
17 through some difficult personal issues, and it's Delvin that's
18 always there for her. And so she wished me to express that to
19 the Court.

20 I think for those reasons, your Honor, for the fact
21 that the minimum mandatory sentence is within the guideline
22 range, that Mr. Tinker is medicated, doing much better now and
23 has made a commitment to continue that, and the facts and
24 circumstances of this particular case, which are the possession
25 of the firearm, for which he does take full responsibility, we

1 would ask that your Honor impose the minimum mandatory sentence
2 of 180 months.

3 THE COURT: Mr. Tinker, is there anything you want to
4 say?

5 THE DEFENDANT: Yes. I just pray to God to have mercy
6 on me. And I promise you you'll never see me again.

7 THE COURT: What does the Government say?

8 MR. EMERY: Your Honor, pursuant to the plea agreement,
9 the Government concurs with the 180-month sentence
10 recommendation.

11 THE COURT: If you would stand with your client.

12 The Court has considered the statements of the parties,
13 the advisory presentence investigation report, which contains
14 the advisory guidelines, and the statutory factors set forth in
15 Title 18, United States Code, Section 3553(a).

16 The Court finds that a sentence at the lowest end of
17 the advisory guideline range is sufficient for punishment and
18 deterrence and meets the factors set forth in Title 18, United
19 States Code, Section 3553(a).

20 It is further the finding of the Court that the
21 Defendant is not able to pay a fine, and therefore no fine
22 shall be imposed.

23 Pursuant to the Sentencing Reform Act of 1984, it is
24 the judgment of the Court that the Defendant, Delvin Deon
25 Tinker, is hereby committed to the custody of the United States

1 Bureau of Prisons to be imprisoned for a total term of 180
2 months as to Count 1.

3 Upon release from imprisonment, the Defendant shall be
4 placed on supervised release for a term of three years as to
5 Count 1.

6 Within the 48 hours of release from the custody of the
7 United States Bureau of Prisons, the Defendant shall report in
8 person to the probation office in the district to which he is
9 released.

10 While on supervised release, the Defendant shall not
11 commit any federal, state or local crimes; he shall be
12 prohibited from possessing a firearm or other dangerous device;
13 he shall not possess a controlled substance; he shall cooperate
14 in the collection of DNA and shall comply with the standard
15 conditions of supervised release that have been adopted by this
16 Court and with the following special conditions:

17 The Defendant shall participate in an approved
18 inpatient or outpatient mental health treatment program. The
19 Defendant will contribute to the cost of services rendered by
20 means of a copayment based upon his ability to pay or
21 availability of third-party payment.

22 The Defendant shall participate in an approved
23 treatment program for drug and/or alcohol abuse and abide by
24 all supplemental conditions of treatment. Participation may
25 include inpatient or outpatient treatment.

1 The Defendant will contribute to the cost of services
2 rendered by means of a co-payment based upon his ability to pay
3 or availability of third-party payment.

4 The Defendant shall submit to a search of his person or
5 property conducted in a reasonable manner and at a reasonable
6 time by the United States probation officer.

7 It is further ordered that the Defendant shall pay to
8 the United States a special assessment of \$100, which shall be
9 due immediately.

10 Does the Government have a motion to make regarding any
11 remaining counts?

12 MR. EMERY: No, your Honor.

13 THE COURT: Mr. Tinker, it is my duty to inform you,
14 sir, that you have 14 days with which to appeal the judgment
15 and sentence of this Court. Should you desire to appeal and be
16 without funds with which to prosecute an appeal, an attorney
17 will be appointed to represent you in connection with that
18 appeal.

19 Should you fail to appeal within that 14-day period, it
20 will constitute a waiver of your right to appeal.

21 It is also my duty to elicit from counsel from both
22 sides fully articulated objections to the Court's finding of
23 facts and conclusions of law as announced at this sentencing
24 hearing and to further elicit any objections which either side
25 may have to the manner in which sentence was imposed in this

1 case.

2 Are there any objections from the Government?

3 MR. EMERY: No, your Honor.

4 THE COURT: From the Defendant?

5 MS CARMON: Your Honor, we'd just note our objections
6 previously for the record.

7 Just two requests from your Honor: We would ask for a
8 South Florida recommendation or as close as you can. His
9 mother and two young children do live in the Miami area.

10 Similarly, Judge, this case originated, obviously,
11 from -- as you can see in the PSI, from a state court case for
12 the same exact incident. There were no other allegations in
13 the state court case. That's court case F-14-1649. I'm not
14 sure what's going to happen with that case. Mr. Emery has been
15 in contact with the assistant state attorney assigned.

16 But in the case that the state court does wish to
17 pursue its prosecution and does enter a sentence against
18 Mr. Tinker, we just ask that you make the recommendation that
19 those sentences run concurrently, given that it's the same
20 exact conduct in both cases.

21 THE COURT: Any objection by the Government?

22 MR. EMERY: No, your Honor.

23 THE COURT: All right. I'll recommend an institution
24 in Florida or as close to South Florida as possible.

25 MS CARMON: Thank you.

3 MS CARMON: That's correct.

4 THE COURT: -- should run concurrently to the sentence
5 imposed in this case.

6 MS CARMON: Thank you.

7 THE COURT: Thank you. We're in recess in this matter.

8 MS. CARMON: Thank you, your Honor.

9 (Proceedings concluded.)

10

C E R T I F I C A T E

12 I hereby certify that the foregoing is an
13 accurate transcription of the proceedings in the
14 above-entitled matter.

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DATE

/s/Lisa Edwards
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