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IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2019

MICHAEL JONES,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

APPENDICES

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

Ryan K. Culpepper
Culpepper Law Firm, PLLC
P.O. Box 70
Hot Springs, Arkansas 71902
Telephone: (501) 620-0857
ryan@theculpepperfirm.com

CJA Counsel for Petitioner

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United States Court of Appeals
For the Eighth Circuit

No. 18-3372

United States of America

Plaintiff - Appellee

v.

Michael Jones

Defendant - Appellant

Appeal from United States District Court
for the Eastern District of Arkansas - Little Rock

Submitted: September 13, 2019
Filed: September 18, 2019
[Unpublished]

Before GRUENDER, STRAS, and KOBES, Circuit Judges.

PER CURIAM.

Michael Jones appeals the district court's¹ order denying his 28 U.S.C. § 2255 motion after an evidentiary hearing. The district court granted Jones a certificate of

¹The Honorable Brian S. Miller, Chief Judge, United States District Court for the Eastern District of Arkansas.

appealability on his claim that his plea counsel was ineffective for failing to file a direct appeal. Following careful review, *see Covey v. United States*, 377 F.3d 903, 906 (8th Cir. 2004) (reviewing de novo denial of ineffective-assistance claim but reviewing for clear error any findings of underlying facts), we affirm the denial of relief on this issue. The evidence established that Jones became upset when his attorney, upon visiting Jones after sentencing to discuss whether he wished to appeal, advised Jones there were no viable issues for appeal. Jones then left his attorney without instructing him to file an appeal. *See Roe v. Flores-Ortega*, 528 U.S. 470, 478 (2000) (holding that counsel who consulted with defendant performs in professionally unreasonable manner only by failing to follow defendant's express instructions with respect to an appeal); *Barger v. United States*, 204 F.3d 1180, 1181-82 (8th Cir. 2000) (noting that, for § 2255 movant to succeed on claim that counsel was ineffective for failing to file appeal, desire to appeal must be manifest).

Jones also seeks to expand the certificate of appealability to include a claim that his counsel was ineffective at sentencing for failing to argue that Jones's prior Missouri and Arkansas drug convictions did not qualify as career-offender predicates. In the absence of authority that would cause a reasonable jurist to conclude that the district court's ruling on this claim was debatable or wrong, we decline to grant the request. *See Winfield v. Roper*, 460 F.3d 1026, 1040 (8th Cir. 2006).

The district court's judgment is affirmed.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

UNITED STATES OF AMERICA

PLAINTIFF

v.

CASE NO. 4:15-CR-00194 BSM

MICHAEL JONES

DEFENDANT

ORDER

Defendant Michael Jones's motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. section 2255 [Doc. No. 61] is reserved in part and denied in part. A ruling is reserved on whether Jones's lawyer was ineffective for failing to file an appeal after being instructed to do so, and an evidentiary hearing will be held on this issue. The remainder of his motion and a certificate of appealability are denied.

I. BACKGROUND

On December 19, 2016, Michael Jones pleaded guilty, pursuant to a plea agreement, to a superseding information charging him with distribution of methamphetamine. *See* Doc. Nos. 50, 51, 52, 53. He was sentenced to 180 months imprisonment. Doc. No. 59. Jones moves to vacate or set aside his sentence because he asserts that his lawyer was constitutionally ineffective. Specifically, he claims that counsel failed to (1) advise Jones about his right to a trial and coerced him into pleading guilty, (2) challenge the drug weight during plea negotiations and during sentencing, (3) object to Jones's designation as a career offender, and (4) file an appeal after being instructed to do so.

II. LEGAL STANDARD

A prisoner in custody for a federal sentence may petition the sentencing court to vacate, set aside, or correct the sentence if (1) the sentence was imposed in violation of the Constitution or laws of the United States; (2) the court was without jurisdiction to impose the sentence; (3) the sentence was in excess of the maximum authorized by law; or (4) the sentence is otherwise subject to collateral attack. 28 U.S.C. § 2255(a). Relief is reserved for “transgressions of constitutional rights and for a narrow range of injuries that could not have been raised on direct appeal and, if uncorrected, would result in a complete miscarriage of justice.” *United States v. Apfel*, 97 F.3d 1074, 1076 (8th Cir. 1996).

Ineffective assistance of counsel claims are a common basis for section 2255 petitions, and they are governed by the performance and prejudice standards articulated by *Strickland v. Washington*, 466 U.S. 668 (1984). *See Caban v. United States*, 281 F.3d 778, 781 (8th Cir. 2002). Jones must show that “his counsel’s representation was deficient and that the deficient performance prejudiced [Jones’s] case.” *DeRoo v. United States*, 223 F.3d 919, 925 (8th Cir. 2000) (quotation omitted). An ineffective assistance of counsel claim is very difficult to prove. *DeRoo*, 223 F.3d at 925.

III. DISCUSSION

A. Failure to Advise Jones of His Trial Rights

First, Jones argues that counsel was ineffective for failing to advise him of his right to a trial and by coercing him into entering a guilty plea. This argument is rejected because

Jones was advised of his trial rights in great detail during his plea colloquy, and he stated under oath that he understood these rights, the terms of his plea agreement, the consequences of pleading guilty, and that he was entering the plea voluntarily. *See Nguyen v. United States*, 114 F.3d 699, 703 (8th Cir. 1997) (“While a guilty plea taken in open court is not invulnerable to collateral attack in a post conviction proceeding, the defendant’s representations during the plea-taking carry a strong presumption of verity and pose a formidable barrier in any subsequent collateral proceedings.”) (internal quotations omitted). “Solemn declarations in open court carry a strong presumption of verity,” *Smith v. Lockhart*, 921 F.2d 154, 157 (8th Cir. 1990) (quotation omitted), and Jones has offered no support for his position or any evidence rebutting this presumption.

B. Failure to Challenge Drug Weight

Second, Jones argues that counsel was ineffective for failing to challenge the drug weight listed in his plea agreement and pre-sentence investigation report (“PSR”). This argument is rejected because the drug weight described in his PSR did not adversely affect Jones’s sentence as he was designated as a career offender and received an enhanced base offense level on account of this designation.

C. Failure to Object to Designation as a Career Offender

Third, Jones argues that counsel was ineffective for failing to object to his designation as a career offender. This argument is rejected because Jones was properly designated as a career offender, and he was not prejudiced by his lawyer’s failure to object to the application

of the enhanced base offense level for career offenders.

The United States Sentencing Guidelines (“Guidelines”) designate a defendant as a career offender if he was at least eighteen years old at the time he committed the instant offense, the instant offense is a felony that is either a controlled substance offense or a crime of violence, and the defendant has at least two prior felony convictions for controlled substance offenses or crimes of violence. U.S.S.G. § 4B1.1(a). A controlled substance offense is defined as follows:

[A]n offense under federal or state law, punishable by imprisonment for a term exceeding one year, that prohibits the manufacture, import, export, distribution, or dispensing of a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with the intent to manufacture, import, export, distribute, or dispense.

Id. § 4B1.2(b).

Jones argues that his prior drug convictions in Missouri and Arkansas do not qualify as controlled substance offenses under the Guidelines. Notwithstanding this assertion, Jones was convicted in Missouri for selling crack cocaine under Mo. Rev. Stat. section 195.211, which is a controlled substance offense under the Guidelines. *United States v. Thomas*, 886 F.3d 1274, 1277 (8th Cir. 2018). Therefore, his Missouri conviction properly supports his designation as a career offender.

Furthermore, Jones was convicted twice in Arkansas under Ark. Code. Ann. Section 5-64-401 (repealed 2011). A categorical approach is first employed to determine whether

a prior conviction is a controlled substance offense. *United States v. Robinson*, 639 F.3d 489, 495 (8th Cir. 2011); *Taylor v. United States*, 495 U.S. 575, 588 (1990). “Under this approach, we look not to the facts of the particular prior case, but instead to whether the state statute defining the crime of conviction categorically fits within the generic federal definition of a corresponding [controlled substance offense].” *United States v. Roblero-Ramirez*, 716 F.3d 1122, 1125 (8th Cir. 2013) (quotation omitted). Subsection (a) made it unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver a controlled substance. Ark. Code Ann. § 5-64-401(a). Subsection (c) made it unlawful for any person to possess a controlled substance. *Id.* § 5-64-401(c). Thus, the statute is not categorically a controlled substance offense because subsection (c) criminalized simple possession of a controlled substance, causing the statute to reach more conduct than the generic Guidelines definition.

If a statute is broader than the generic federal definition, courts then look to “whether the statute is ‘divisible,’ meaning that it ‘comprises multiple, alternative versions of the crime.’” *United States v. Maldonado*, 864 F.3d 893, 897 (8th Cir. 2017) (quoting *Descamps v. United States*, 570 U.S. 254, 262 (2013)). If the statute is divisible, a modified categorical approach may be applied. *Id.* “Under that approach, a sentencing court looks to a limited class of documents (for example, the indictment, jury instructions, or plea agreement and colloquy) to determine what crime, with what elements, a defendant was convicted of.” *Mathis v. United States*, 136 S.Ct. 2243, 2249 (2016).

Ark. Code. Ann. section 5-64-401 is a divisible statute. *Flores-Larrazaola v. Lynch*, 840 F.3d 234, 238–39 (5th Cir. 2016). Accordingly, a modified categorical approach is applied to determine what crime Jones was convicted of committing. *Mathis*, 136 S.Ct. at 2249. The judgment and commitment order from Jones’s 2001 conviction indicates that Jones pleaded guilty to delivery of a controlled substance and that the offense was a Class Y felony. Because of this description and the fact that simple possession of a controlled substance is a Class C felony, *see* Ark. Code Ann. section 5-64-401(c), Jones was clearly not convicted in 2001 of simple possession under subsection (c). Similarly, the judgment and commitment order from Jones’s 2006 conviction indicate that Jones pleaded guilty to delivery of cocaine, a controlled substance, which is also a Class Y felony. For this reason, Jones was not convicted in 2006 of simple possession under subsection (c). Delivery of a controlled substance, pursuant to subsection (a), falls within the generic definition of controlled substance offense. *See, e.g., United States v. Howard*, 670 F. App’x 914, 915 (8th Cir. 2016) (holding that possession with intent to deliver a controlled substance qualifies as a controlled substance offense). Therefore, Jones’s Arkansas convictions in 2001 and 2006 support his designation as a career offender.

For these reasons, Jones was properly designated as a career offender and correctly received an enhanced base offense level. His lawyer’s failure to object did not prejudice him.

D. Failure to File an Appeal

Finally, Jones asserts that counsel was ineffective for failing to file an appeal after

Jones expressly asserted that he wished to appeal his sentence. “[A]n attorney’s failure to file a notice of appeal after being instructed to do so by his client constitutes ineffective assistance entitling petitioner to section 2255 relief.” *Barger v. United States*, 204 F.3d 1180, 1182 (8th Cir. 2000). Jones need not demonstrate prejudice or that he would have been successful on appeal. *Id.*; *see also Walking Eagle v. United States*, 742 F.3d 1079, 1082 (8th Cir. 2014). The fact that there was a plea agreement limiting Jones’s appeal rights does not change the presumption that Jones was prejudiced by his lawyer’s failure to appeal when instructed to do so. *Watson v. United States*, 493 F.3d 960, 964 (8th Cir. 2007). Jones must show, however, that he actually asked his lawyer to file an appeal, and “[a] bare assertion . . . that [Jones] made a request is not by itself sufficient to support a grant of relief, if evidence that the fact-finder finds to be more credible indicates the contrary proposition.” *Barger*, 204 F.3d at 1182.

Jones claims that he instructed his lawyer to appeal his sentence and that counsel failed to do so. After telling Jones that there were no appealable issues, Jones’s lawyer allegedly advised him to waive his right to appeal and asked him to sign a written waiver. Jones, however, says that he refused to sign. In response, the government submits an affidavit from Jones’s lawyer, who states that he met with Jones to discuss an appeal, that Jones indicated he did not wish to appeal, and that Jones refused to sign a statement regarding his appeal instructions.

The contradictory accounts given by Jones and his lawyer create a factual dispute that

requires an evidentiary hearing to resolve. *See Thomas v. United States*, 737 F.3d 1202, 1206 (8th Cir. 2013) (“Evidentiary hearings on 28 U.S.C. § 2255 motions are preferred, and the general rule is that a hearing is necessary prior to the motion’s disposition if a factual dispute exists.”); *see also Witthar v. United States*, 793 F.3d 920, 923–24 (8th Cir. 2015) (holding that an evidentiary hearing was needed when a defendant claimed that she instructed her attorney to appeal and he failed to do so); *United States v. Sellner*, 773 F.3d 927, 932 (8th Cir. 2014) (same). Although the government argues that Jones’s statements lack credibility because they are unsworn statements that are contradicted by his lawyer’s affidavit, Jones appears to cure this deficiency by including sworn statements in his reply that tend to support his version of the facts. Moreover, that Jones refused to sign a written waiver of his appeal rights further supports his position.

The government also argues that Jones’s conduct is inconsistent with that of an individual who is truly concerned about timely appealing his sentence. This argument is well taken but ultimately unpersuasive. Although Jones’s motion, filed almost one year after the judgment was entered, appears to be the first mention of his desire to appeal and his lawyer’s refusal to follow his instructions, a delay of one year is not *per se* unreasonable. Jones will be afforded an opportunity to explain why he waited so long to bring up this issue.

VI. CONCLUSION

For the foregoing reasons, Jones’s motion to vacate, set aside or correct sentence under 28 U.S.C. section 2255 [Doc. No. 61] is reserved in part and denied in part. A hearing

is necessary solely to determine whether Jones instructed his lawyer to file an appeal. The rest of his motion is denied. A certificate of appealability is also denied because Jones has not made a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c); *Slack v. McDaniel*, 529 U.S. 473, 483–84 (2000).

IT IS SO ORDERED this 27th day of August 2018.


UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

UNITED STATES OF AMERICA

PLAINTIFF

v.

CASE NO. 4:15-CR-00194 BSM

MICHAEL JONES

DEFENDANT

ORDER

Defendant Michael Jones's motion to vacate, set aside, or correct his sentence [Doc. No. 61] is denied as to his claim concerning whether his lawyer, Garry Corrothers, was ineffective for failing to file a notice appeal after being instructed to do so. *See* Doc. No. 75.

A lawyer's failure to timely file a notice of appeal when so instructed by his client constitutes ineffective assistance of counsel and warrants relief under 28 U.S.C. section 2255. *Barger v. United States*, 204 F.3d 1180, 1182 (8th Cir. 2000). Jones must show, however, that he actually instructed Corrothers to file an appeal, and “[a] bare assertion . . . that [Jones] made a request is not by itself sufficient to support a grant of relief, if evidence that the fact-finder finds to be more credible indicates the contrary proposition.” *Id.* Moreover, “[c]ounsel may properly decline to file an appeal if the client doesn't request one after consultation.” *Crutcher v. United States*, 2 F. App'x 658, 660 (8th Cir. 2001).

Based on the testimony presented by Jones and Corrothers, it is clear that Jones did not instruct Corrothers to file an appeal. After sentencing, Corrothers met with Jones at the prison, advised Jones that there were no meritorious issues to raise on appeal, and recommended against taking an appeal. Jones subsequently refused to sign a letter

concerning his appeal instructions and simply left the meeting without telling Corrothers what to do. The letter allowed Jones to express whether he wished to appeal his conviction and sentence. Although Jones was understandably frustrated, he did not actually request that Corrothers file an appeal after Corrothers asked Jones for instructions. Accordingly, Corrothers was not constitutionally ineffective for failing to file an appeal. *See id.*

A certificate of appealability is granted on this issue. *See* 28 U.S.C. § 2253(c); *Slack v. McDaniel*, 529 U.S. 473, 483–84 (2000).

IT IS SO ORDERED this 12th day of October 2018.



UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

Eastern District of Arkansas

MAR 24 2017
JAMES W. McCORMACK, CLERK
By: *[Signature]* DEP CLERK

UNITED STATES OF AMERICA

v.

MICHAEL JONES

) JUDGMENT IN A CRIMINAL CASE

) Case Number: 4:15CR194 BSM

) USM Number: 29296-009

) Garry J. Corrothers

) Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) 1s of the Superseding Information

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:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21 U.S.C. 841(a)(1) and (b)(1)(C)	Distribution of Methamphetamine, a Class C Felony	6/24/2014	1s

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) 1-3 of the Indictment 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.

3/24/2017

Date of Imposition of Judgment

[Signature]

Signature of Judge

Brian S. Miller, U.S. District Judge

Name and Title of Judge

3-24-17

Date

DEFENDANT: MICHAEL JONES
CASE NUMBER: 4:15CR194 BSM

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:
180 months.

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

The Court recommends the defendant participate in residential substance abuse treatment and educational and vocational programs during incarceration. The Court will recommend placement in FCI Memphis.

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 _____

a _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: MICHAEL JONES
CASE NUMBER: 4:15CR194 BSM

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 cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
5. You must comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
6. You must participate in an approved program for domestic violence. *(check if applicable)*

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

DEFENDANT: MICHAEL JONES
CASE NUMBER: 4:15CR194 BSM

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: MICHAEL JONES
CASE NUMBER: 4:15CR194 BSM

ADDITIONAL SUPERVISED RELEASE TERMS

- 14) The defendant will participate under the guidance and supervision of the probation office in a substance abuse treatment program which may include drug and alcohol testing, outpatient counseling, and residential treatment. The defendant will abstain from the use of alcohol during supervision. The defendant will pay for the cost of treatment at the rate of \$10 per session, with the total cost not to exceed \$40 per month, based on ability to pay as determined by the probation office. In the event the defendant is financially unable to pay for the cost of treatment, the co-pay requirement will be waived.
- 15) The defendant must participate in Adult Education, GED, literacy classes, or other vocational/educational programs under the guidance and supervision of the probation office.

DEFENDANT: MICHAEL JONES
CASE NUMBER: 4:15CR194 BSM**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	\$ 100.00	\$ 0.00	\$ 0.00	\$ 0.00

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	\$ <u>0.00</u>	\$ <u>0.00</u>
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Restitution amount ordered pursuant to plea agreement \$ _____

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

the interest requirement is waived for the fine restitution.

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

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

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

DEFENDANT: MICHAEL JONES
CASE NUMBER: 4:15CR194 BSM

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 \$ 100.00 due immediately, balance due
 not later than _____, or
 in accordance with C, D, E, or F below; or

B Payment to begin immediately (may be combined with C, D, or F below); or

C Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F Special instructions regarding the payment of criminal monetary penalties:

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 clerk of the court.

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

Joint and Several

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

AFFIDAVIT OF GARRY J. CORROTHERS

STATE OF ARKANSAS))SS
COUNTY OF PULASKI)

Before the undersigned Notary Public, duly qualified and acting in and for said County and State, appeared Garry J. Corrothers to me well known as the affiant herein, who stated the following under oath:

1. The undersigned began representing Michael Jones in the Eastern District of Arkansas on August 27, 2015. Beginning this date, I had several in-person conferences with him. Also had numerous telephone conferences. My last in-person visit with defendant was on April 1, 2017. During these telephone and in-person conferences, we discussed, among other things, whether defendant desired a trial, defendant's criminal record, the sentencing guidelines and the fact that his criminal history would render him a career criminal if he pleaded or was found guilty. More specifically, on August 5, 2016, I traveled to the Mississippi County Courthouse, in Blytheville, Arkansas, and reviewed defendant's criminal history. After leaving the courthouse, I traveled to Luxora, Arkansas, to the state facility in which defendant was held and reviewed my findings with defendant in person. During our visit, I spoke directly to the assigned Assistant United States Attorney, regarding defendant's criminal history in an attempt to mitigate his criminal record as best I could. We were allowed to use a telephone in the central office area, and although I do not recall whether we were on speaker telephone, defendant either heard or had explained to him not only the substance of that telephone call, but the substance of each and every communication I had with the government, including being provided with all written communication coming from the office of the Assistant United States Attorney.

2. Well before the subsequent change of plea hearing and sentencing hearing,

APPENDIX E



defendant knew that there would be significant sentencing guideline issues, including whether or not he was a career offender. He was aware of his Arkansas criminal history and I was provided with his criminal history from Missouri and spoke by telephone with the Office of the Clerk in St. Francois County, Missouri, to verify the history that I was provided.

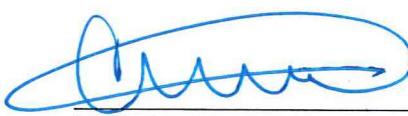
3. Prior to the sentencing hearing, defendant provided me with information to include in his Sentencing Memorandum.

4. On April 1, 2017, several days subsequent to the Judgment being entered, I traveled to Mason, TN, where defendant was being held prior to being designated to the Bureau of Prisons, specifically to have written instructions from him regarding an appeal. My billing records indicate a trip to Mason and the records of the facility will verify that I was there. Defendant was agitated at the length of his sentence and did not want to confer with undersigned counsel. After discussing appeal issues with the defendant for the entire length of the visit, he assured me that he did not want to appeal. I then asked him to sign a statement regarding his appeal instructions. He refused to do so and I then left the facility.

IN WITNESS WHEREOF, I have set my hand and seal this 21st day of May, 2018.


Garry J. Corrothers

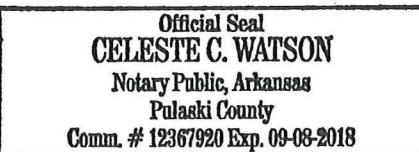
SUBSCRIBED AND SWORN TO before me on this 21st day of May, 2018.



NOTARY PUBLIC

MY COMMISSION EXPIRES:

9/8/18



IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

UNITED STATES OF AMERICA

PLAINTIFF

VS.

CASE NO.

4:15-CR-00194 BMS

MICHAEL JONES

DEFENDANT

APPEAL INSTRUCTION LETTER

 I wish to appeal my conviction and sentence.

 I do not wish to appeal my conviction and sentence.

SIGNATURE: _____

PRINTED NAME: _____

DATE: _____

INFORMATION
IN THE CIRCUIT COURT OF PEMISCOT COUNTY, MISSOURI
DIVISION I

STATE OF MISSOURI) ss.
COUNTY OF PEMISCOT)

STATE OF MISSOURI,

Plaintiff,

Case No. 13PE-CR00347

vs.

PA File No.: 155009109

MICHAEL JONES

NORTH FIRST STREET, STEELE, MO 63877

DOB: [REDACTED] 1980 SSN: [REDACTED] 2804 B/M

Defendant.

CT. I: Distribute/deliver/manufacture/produce or attempt to or possess with intent to distribute/deliver/manufacture/produce a controlled substance, CHARGE CODE: 3246530.

CT. II: Unlawful possession of a firearm, CHARGE CODE: 3106512.

Count I: The Prosecuting Attorney of the County of Pemiscot, State of Missouri, upon information and belief, charges that the defendant, in violation of Section 195.211, RSMo, committed the class B felony of sale of a controlled substance, punishable upon conviction under Section 558.011, RSMo, in that on or about January 24, 2011, in the County of Pemiscot, State of Missouri, the Defendant knowingly sold crack cocaine, a controlled substance, to a confidential informant, knowing that it was a controlled substance.

Count II: The Prosecuting Attorney of the County of Pemiscot, State of Missouri, upon information and belief, charges that the defendant, in violation of 571.070, RSMo, committed the class C felony of unlawful possession of a concealable firearm, punishable under Sections 558.011 and 560.011, RSMo, in that on or about January 24, 2011, in the County of Pemiscot, State of Missouri, the defendant knowingly possessed a 9 mm semi-automatic pistol, a concealable firearm, and on November 26, 2011, a date during the 5 years preceding the January 24, 2011, the defendant pleaded guilty to Distribution of a controlled substance under the laws of Mississippi County Circuit Court Arkansas, a dangerous felony.

W. K.

William Carter, Prosecuting Attorney
Pemiscot County, Missouri

WITNESSES:

Ryan Becker, Bootheel Drug Task Force, Cape Giradeau, ,



APPENDIX F



I N F O R M A T I O N
IN THE CIRCUIT COURT OF PEMISCOT COUNTY, MISSOURI
DIVISION I

STATE OF MISSOURI) ss.
COUNTY OF PEMISCOT)

STATE OF MISSOURI,

Plaintiff,

Case No. 13PE-CR00347

PA File No.: 155009109

vs.

MICHAEL JONES

NORTH FIRST STREET, STEELE, MO 63877

DOB: [REDACTED] 980 SSN: [REDACTED] 2804 B/M

Defendant.

CT. I: Distribute/deliver/manufacture/produce or attempt to or possess with intent to distribute/deliver/manufacture/produce a controlled substance, CHARGE CODE: 3246530.

CT. II: Unlawful possession of a firearm, CHARGE CODE: 3106512.

Count I: The Prosecuting Attorney of the County of Pemiscot, State of Missouri, upon information and belief, charges that the defendant, in violation of Section 195.211, RSMo, committed the class B felony of sale of a controlled substance, punishable upon conviction under Section 558.011, RSMo, in that on or about January 24, 2011, in the County of Pemiscot, State of Missouri, the Defendant knowingly sold crack cocaine, a controlled substance, to a confidential informant, knowing that it was a controlled substance.

Count II: The Prosecuting Attorney of the County of Pemiscot, State of Missouri, upon information and belief, charges that the defendant, in violation of 571.070, RSMo, committed the class C felony of unlawful possession of a concealable firearm, punishable under Sections 558.011 and 560.011, RSMo, in that on or about January 24, 2011, in the County of Pemiscot, State of Missouri, the defendant knowingly possessed a 9 mm semi-automatic pistol, a concealable firearm, and on November 26, 2011, a date during the 5 years preceding the January 24, 2011, the defendant pleaded guilty to Distribution of a controlled substance under the laws of Mississippi County Circuit Court Arkansas, a dangerous felony.

W. K.

William Carter, Prosecuting Attorney
Pemiscot County, Missouri

WITNESSES:

Ryan Becker, Bootheel Drug Task Force, Cape Girardeau, ,



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PEMISCOT CIRCUITDIVI

PAGE 04/05



IN THE 34TH JUDICIAL CIRCUIT COURT, PEMISCOT COUNTY, MISSOURI

Judge or Division: JOSHUA D UNDERWOOD	Case Number: 44RE 0000147 04
State of Missouri vs. Defendant: MICHAEL JONES	Offense Cycle No.: L4005529
	DOB: [REDACTED] 1980
	SSN: [REDACTED] 2804

(Date File Stamp)

**Order
(559.115 Review)**

Pursuant to §559.115, RSMo:

Defendant is being considered for probation during the first 120 days of incarceration. The Department of Corrections is ordered to provide the court with a report concerning this defendant's behavior during his/her incarceration and to recommend whether probation should be granted. The report should be received by the court no later than .

Defendant is granted probation during the first 120 days of incarceration effective .

The court requests that defendant be placed in the following program administered by the Department of Corrections:

- Shock Incarceration Program
- Institutional Treatment Program
- General Population
- The court requests that Department of Corrections conduct a sexual offender assessment on the defendant. Upon completion of the assessment, Department of Corrections shall provide to the court a report on the defendant and may provide recommendations for terms and conditions of probation.

So Ordered:

1-13-14

Date

Judge

cc: Prosecuting Attorney

01/14/2014 09:01

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PEMISCOT CIRCUITDIVI

PAGE 05/05

In the Circuit Court of Pemiscot County, Missouri

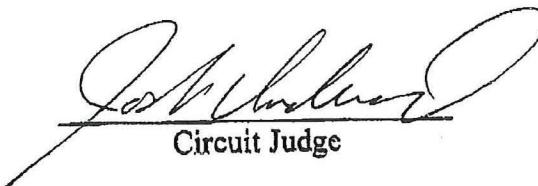
NOVEMBER TERM
January 7, 2014

13PE-CR00347-01

STATE OF MISSOURI } ss.
County of Pemiscot }

Now on this day in open Court, comes Tommy Greenwell Sheriff of
Pemiscot County, Missouri, and upon his application, it is ordered by the
Court that he be allowed a guard to assist him in transporting

MICHAEL JONES to the Department of Corrections.



[Handwritten signature]
Circuit Judge



IN THE 34TH JUDICIAL CIRCUIT COURT, PEMISCOT COUNTY MISSOURI

Judge or Division : JOSHUA D UNDERWOOD (59979) DIVIII		Case Number : 13PE-CR00347-01 <input type="checkbox"/> Change of Venue from
		Offense Cycle No : L4005529
State Of Missouri vs. Defendant: MICHAEL JONES (JONM*2804) NORTH FIRST STREET STEELE, MO 63877		Prosecuting Attorney/MO Bar No: WILLIAM W CARTER (53391)
DOB : [REDACTED] 1980 SSN : [REDACTED] 2804 SEX : M <i>Prae: B</i>		
		Appeal Bond Set Date : Amount :
Judgment		

	Charge #	Charge Date	Charge Code	Charge Description
Original Charge:	1	24-Jan-2011	3246500	Dist/Del/Manf/Produce Or Attempt To Or Possess W/Intent To Dist/Del/Manf/Produce A Controlled Substance (Felony B RSMo: 195.211)

Disposition:	13-Jan-2014	Guilty Plea
Order Date:	13-Jan-2014	Sentence or SIS : Incarceration DOC
Length :	10 Years	Start Date : 13-Jan-2014

	Charge #	Charge Date	Charge Code	Charge Description
Original Charge:	2	24-Jan-2011	3106500	Unlawful Possession Of A Firearm (Felony C RSMo: 571.070)

Disposition: 13-Jan-2014 Dismissed by Prosec/Nolle Pros

Program :	SHOCK INCARCERATION	Agency :	CARUTHERSVILLE PROB PAROLE OFFICE
------------------	---------------------	-----------------	-----------------------------------

Classification : REPORT ORDERED

Associated To : Charge 1

Start Date : 13-Jan-2014 **Due to End :** 13-May-2014

The court informed the defendant of verdict/finding, asks the defendant whether (s)he has anything to say why judgment should not be pronounced, and finds that no sufficient cause to the contrary has been shown or appears to the court.

Defendant has been advised of his/her rights to file a motion for post conviction relief pursuant to Rule 24.035/29.15 and the court has found **No Probable Cause** to believe that defendant has received ineffective assistance of counsel.

From: NEW MADRID CO CIRCUIT CLERK

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01/13/2014 11:11

#788 P.005/005

01/14/2014 09:01 5733331272

PEMISCOT CIRCUITDIVI

PAGE 03/05

The Court orders:

The sheriff to authorize one additional officer/guard to transport defendant to Department of Corrections.

That Judgment entered in favor of the State of Missouri and against the defendant for the sum of \$68.00 for the Crime Victims Compensation fund. Judgment is Not Satisfied.

Judgment for the State of Missouri and against the defendant for appointed counsel services for the sum of \$625.00 . Judgment is Not Satisfied.

The Defendant is committed to General Population (§559.115.2 RSMo). The Department of Corrections shall provide a report and recommendation whether probation should be granted.

The Court further orders:

13-Jan-2014 Defendant Sentenced

State appears by P.A., Defendant appears in person (in custody of sheriff) and by attorney, David Wiegert. Defendant granted leave to withdraw former plea of not guilty and enters plea of guilty as to Count I. On P.A.'s Motion and pursuant to plea agreement, Count II Ordered Dismissed. The Court finds the plea to be voluntary with full understanding of the charge; constitutional rights and range of punishment explained. Defendant waives SAR. Allocution Granted. Defendant sentenced to 10 years in the MO DOC. The Court will exercise its discretionary authority to Order release of Defendant after 120 days pursuant to Section 559.115 RSMo and recommends placement in the General Population. Upon Defendant's successful completion of the program and the Court receiving a favorable report from the DOC, Defendant to be released and placed on supervised probation for the remainder of his sentence. Defendant to pay \$68.00 CVCF. Defendant advised of his right to proceed under Supreme Court rule 24.035. The Court finds that no probable cause exists for the Court to believe that Defendant received ineffective assistance of counsel. *Jan 2014*

So Ordered on: 13PE-CR00347-01 ST V MICHAEL JONES

1-13-14

Date

Judge

I certify that the above is a true copy of the original Judgment and Sentence of the court in the above cause, as it appears on record in my office.

(Seal of Circuit Court)

Issued on:

1-13-14

Date

Clerk

01/14/2014 09:01 5733331272

PEMISCOT CIRCUITDIVI

PAGE 04/05



IN THE 34TH JUDICIAL CIRCUIT COURT, PEMISCOT COUNTY, MISSOURI

Judge or Division: JOSHUA D UNDERWOOD	Case Number: 14000147 04
State of Missouri	Offense Cycle No.: L4005529
vs.	DOB: [REDACTED] 980
Defendant: MICHAEL JONES	SSN: [REDACTED] 2804

(Date File Stamp)

**Order
(559.115 Review)**

Pursuant to §559.115, RSMo:

Defendant is being considered for probation during the first 120 days of incarceration. The Department of Corrections is ordered to provide the court with a report concerning this defendant's behavior during his/her incarceration and to recommend whether probation should be granted. The report should be received by the court no later than [REDACTED].

Defendant is granted probation during the first 120 days of incarceration effective [REDACTED].

The court requests that defendant be placed in the following program administered by the Department of Corrections:

Shock Incarceration Program

Institutional Treatment Program

General Population

The court requests that Department of Corrections conduct a sexual offender assessment on the defendant. Upon completion of the assessment, Department of Corrections shall provide to the court a report on the defendant and may provide recommendations for terms and conditions of probation.

So Ordered:

1-13-14
Date

Judge

cc: Prosecuting Attorney

01/14/2014 09:01

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PEMISCOT CIRCUITDIVI

PAGE 05/05

In the Circuit Court of Pemiscot County, Missouri

NOVEMBER TERM
January 7, 2014

13PE-CR00347-01

STATE OF MISSOURI } ss.
County of Pemiscot }

Now on this day in open Court, comes Tommy Greenwell Sheriff of
Pemiscot County, Missouri, and upon his application, it is ordered by the
Court that he be allowed a guard to assist him in transporting

MICHAEL JONES to the Department of Corrections.



John W. Chidester
Circuit Judge



IN THE 34TH JUDICIAL CIRCUIT COURT, PEMISCOT COUNTY MISSOURI

Judge or Division : JOSHUA D UNDERWOOD (59979) DIVIII		Case Number : 13PE-CR00347-01 <input type="checkbox"/> Change of Venue from
		Offense Cycle No : L4005529
State Of Missouri vs. Defendant: MICHAEL JONES (JONM*2804) NORTH FIRST STREET STEELE, MO 63877		Prosecuting Attorney/MO Bar No: WILLIAM W CARTER (53391)
DOB : [REDACTED] 1980 SSN : [REDACTED] 804 SEX : M <i>Paru: B</i>		
		Appeal Bond Set Date : Amount :
Judgment		

	Charge #	Charge Date	Charge Code	Charge Description
Original Charge:	1	24-Jan-2011	3246500	Dist/Del/Manf/Produce Or Attempt To Or Possess W/Intent To Dist/Del/Manf/Produce A Controlled Substance (Felony B RSMo: 195.211)

Disposition:	13-Jan-2014	Guilty Plea
Order Date:	13-Jan-2014	Sentence or SIS : Incarceration DOC
Length :	10 Years	Start Date : 13-Jan-2014

	Charge #	Charge Date	Charge Code	Charge Description
Original Charge:	2	24-Jan-2011	3106500	Unlawful Possession Of A Firearm (Felony C RSMo: 571.070)

Disposition:	13-Jan-2014	Dismissed by Prosec/Nolle Pros
Program :	SHOCK INCARCERATION	Agency : CARUTHERSVILLE PROB PAROLE OFFICE

Classification : REPORT ORDERED

Associated To : Charge 1

Start Date : 13-Jan-2014 **Due to End :** 13-May-2014

The court informed the defendant of verdict/finding, asks the defendant whether (s)he has anything to say why judgment should not be pronounced, and finds that no sufficient cause to the contrary has been shown or appears to the court.

Defendant has been advised of his/her rights to file a motion for post conviction relief pursuant to Rule 24.035/29.15 and the court has found **No Probable Cause** to believe that defendant has received ineffective assistance of counsel.

From: NEW MADRID CO CIRCUIT CLERK

15737485409

01/14/2014 11:11

#788 P.005/005

01/14/2014 09:01 5733331272

PEMISCOT CIRCUITDIVI

PAGE 03/05

The Court orders:

The sheriff to authorize one additional officer/guard to transport defendant to Department of Corrections.

That Judgment entered in favor of the State of Missouri and against the defendant for the sum of \$68.00 for the Crime Victims Compensation fund. Judgment is Not Satisfied.

Judgment for the State of Missouri and against the defendant for appointed counsel services for the sum of \$625.00 . Judgment is Not Satisfied.

The Defendant is committed to General Population (§559.115.2 RSMo). The Department of Corrections shall provide a report and recommendation whether probation should be granted.

The Court further orders:

13-Jan-2014 Defendant Sentenced

State appears by P.A., Defendant appears in person (in custody of sheriff) and by attorney, David Wiegert. Defendant granted leave to withdraw former plea of not guilty and enters plea of guilty as to Count I. On P.A.'s Motion and pursuant to plea agreement, Count II Ordered Dismissed. The Court finds the plea to be voluntary with full understanding of the charge; constitutional rights and range of punishment explained. Defendant waives SAR. Allocution Granted. Defendant sentenced to 10 years in the MO DOC. The Court will exercise its discretionary authority to Order release of Defendant after 120 days pursuant to Section 559.115 RSMo and recommends placement in the General Population. Upon Defendant's successful completion of the program and the Court receiving a favorable report from the DOC, Defendant to be released and placed on supervised probation for the remainder of his sentence. Defendant to pay \$68.00 CVCF. Defendant advised of his right to proceed under Supreme Court rule 24.035. The Court finds that no probable cause exists for the Court to believe that Defendant received ineffective assistance of counsel. *Jan 2014*

So Ordered on: 13PE-CR00347-01 ST V MICHAEL JONES

1-13-14

Date

Judge

I certify that the above is a true copy of the original Judgment and Sentence of the court in the above cause, as it appears on record in my office.

(Seal of Circuit Court)

Issued on:

1-13-14

Date

Clerk

Jones
Defendant's full name: MichaelBOOK 49 PAGE 4067 IN THE CIRCUIT COURT OF MISSISSIPPI, ARKANSAS
4068 CHICKASAWHADISTRICT Criminal DIVISION

On February 12, 2007 the Defendant appeared before the Court, was advised of the nature of the charge(s), of constitutional and legal rights, of the effect of a guilty plea upon those rights, and of the right to make a statement before sentencing. The Court made the following findings:

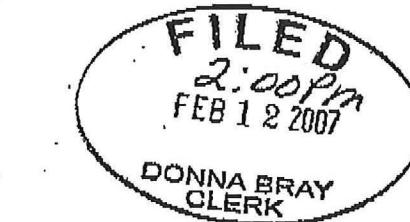
DEFENDANT'S FULL NAME: Michael Jones

DATE OF BIRTH: 8/80RACE: BSEX: M

SID #:

DEFENDANT'S ATTORNEY: Tur BurchPROSECUTING ATTORNEY OR DEPUTY: Chuck Easterling

CHANGE OF VENUE FROM:

Defendant was represented by private counsel public defender appointed counsel
 himself/herself

Defendant made a voluntary, knowing and intelligent waiver of the right to counsel:

 Yes No

There being no legal cause shown by the Defendant, as requested, why judgment should not be pronounced, a judgment of conviction is hereby entered against the Defendant on each charge enumerated, fines levied, and court costs assessed. The Defendant is sentenced to the Arkansas Department of Correction (A.D.O.C.) for the term specified on each offense shown below:

TOTAL NUMBER OF COUNTS: 3

Nolle Prosequi Ct 243

Docket #: CR 2006-323
Arrest Tracking #: 5238721

Offense # 1

A.C.A. # of Offense: 5-64-4(d)Name of Offense: Delivery of acls, cocaineSeriousness Level of Offense: 7Criminal History Score: 3;DPresumptive Sentence: 120 mon.Sentence is a departure from the sentencing grid. Yes No.Offense is a felony misdemeanor.Classification of offense: A B C D U YSentence imposed: 54 months. followed by 5 yrs. SISSuspended imposition of sentence: months.Defendant was sentenced as an Habitual Offender under A.C.A. 5-4-501, Subsection (a) (b) (c) (d).Sentence was enhanced by A.C.A. NIADefendant attempted solicited conspired to commit the offense.Offense date: 7-15-06Number of counts: 3;SDefendant was on probation parole at time of conviction.Commitment on this offense is a result of the revocation of Defendant's probation or suspended imposition of sentence. Yes No.Victim of the offense was under over the age of 18 years.

Defendant voluntarily, intelligently, and knowingly entered a

 negotiated plea of guilty or nolo contendere. plea directly to the court of guilty or nolo contendere.

Defendant

 entered a plea as shown above and was sentenced by a jury. was found guilty of said charge(s) by the court, and sentenced by the court a jury. was found guilty at a jury trial, and sentenced by the court a jury.Page 1 of 2

Jones
Defendant's full name: MichaelBOOK 49 PAGE 4067 IN THE CIRCUIT COURT OF MISSISSIPPI, ARKANSAS
4068 CHICKASAWHADISTRICT Criminal DIVISION

On February 12, 2007 the Defendant appeared before the Court, was advised of the nature of the charge(s), of constitutional and legal rights, of the effect of a guilty plea upon those rights, and of the right to make a statement before sentencing. The Court made the following findings:

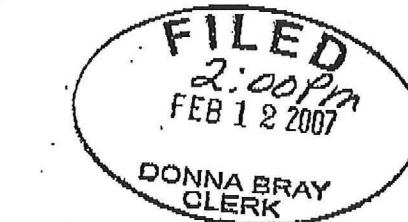
DEFENDANT'S FULL NAME: Michael Jones

DATE OF BIRTH: 8/0RACE: BSEX: M

SID #:

DEFENDANT'S ATTORNEY: Jeff BurleyPROSECUTING ATTORNEY OR DEPUTY: Chuck Easterling

CHANGE OF VENUE FROM:

Defendant was represented by private counsel
 public defender

appointed counsel
 himself/herself

Defendant made a voluntary, knowing and intelligent waiver of the right to counsel:
Yes No

There being no legal cause shown by the Defendant, as requested, why judgment should not be pronounced, a judgment of conviction is hereby entered against the Defendant on each charge enumerated, fines levied, and court costs assessed. The Defendant is sentenced to the Arkansas Department of Correction (A.D.O.C.) for the term specified on each offense shown below:

TOTAL NUMBER OF COUNTS: 3 Nolle Prosequi Ch 243

Offense # 1

Docket #: CR 2006-323
Arrest Tracking #: 5238721

A.C.A. # of Offense: 5-64-401Name of Offense: Delivery of acls, cocaineSeriousness Level of Offense: 7Criminal History Score: 310Presumptive Sentence: 120 mon.Sentence is a departure from the sentencing grid. Yes No.Offense is a felony misdemeanor.Classification of offense: A B C D U YSentence imposed: 54 months. Followed by 5 yrs. SISSuspended imposition of sentence: monthsDefendant was sentenced as an Habitual Offender under A.C.A. 5-4-501, Subsection (a) (b) (c) (d).Sentence was enhanced by A.C.A. NIADefendant attempted solicited conspired to commit the offense.Offense date: 7-15-06Number of counts: 315Defendant was on probation parole at time of conviction.Commitment on this offense is a result of the revocation of Defendant's probation or suspended imposition of sentence. Yes No.Victim of the offense was under over the age of 18 years.

Defendant voluntarily, intelligently, and knowingly entered a

 negotiated plea of guilty ~~or nolo contendere~~ plea directly to the court of guilty or nolo contendere.

Defendant

 entered a plea as shown above and was sentenced by a jury. was found guilty of said charge(s) by the court, and sentenced by the court a jury. was found guilty at a jury trial, and sentenced by the court a jury.

Defendant's full name:

Jones,
Michael

Indicate which sentences are to run consecutively:

Death Penalty: Execution Date:

Total time to serve on all offenses listed above: 54 months. Followed by 5 yrs. \$15

Time is to be served at: Department of Correction Regional Punishment Facility.

Jail time credit: 90 days.

The Defendant was convicted of a target offense under the Community Punishment Act. The Court hereby orders that the Defendant be judicially transferred to the Department of Community Punishment (D.C.P.). Yes No

Failure to meet the criteria or violation of the rules of the D.C.P. could result in transfer to the A.D.O.C.

Fines \$ Court Costs \$

A judgment of restitution is hereby entered against the Defendant in the amount and terms as shown below:

Amount \$ Due immediately Installments of:

Payment to be made to:

If multiple beneficiaries, give names and show payment priority:

Defendant is a Sex or Child Offender as defined in A.C.A. 12-12-903, and is ordered to complete the Sex Offender Registration Form: Yes No.

Defendant is alleged to be a Sexually Violent Predator, and is ordered to undergo an evaluation at a facility designated by the Department of Correction pursuant to A.C.A. 12-12-918: Yes No.

Defendant was adjudicated guilty of a sex offense, a violent offense, or a repeat offense (as defined in A.C.A. 12-12-1103), and is ordered to have a DNA sample drawn at:

a D.C.P. facility the A.D.O.C. or (other): Yes No.

Defendant was informed of the right to appeal: Yes No.

Appeal Bond: \$

The County Sheriff is hereby ordered to transport the Defendant to the Arkansas Department of Correction Regional Punishment Facility.

The short report of circumstances attached hereto is approved.

Date: 2/23/07 Circuit Judge: FOGLEMAN Signature: J. N. J.

I certify this is a true and correct record of this Court

Date: 2/24/2007 By: Donna Bray Hannette Watt D.C.

Form Revised 4/00

BOOK 45 PAGE 385 & 386 AMENDED JUDGMENT AND COMMITMENT ORDER IN THE CIRCUIT COURT OF MISSISSIPPI, ARKANSAS CHICKASAWA DISTRICT CRIMINAL DIVISION

On May 5, 2003 the Defendant appeared before the Court, was advised of the nature of the charge(s), of constitutional and legal rights, of the effect of a guilty plea upon those rights, and of the right to make a statement before sentencing. The Court made the following findings:

DEFENDANT'S FULL NAME: MICHAEL Jones
DATE OF BIRTH: 80
RACE: B
SEX: M
SID #:
DEFENDANT'S ATTORNEY: KATHIE Kimbrell
PROSECUTING ATTORNEY OR DEPUTY: B. Hanlan
CHANGE OF VENUE FROM:

Defendant was represented by private counsel public defender appointed counsel himself/herself

Defendant made a voluntary, knowing and intelligent waiver of the right to counsel:
Yes No

There being no legal cause shown by the Defendant, as requested, why judgment should not be pronounced, a judgment of conviction is hereby entered against the Defendant on each charge enumerated, fines levied, and court costs assessed. The Defendant is sentenced to the Arkansas Department of Correction (A.D.O.C.) for the term specified on each offense shown below:

TOTAL NUMBER OF COUNTS: CT. I

Offense # 1

Docket #: CR 2001-318

Arrest Tracking #: MCSO 05232353

A.C.A. # of Offense: 5-64-401

Name of Offense: Delivery of Controlled Substance

Seriousness Level of Offense: 7

Criminal History Score: 1

Presumptive Sentence: 54/43

Sentence is a departure from the sentencing grid. Yes No N/A

Offense is a X felony misdemeanor.

Classification of offense: A B C D U KY

Sentence imposed: 24 months.

Suspended imposition of sentence: 60 months.

Defendant was sentenced as an Habitual Offender under A.C.A. 5-4-501, Subsection (a) (b) (c) (d).

Sentence was enhanced by A.C.A.

Defendant attempted solicited conspired to commit the offense.

Offense date: 8-27-01

Number of counts: 1

Defendant was on X probation parole at time of conviction.

Commitment on this offense is a result of the revocation of Defendant's probation or suspended imposition of sentence. X Yes No

Victim of the offense was under X over the age of 18 years.

Defendant voluntarily, intelligently, and knowingly entered a

X negotiated plea of guilty or not guilty.

plea directly to the court of guilty or nolo contendere.

Defendant

entered a plea as shown above and was sentenced by a jury.

was found guilty of said charge(s) by the court, and sentenced by the court a jury.

was found guilty at a jury trial, and sentenced by the court a jury.



Defendant's full name: MICHAEL JONES

Indicate which sentences are to run consecutively:

Death Penalty: 0 Execution Date: 0Total time to serve on all offenses listed above: 24 months.Time is to be served at: X Department of Correction Regional Punishment Facility.
Jail time credit: 0 days.The Defendant was convicted of a target offense under the Community Punishment Act. The Court hereby orders that the Defendant be judicially transferred to the Department of Community Punishment (D.C.P.). Yes X No

Failure to meet the criteria or violation of the rules of the D.C.P. could result in transfer to the A.D.O.C.

Fines \$ 0 Court Costs \$ 0

A judgment of restitution is hereby entered against the Defendant in the amount and terms as shown below:

Amount \$ Due immediately Installments of:

Payment to be made to:

If multiple beneficiaries, give names and show payment priority:

Defendant is a Sex or Child Offender as defined in A.C.A. 12-12-903, and is ordered to complete the Sex Offender Registration Form: Yes X No.Defendant is alleged to be a Sexually Violent Predator, and is ordered to undergo an evaluation at a facility designated by the Department of Correction pursuant to A.C.A. 12-12-918: Yes X No.

Defendant was adjudicated guilty of a sex offense, a violent offense, or a repeat offense (as defined in A.C.A. 12-12-1103), and is ordered to have a DNA sample drawn at:

 a D.C.P. facility X the A.D.O.C. or (other): Yes No.Defendant was informed of the right to appeal: Yes No.Appeal Bond: \$ The County Sheriff is hereby ordered to transport the Defendant to X the Arkansas Department of Correction Regional Punishment Facility.

The short report of circumstances attached hereto is approved.

Date: 5/15/03 Circuit Judge: John Fogleman Signature: John F. Fogleman

I certify this is a true and correct record of this Court.

5-15-2003 Donna DiCicco Date: 5-15-2003 Circuit Clerk/Deputy: By: Donna DiCicco D.C.

(Seal)

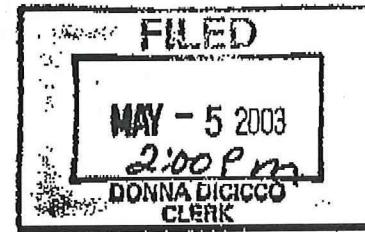
Form Revised 4/00

BOOK 45 PAGE 234+235JUDGMENT AND COMMITMENT ORDER
IN THE CIRCUIT COURT OF MISSISSIPPI, ARKANSAS
CHICKASAWA DISTRICT COURT, DIVISION

On May 5, 2003 the Defendant appeared before the Court, was advised of the nature of the charge(s), of constitutional and legal rights, of the effect of a guilty plea upon those rights, and of the right to make a statement before sentencing. The Court made the following findings:

DEFENDANT'S FULL NAME: Michael JonesDATE OF BIRTH: 30RACE: BSEX: MSID #: DEFENDANT'S ATTORNEY: MATHIE KimberlPROSECUTING ATTORNEY OR DEPUTY: B. Harlan

CHANGE OF VENUE FROM:



Defendant was represented by private counsel appointed counsel
 public defender himself/herself

Defendant made a voluntary, knowing and intelligent waiver of the right to counsel:
 Yes No

There being no legal cause shown by the Defendant, as requested, why judgment should not be pronounced, a judgment of conviction is hereby entered against the Defendant on each charge enumerated, fines levied, and court costs assessed. The Defendant is sentenced to the Arkansas Department of Correction (A.D.O.C.) for the term specified on each offense shown below:

TOTAL NUMBER OF COUNTS: CT 1Offense # 1Docket #: 2001-516
Arrest Tracking #: MCSo 0523 2353A.C.A. # of Offense: 5-64-401Name of Offense: Delivery of Controlled Substance ContainingSeriousness Level of Offense: 7Criminal History Score: 1Presumptive Sentence: 54/ASSentence is a departure from the sentencing grid. Yes ✓ No. 1/4
Offense is a Y felony misdemeanor.Classification of offense: A B C D U ✓YSentence imposed: 24 months.Suspended imposition of sentence: 60 months.Defendant was sentenced as an Habitual Offender under A.C.A. 5-4-501, Subsection (a) (b)
(c) (d).

Sentence was enhanced by A.C.A.

Defendant attempted solicited conspired to commit the offense.Offense date: 8-27-01Number of counts: 1Defendant was on X probation parole at time of conviction.Commitment on this offense is a result of the revocation of Defendant's probation or suspended imposition of sentence. X Yes No.Victim of the offense was under X over the age of 18 years.

Defendant voluntarily, intelligently, and knowingly entered a

X negotiated plea of guilty or nolo contendere.

plea directly to the court of guilty or nolo contendere.

Defendant

 entered a plea as shown above and was sentenced by a jury. was found guilty of said charge(s) by the court, and sentenced by the court a jury. was found guilty at a jury trial, and sentenced by the court a jury.

Defendant's full name:

MICHAEL JONES

Indicate which sentences are to run consecutively:

Death Penalty: Execution Date: Total time to serve on all offenses listed above: 24 months.Time is to be served at: Department of Correction Regional Punishment Facility.
Jail time credit: 0 days.QMJ

The Defendant was convicted of a target offense under the Community Punishment Act. The Court hereby orders that the Defendant be judicially transferred to the Department of Community Punishment (D.C.P.). Yes No
Failure to meet the criteria or violation of the rules of the D.C.P. could result in transfer to the A.D.O.C.

Fines \$ 0 Court Costs \$ 0

A judgment of restitution is hereby entered against the Defendant in the amount and terms as shown below:

Amount \$ Due immediately Installments of:

Payment to be made to:

If multiple beneficiaries, give names and show payment priority:

Defendant is a Sex or Child Offender as defined in A.C.A. 12-12-903, and is ordered to complete the Sex Offender Registration Form: Yes No.Defendant is alleged to be a Sexually Violent Predator, and is ordered to undergo an evaluation at a facility designated by the Department of Correction pursuant to A.C.A. 12-12-918: Yes No.

Defendant was adjudicated guilty of a sex offense, a violent offense, or a repeat offense (as defined in A.C.A. 12-12-1103), and is ordered to have a DNA sample drawn at:

a D.C.P. facility the A.D.O.C. or (other): Yes No.Defendant was informed of the right to appeal: Yes No.

Appeal Bond: \$

The County Sheriff is hereby ordered to transport the Defendant to the Arkansas Department of Correction Regional Punishment Facility.

The short report of circumstances attached hereto is approved.

Date: 5/5/03 Circuit Judge: John Fogelman Signature: John Fogelman

I certify this is a true and correct record of this Court.

5-5-2003 Donna DiCicco

Date: 5/5/03 Circuit Clerk/Deputy: Taniesa Boyd, D.C.

(Seal)

Form Revised 4/00

PROCEEDINGS

THE COURT: All right. This morning we're taking up the hearing, evidentiary hearing, in the case of the United States of America versus Michael Jones. The case number is 15CR194. Mr. Jones has just come into the courtroom, and he'll be representing himself, and Jamie Dempsey is representing the government.

And this is a case in which Mr. Jones entered a plea of guilty and I sentenced him. And he -- hold on just one second. Let me get these dates together. And he was represented by Garry Corrothers. And I was going to put the date that he entered his plea of guilty. He pled guilty on December the 19th of 2016, and ultimately I sentenced him to 180 months of imprisonment. He, approximately a year later, filed a motion for ineffective assistance of counsel against Mr. Corrothers. And in his motion he states that Mr. Corrothers did not advise him effectively of his right to go to trial, and actually coerced him into entering a plea of guilty.

He also challenged the drug weight -- or said that Mr. Corrothers failed to challenge the drug weight during the plea negotiations or at sentencing.

He also objected to his designation as a career offender.

And he states that he directed Mr. Corrothers to file an appeal for him, but that Mr. Corrothers not only failed to file the appeal for him, but tried to get him to sign a statement

1 that he was waiving his right to appeal.

2 The government in response, of course, responded to all of
3 the allegations, and ultimately I ruled for the government on
4 the first three. However, I did not rule for the government on
5 the -- Mr. Jones's argument that Mr. Corrothers was ineffective
6 because he failed to perfect his appeal when he was directed to
7 do so.

8 Now, my understanding, based on the briefing, is that Mr.
9 Corrothers's position is that he was never directed to file the
10 appeal. And, in fact, I believe Mr. Corrothers's position is,
11 Mr. Jones, is, that you told him -- at least as I understand
12 it, I might be a little off on this -- that you told him not to
13 file the appeal. And then there were some arguments in the
14 briefings as to what proves both positions. But based on the
15 briefing, I can't make a determination as to whether Mr. Jones
16 actually told Mr. Corrothers to file the appeal, or the other
17 way. And so I'm holding this hearing today just because -- and
18 I want to focus specifically on whether Mr. Jones directly told
19 Mr. Corrothers to file his appeal or whether he did not. I
20 have to listen to both sides and weigh the credibility and make
21 a determination on that issue.

22 And so, Mr. Jones, are you ready to testify?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And do you have any documents -- I see you
25 have some papers with you. Do you have any documents or

1 anything you want to --

2 THE DEFENDANT: Yes, sir.

3 THE COURT: -- have introduced into evidence?

4 THE DEFENDANT: Yes, sir, what I wrote down.

5 THE COURT: Okay. No, you keep your statement, but
6 you can read it, you can tell me what you have to say.

7 Come on up and we will swear you in and you can come take
8 the witness stand.

9 Mr. Jones, would you raise your right hand and we'll swear
10 you in from there?

11 (Defendant sworn.)

12 THE COURT: Mr. Jones, understand that Ms. Dempsey
13 will have a chance to ask you questions once you give your
14 testimony. Okay?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And when Mr. Corrothers gives his
17 testimony, I will permit you to ask him questions. Do you
18 understand?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Now, when you ask him questions,
21 understand that it's not going to be a chance for you to give a
22 statement at that point. You can give your statement now. I
23 will confine your statements to Mr. Corrothers -- let me check
24 that. Any communication you had with Mr. Corrothers has to be
25 in the form of a question to him about what happened and not an

1 argument with him. Do you understand?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Okay. Mr. Jones, you can come over here
4 and have a seat on the witness stand.

5 All right. Mr. Jones, you can give your statement. And
6 make sure you pull that microphone towards you so everyone in
7 the courtroom can hear you.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Just pull it towards you so you don't have
10 to bend it all the way down. You can lift it up a little bit.

11 All right. You can testify, Mr. Jones.

12 DIRECT EXAMINATION

13 THE DEFENDANT: The first question is, the reason why
14 I waited on my appeal, because after reading that I could file
15 the 2255 ineffective assistance of counsel claim for his
16 failure to file a requested appeal, I took it in my route.

17 And as I stated earlier, I was ignorant to certain things
18 like the procedures --

19 (Court reporter clarification.)

20 THE DEFENDANT: -- procedures to file a direct appeal.
21 I was relying on my lawyer heavily in these respects as I did
22 not know what to do considering the impression I was under left
23 to me by my attorney, which was that he was not going to file
24 the appeal. And the whole impression my attorney left me with
25 was that he was not going to file it because he told me that I

1 didn't have any appealable issues. And being under stress
2 along with having the representation of an attorney who'd been
3 appointed to me by this Court who was not wanting to file the
4 requested notice, especially considering the time frame for
5 filing the notice of appeal, the appeal would have been late.
6 So I filed it in my 22 [sic] considering the circumstances of
7 my case.

8 And I didn't sign waivers because I didn't want it to seem
9 that I was giving up my rights. I was not going to do that
10 considering I wanted my appeal. Counsel was just so adamant
11 about him not filing it or presenting it for me. I have to
12 admit I was lost, and once I read I could file a 2255 motion to
13 vacate, I filed it.

14 THE COURT: Let's do this, Mr. Jones. I think I
15 got -- I follow what you're saying, but let's go in steps.

16 You were represented by Garry Corrothers, right?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And he was appointed to represent you?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Okay. And at some point you entered a
21 plea of guilty, is that right?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And sometime after that, I sentenced you?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Okay. And -- okay. And when we had the

1 sentencing hearing, you know, that's when I explained how much
2 time you have to appeal, right?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Okay. Now, you have 14 days from the day
5 that the judgment is entered to file your appeal. I don't know
6 if you understand that. Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Okay. Did you meet with Mr. Corrothers in
9 that 14-day period to discuss an appeal?

10 THE DEFENDANT: Yes, sir. He came to Mason, but --

11 THE COURT: And just so the record is clear, we have a
12 holding facility in Mason, Tennessee, and you were being held
13 over there?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Okay. So Mr. Corrothers traveled from
16 Little Rock to Mason to speak with you?

17 THE DEFENDANT: Yes, sir. He came to speak with me,
18 but as we were talking about the appeal, like I said in this
19 right here, he was saying that I didn't have no eligibilities
20 of issues about the situation, so I felt like that that's the
21 only reason that I didn't sign the appeal.

22 THE COURT: So just to make sure we have the record
23 straight, you mentioned to him about filing an appeal?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And he told you, "Mr. Jones, I don't think

1 you should file an appeal because you don't have any issues to
2 appeal"?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And then what did you say to him?

5 THE DEFENDANT: I didn't sign it.

6 THE COURT: Did you tell him at that point, "Well, I
7 know I don't have any issues, but I still want to appeal"?
8 What did you say to him specifically?

9 THE DEFENDANT: Sir, I was so stressed out, and once
10 he said I didn't have no -- any issues, I didn't want to sign
11 it, I just got up and left.

12 THE COURT: And so when he told you that you didn't
13 have any issues, you said you were stressed out?

14 THE DEFENDANT: Yes, sir. And I didn't know --
15 because the whole time that I been going through this issue,
16 I've been asking him certain questions and he ain't been
17 representing the questions I been asking. So once he told me
18 that I didn't have no issue, I ain't know what to do.

19 THE COURT: Okay. And so your position is -- I'm just
20 making sure we have this nailed down. What did you think would
21 happen when you got up and left? Did you think he would then
22 go file your appeal, or did you think he would not file it at
23 that point?

24 THE DEFENDANT: Well, I really didn't know. So once I
25 got to the place I was going, I went to looking into the law

1 libraries and looking up on things and I seen I could file a
2 2255 on it, so I took it on my own and filed one.

3 THE COURT: Okay. Ms. Dempsey, do you have any
4 cross-examination?

5 MS. DEMPSEY: Just a few, Your Honor.

CROSS-EXAMINATION

7 BY MS. DEMPSEY:

8 Q. Good morning, Mr. Jones. You mentioned that when Mr.
9 Corrothers visited you, he went over a document with you, is
10 that correct?

11 A. Yes, ma'am.

12 Q. Okay. I'm going to show you a document. Can you see it
13 on the screen there?

14 A. Yes, ma'am.

15 Q. Is this the document that he showed you?

16 A. It is a document, but I don't remember signing nothing.

17 Q. Right. So when he showed this to you, and it says Appeal
18 Instruction Letter, do you see there's a spot where you could
19 indicate you wish to appeal your conviction and sentence?

20 A. Yes, ma'am.

21 Q. Okay. You didn't mark that, correct?

22 A. No, ma'am.

23 Q. And you didn't sign it, correct?

24 A. No, ma'am.

25 Q. So it appears that he showed you something where you could

1 have indicated whether you wished to file an appeal or not, is
2 that fair?

3 A. Yes, ma'am.

4 Q. So do you recall asking Mr. Corrothers what he thought
5 about your chances on appeal?

6 A. He told me I didn't have no issues on it, so that's what
7 made me not sign anything on this appeal thing right here.

8 Q. But you would agree with me, he gave you the opportunity
9 to indicate here you wish to file an appeal, is that fair?

10 A. Yeah, I wanted to file an appeal, but once he told me that
11 I didn't have any issues, that's why I didn't sign it.

12 THE COURT: Anything else?

13 MS. DEMPSEY: Nothing further, Your Honor.

14 THE COURT: All right. Mr. Jones, anything else you
15 want to add before you stand down?

16 THE DEFENDANT: No, sir.

17 THE COURT: Okay. You can stand down.

18 Ms. Dempsey, do you want to call Mr. Corrothers to
19 testify?

20 MS. DEMPSEY: Your Honor, I think it would be helpful.

21 THE COURT: You can do that now.

22 MS. DEMPSEY: Okay. Mr. Corrothers.

23 THE COURT: Mr. Corrothers, would you raise your right
24 hand and we'll swear you in?

25 **GARRY CORROTHERS, GOVERNMENT'S WITNESS, DULY SWORN**

1 DIRECT EXAMINATION

2 BY MS. DEMPSEY:

3 Q. Good morning, Mr. Corrothers.

4 A. Good morning.

5 Q. You were representing Mr. Jones starting August 27, 2015,
6 is that correct?

7 A. Yes, I believe that's correct.

8 Q. He was sentenced on March 24th of 2017?

9 A. Yes.

10 Q. At the sentencing, after the sentencing hearing was over,
11 did you and Mr. Jones discuss an appeal at that time?12 A. I really can't remember. I typically ask them if they
13 want to appeal or not. I don't remember our conversation, but
14 it was my practice to start having a letter done up or
15 something for them to sign. I had a 2255 filed about over ten
16 years ago, and Judge Susan Webber Wright suggested that I get
17 something in writing from individuals so that it won't be a --
18 lack of a better word -- a swearing match as to whether they
19 told me to appeal or not. So I thought it prudent to get
20 something in writing and visit him at whatever facility he was
21 in.22 Q. And you're referring to your meeting on April 1st at the
23 facility in Mason, Tennessee, correct?

24 A. Yes.

25 Q. And is this the appeal instruction letter that you

1 typically present your clients with?

2 A. Yes.

3 Q. And what do you recall about that meeting with Mr. Jones?

4 A. Well, Mr. Jones -- it appeared to me that he was kind of
5 unhappy from the onset of when I walked in the room. I felt
6 like he didn't even want me to visit him, but I felt like I
7 really needed to get some instructions from him as to what I
8 should do. So we've had meetings where, you know, they are
9 cordial at times, but a lot of times there's this edge, you
10 know, kind of tense. So I felt -- the whole visit I said I
11 felt that it was just real tense.

12 Q. Okay. So you met with him and you went over this appeal
13 instruction letter, correct?

14 A. Yes.

15 Q. And did he ever -- did Mr. Jones ever say to you that he
16 wished to file an appeal?

17 A. No, he did not.

18 Q. And did he ever ask you your opinion?

19 A. Yes, he asked me my opinion, the chances of this matter
20 being overturned on appeal, and I did give him my opinion.
21 What I would typically do would be to say something like:
22 Well, the sentence you got, I know we wanted a lesser sentence,
23 but it's within the guideline range. And those are typically
24 difficult to get that overturned to get a lower sentence. And
25 that's what I would typically do if somebody says: Well, I

1 want to appeal a sentence that's within the guideline range.

2 Q. Did Mr. Jones sign this document?

3 A. No, he did not sign it. If I remember, I know I really
4 wanted to get him to sign it one way or another before I left
5 the facility, some kind of way letting me know whether or not
6 you want me to file the appeal. And he was really irritated
7 and really frustrated and just didn't want to do anything, I
8 felt, that I suggested that he do.

9 Q. If he wished to appeal, he could have indicated that on
10 this letter, correct?

11 A. Certainly, and I would gladly have filed the appeal for
12 him.

13 Q. And if he had asked you to appeal, you would have
14 appealed?

15 A. Yes, I certainly would have.

16 MS. DEMPSEY: And, Your Honor, just for the record, I
17 would like to go ahead and make Mr. Corrothers's affidavit and
18 this letter, which is one of the exhibits, an exhibit to this
19 hearing. I know it's already in the docket, but --

20 THE COURT: I'll receive the exhibit, but as far as
21 the testimony, I don't know that that adds anything --

22 MS. DEMPSEY: Sure.

23 THE COURT: -- additional to the hearing. Mark it as
24 a proffer, the affidavit, but I'll receive the actual form as
25 an exhibit to the hearing.

1 MS. DEMPSEY: Okay. So that'll be Exhibit 1?

2 THE COURT: Yes, ma'am.

3 (Government's Exhibit 1 received in evidence.)

4 MS. DEMPSEY: I have nothing further, Your Honor.

5 THE COURT: Mr. Jones, do you want to ask Mr.

6 Corrothers some questions?

7 THE DEFENDANT: No, sir.

8 THE COURT: Mr. Corrothers -- okay. You know, I'm
9 sitting here and I'm trying to figure out exactly what happened
10 in that room when you were talking to Mr. Jones. Mr. Jones's
11 position is that he said: Can I appeal? You advised him that
12 there were no issues for appeal, at which point he got upset,
13 and then you tried to get him to sign the document one way or
14 the other. But from what I gather from him is, he got up and
15 left the room or he got up. Is that -- and I know you said you
16 asked him specifically to sign the document, but did his
17 getting up leaving -- did that happen?

18 THE WITNESS: I don't remember it happening. I
19 remember him -- I may be wrong, it's been a while back -- my
20 recollection is that he kind of invited me to leave the
21 facility. And I think that --

22 THE COURT: When you say he kind of invited you, what
23 do you mean by that? I just want to make sure --

24 THE WITNESS: He wanted to end the meeting, because we
25 kind of went around and around with what he wanted to do,

1 whether or not he would sign this document indicating whether
2 or not he wanted to appeal. Kind of seems like he went around
3 and around with that for a while, and then --

4 THE COURT: Did Mr. Jones understand that what he was
5 going to sign was either yes or no, or that he -- what I get
6 from him is -- and let's just put it on the table. What I get
7 from him is, is that he thought that he was saying, no, by
8 signing the document. But the document clearly says: Yes or
9 no. And what the document says is that is giving me
10 instruction on what I should do, either yes or no.

11 His reading of it or take of it appears to be that he
12 thought the document only meant no. Do you remember that being
13 the case?

14 THE WITNESS: No, I don't remember that being the
15 case. I don't remember him looking at it, although I think I
16 would have tried to present it to him to look at it and read it
17 because it had a place on here for him to check and a place
18 where he could sign it. So, you know, that's my recollection.
19 Again, my recollection is I thought -- and I may be wrong, but
20 I thought that I left before he did because he was wanting me
21 to leave because he wasn't going to sign this document, it
22 seemed like, under any circumstances, and we weren't going to
23 get anywhere. So I thought that I left the room before he did.
24 Maybe he did leave the room before me. In any event, we never
25 had a meeting of the minds as to whether or not he would look

1 at this letter and let me know whether or not he wanted to
2 appeal. I know I said to him, "Let me know whether you want to
3 appeal or not." He asked me because I was -- I'm going to
4 Mason to see if he wants to appeal or not. He asked me for my
5 opinion of the likelihood of this getting reversed on appeal,
6 if I recall, and I gave him my opinion.

7 THE COURT: I understand.

8 Any questions, Mr. Jones, before he stands down? No. Ask
9 him --

10 THE DEFENDANT: No, sir.

11 THE COURT: -- because this is your only chance. You
12 know that, right?

13 THE DEFENDANT: Yes, sir.

14 Mr. Corrothers, I left the room before you did because I
15 felt like if I would have told you to leave, I'd have been in
16 the wrong. So I got up when you said that I didn't have any
17 issues --

18 THE COURT: Hold on just one second, Mr. Jones. Do
19 you have a question for him?

20 THE DEFENDANT: No.

21 THE COURT: Okay. Mr. Corrothers, you can stand down.

22 THE DEFENDANT: That's all I have.

23 THE COURT: No, no. I'm going to give you a chance to
24 make your statement --

25 THE DEFENDANT: Yes, sir.

1 THE COURT: -- but while he is on the witness stand, I
2 wanted to give you a chance to ask him questions.

3 THE DEFENDANT: All right.

4 THE COURT: Any other witnesses?

5 MS. DEMPSEY: No, Your Honor.

6 THE COURT: All right, Mr. Jones, you can make your
7 statement.

8 THE DEFENDANT: Yes, sir. I had left the building
9 before he did because I felt like he is the lawyer, I would
10 have been wrong to let him get up and leave before I did. Like
11 I said, I was stressed out. I know that I didn't have
12 anything -- when he told me that if I do the appeal, I ain't
13 got nothing, so I just got up and left and walked out. So I
14 don't know when he left, but I opened the door and walked out.

15 That's all I have to say, Your Honor.

16 THE COURT: Okay. All right. Let me say this. And
17 this is an interesting case for a couple of reasons. And let
18 me just tell y'all what my thoughts are.

19 Mr. Corrothers, based on the record I have, Mr. Jones, his
20 statement to you that the likelihood of you getting this
21 reversed on appeal was almost zero is absolutely accurate. Had
22 Mr. Corrothers -- based on the record I have, had he appealed
23 it, this would have been one of those cases that probably would
24 go to the Eighth Circuit Court of Appeals, and literally,
25 within six months, there would have been a very short order or

1 opinion saying: No basis for appeal. The conviction is
2 affirmed and sentence.

3 And I think what Mr. Corrothers told you about it being
4 within the guidelines range, the calculations of the guideline
5 range being accurate, those types of things, I think the Eighth
6 Circuit would have said the same thing.

7 But the issue presented here is whether you told him
8 specifically, "I want you to appeal" and he just didn't do it.

9 Now, here's what makes this case even more not peculiar,
10 but makes it a little interesting from my standpoint, is, Ms.
11 Dempsey, if I were to rule for Mr. Jones -- and I say this to
12 you, Mr. Jones. If I rule for you and I say you're absolutely
13 right, I believe you and I -- because here's what -- let me be
14 very honest. I'm listening to you and I'm listening to Mr.
15 Corrothers, and both of you sound to me fairly credible. It
16 doesn't sound like you just sat on the witness stand -- you did
17 not sit on the witness stand, Mr. Jones, and tell me, "I told
18 him flat out I want an appeal. I don't care what you say,
19 appeal the case." Had you said that, then I would say, well,
20 Mr. Jones is coming in here shading the truth.

21 What your testimony was is you asked him, "Can we appeal?"
22 And he says, "You're going to lose on appeal," at which point,
23 you did not ask him from that point forward, "I want you" -- or
24 tell him, "I want you to appeal." That's what the testimony
25 was, right?

1 And so Mr. Corrothers's testimony in response is, "Well, I
2 was talking to him about the appeal and I just wanted to get
3 guidance on what he wanted me to do. And he never gave it to
4 me because he got upset with me; that I wanted him to sign this
5 document telling me appeal or don't appeal. But he was looking
6 at it and he was so upset that I told him we weren't going to
7 win, that we never had a chance to talk."

8 This is one of the few times when I can listen to two
9 witnesses who are telling me two different things, but they are
10 actually saying the same thing from two different angles.

11 If I'm Mr. Jones and I'm sitting over in prison and you're
12 telling me I've got 15 years to do and you're telling me I
13 don't have a shot on appeal, I'm mad too. And I don't know if
14 I'm going to give you a chance -- and if you're trying to get
15 me to sign something, I might have gotten the same impression
16 that you're trying to get me to sign something to cover your
17 behind, not to help me. But if you look at the document,
18 that's not what the document says. The document says: If you
19 want me to appeal, check this box.

20 Let me come full circle.

21 The problem with this is, is that Mr. Jones -- and let me
22 tell you kind of what I'm thinking, Mr. Corrothers and Ms.
23 Dempsey and Mr. Jones, and I'm not there yet. There's an issue
24 with me and I've got to resolve it in my mind before I rule.
25 In that Mr. Corrothers came in there with a document that said

1 yes or no, he never got yes or no. So then the question is, is
2 it the responsibility of the lawyer to get yes or no? And if
3 you don't get yes or you don't get no, do you have an
4 affirmative duty to make sure you get it? I don't know what
5 the answer to that is. I know Mr. Corrothers's position is
6 that, no, he never told me to appeal. But the document says he
7 didn't tell him anything.

8 MS. DEMPSEY: Your Honor --

9 THE COURT: Yes, ma'am.

10 MS. DEMPSEY: Just if I may, I don't know if this
11 is --

12 THE COURT: Let me finish this real quick, Ms.
13 Dempsey.

14 MS. DEMPSEY: Okay. I'm sorry.

15 THE COURT: But here's the problem with your case, Mr.
16 Jones. If I were to rule in your favor and say that Mr.
17 Corrothers had a responsibility to get you to check one way or
18 the other or tell him one way or the other, and therefore I'm
19 going to lean in your favor, all that does is give you a right
20 to appeal, and the Eighth Circuit is still going to affirm it.
21 So even if I give you the right to appeal, I am firmly
22 convinced, as I sit here right now, that you are going to get
23 the same ruling from the Eighth Circuit that you would have
24 gotten had you appealed the first time. So the question is, do
25 I rule for you, give you a chance to appeal, and then the

1 government files a brief -- and it will file its brief. But
2 I'm firmly convinced that the Eighth Circuit is not going to
3 reverse your plea of guilty or your sentence. And so this is
4 all academic as far as I look at it. When I say academic, what
5 I mean, Mr. Jones, is, this is just us sitting here going
6 through a lot of legal analysis and we're going to end up right
7 back at the same place.

8 But let me hear from Ms. Dempsey, and then I'll hear from
9 you, Mr. Jones.

10 Ms. Dempsey, what were you going to say?

11 MS. DEMPSEY: Just that my understanding of Mr.
12 Corrothers's affidavit and his testimony today is that when he
13 went to meet with Mr. Jones, it wasn't that Mr. Jones ever --
14 he never indicated: I wish to file an appeal.

15 THE COURT: I know.

16 MS. DEMPSEY: So I don't know if that's enough because
17 that was the question we were here on.

18 THE COURT: I understand. I understand that. I'm
19 saying, even if I --

20 MS. DEMPSEY: Sure.

21 THE COURT: -- even if I were to find that there was
22 some other duty that was required other than -- if the document
23 indicates he did not get an answer one way or the other --

24 MS. DEMPSEY: Right.

25 THE COURT: -- did he have a responsibility to get an

1 answer? I'm not saying we're there yet. But I'm saying, even
2 if I found that, is it all just an academic exercise and we're
3 right -- and the case gets appealed, the U.S. Attorney's Office
4 has to file a brief, and then the answer is still the same?

5 Mr. Jones, you wanted to say something?

6 THE DEFENDANT: You said if you knew that they won't
7 decide in my favor. I would rather take that chance of still
8 doing the appeal even though, like you said, I might not get
9 it, but I still would rather do my appeal.

10 THE COURT: And here's the thing, even if I rule
11 against you today, you can appeal this order, and so you'll
12 still get your appeal. The question will be, will you be
13 appealing this or will you be appealing the judgment? And you
14 might end up getting both, but we'll see.

15 Is there anything else we need to take up on this before
16 we recess?

17 THE DEFENDANT: No, sir.

18 MS. DEMPSEY: No, Your Honor.

19 THE COURT: All right. I don't think this is going to
20 take me very long to get an order out on this, but look for it
21 maybe sometime next week. Okay?

22 All right. Let's recess until 1 o'clock.

23 (Proceedings adjourning at 10:57 a.m.)

24

25

REPORTER'S CERTIFICATE

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

/s/ Judith A. Ammons, RPR, CRR, CCR Date: November 13, 2018
United States Court Reporter

Judith A. Ammons, RPR, CRR, CCR
United States Court Reporter

062a

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

OCT 29 2018

JAMES W. McCORMACK, CLERK
By: *James W. McCormack*
CLERK

UNITED STATES OF AMERICA

PLAINTIFF

v.

CASE NO. 4:15-CR-00194BSM

MICHAEL JONES

DEFENDANT

NOTICE OF APPEAL

Comes now on this 24 day of October, 2018, filing this notice of Appeal. Well as, requesting to proceed IFP.

MICHAEL JONES
F.C.I. TEXARKANA
P.O. BOX 7000
TEXARKANA, TX 75505

Certificate of Service

I do hereby certify to the foregoing on this ____ day of October, 2018. And, that the foregoing has been Mail-Filed sent through the legal Mailing System here at F.C.I. Texarkana. and has been sent to this Honorable Court.

MICHAEL JONES

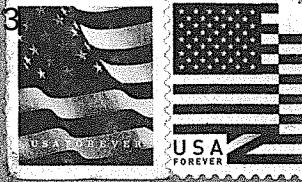
pro se

Michael Jones

Reg. No. 29296009

FCI Texarkana
P.O. Box 7000

Texarkana, TX 75505



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065a

Grant, Vacate, and Remand Orders Citing Mathis

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