

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

File Name: 19a0527n.06

Case Nos. 17-6340/6343

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

UNITED STATES OF AMERICA,)
)
Petitioner-Appellant,)
)
v.)
)
ROBBIE BATEMAN,)
)
Respondent-Appellee.)

FILED
Oct 16, 2019
DEBORAH S. HUNT, Clerk

ON APPEAL FROM THE UNITED
STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF
TENNESSEE
OPINION

BEFORE: BOGGS, BATCHELDER, and DONALD, Circuit Judges.

BERNICE BOUIE DONALD, Circuit Judge. Robbie Bateman (“Bateman”) pleaded guilty to and was convicted for being a felon in possession of a firearm. Based on Bateman’s prior convictions, the Government sought and obtained an enhanced sentence under the Armed Career Criminal Act (“ACCA”). He was sentenced to 188 months’ imprisonment. Following the Supreme Court’s decision in *Johnson v. United States*, 135 S. Ct. 2551 (2015) (striking down the ACCA’s residual clause), Bateman filed for relief under 28 U.S.C. § 2255, challenging his sentence enhancement. Bateman contended that his seven prior convictions for Tennessee-aggravated burglary no longer qualified as violent felonies under the ACCA. The district court stayed his petition pending the resolution of the same claim before this Court in *United States v. Stitt*. 860 F.3d 854 (6th Cir. 2017) (en banc) [hereinafter *Stitt I*]. In *Stitt I*, we held that Tennessee’s

aggravated-burglary statute does not qualify as an enumerated offense under the ACCA. *Id.* at 857. Following *Stitt I*, the district court granted Bateman’s petition, vacated his original sentence, and ordered resentencing. The Supreme Court, however, reversed the decision of the en banc court. *United States v. Stitt*, 139 S. Ct. 399, 408 (2018) [hereinafter *Stitt II*]. The government now appeals the district court’s granting of Bateman’s habeas petition in light of *Stitt II* and seeks reinstatement of Bateman’s original sentence.

Bateman advances two grounds opposing reversal. First, Bateman claims that Tennessee’s definition of “entry” is broader than the ACCA’s, such that it considers attempted burglary as completed burglary. Bateman contends that because an attempted burglary does not qualify as a generic burglary, it does not qualify as a violent felony under the ACCA. Bateman’s position has already been before this Court, and we are bound by our prior decisions that a violation of the Tennessee-aggravated burglary statute qualifies as a violent felony. *Brumbach v. United States*, 929 F.3d 791, 795 (6th Cir. 2019); *see United States v. Nance*, 481 F.3d 882, 888 (6th Cir. 2007).

Second, Bateman asserts that the approved evidence available to the government cannot conclusively establish that his predicate offenses under the ACCA were committed on three separate occasions, as required by 18 U.S.C. § 924(e)(1). This argument was not before the district court in Bateman’s original petition or supplement to his petition and is raised here for the first time. Ordinarily, ““issues not presented to the district court but raised for the first time on appeal are not properly before the court.”” *Foster v. Barilow*, 6 F.3d 405, 407 (6th Cir. 1993) (quoting *J.C. Wyckoff & Assocs., Inc. v. Standard Fire Ins. Co.*, 936 F.2d 1474, 1488 (6th Cir. 1991)). There are, to be sure, some exceptions, such as when faced with “exceptional cases,” “particular circumstances,” or times when the rule would produce “a plain miscarriage of justice.” *Pinney*

Dock & Transp. Co. v. Penn Cent. Corp., 838 F.2d 1445, 1461 (6th Cir. 1988) (quoting *Hormel v. Helvering*, 312 U.S. 552, 558 (1941)).

Even if Bateman's claim was within the bounds of these narrow exceptions, it nevertheless fails as untimely. Section 2255(f) places a one-year period of limitations on all § 2255 petitions for relief, running from the latest of any of the following:

- (1) the date on which the judgment of conviction becomes final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

28 U.S.C. § 2255(f). Unlike Bateman's original petition which, by relying on *Johnson*, satisfied category three, Bateman's new claim that he does not have three qualifying ACCA predicates does not rely on any newly recognized right. Instead, Bateman bases his assertion on *United States v. King*, 853 F.3d 267 (6th Cir. 2017), where this Court applied the standards approved in *Shepard v. United States*, decided over nine years before his petition. 544 U.S. 13, 26 (2005) (limiting the class of documents used by a court to determine of what crime and elements a defendant was convicted).

Because Bateman's claim for relief on these new grounds does not meet any of the alternative limitations periods,¹ he was required to file it within one year of his conviction

¹ Bateman does not offer any reason why his § 2255 petition satisfies the second or fourth one-year limitations categories.

becoming final. 28 U.S.C. § 2255(f)(1). Bateman's conviction became final on February 29, 2012. Bateman's § 2255 motion was not filed until June 18, 2014, over two years after his conviction became final. Therefore, Bateman's alternative argument is untimely.

For the foregoing reasons, we **REVERSE** the district court's grant of habeas relief, and **REMAND** with instructions to reinstate the original sentence.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

ROBBIE SHANE BATEMAN,)	
)	
Petitioner,)	
)	
v.)	Nos. 3:11-CR-42-PLR-HBG
)	3:11-CR-144-PLR-HBG
UNITED STATES OF AMERICA,)	3:14-CV-270-PLR
)	3:14-CV-271-PLR
Respondent.)	

MEMORANDUM OPINION

Presently before the Court are motions to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 and supplements thereto filed by Robbie Shane Bateman (“Petitioner”) which challenge his enhanced sentence as an armed career criminal under the Armed Career Criminal Act (“ACCA”), 18 U.S.C. § 924(e), pursuant to *Johnson v. United States*, 135 S. Ct. 2551 (2015).¹ In light of both *Johnson* and the recent *en banc* decision of the Sixth Circuit Court of Appeals in *United States v. Stitt*, 860 F.3d 854 (6th Cir. 2017), it now is undisputed that Petitioner no longer qualifies as an armed career criminal under the ACCA. Accordingly, Petitioner’s § 2255 motions [Doc. 24 at No. 3:11-CR-42 and Doc. 13 at No. 3:11-CR-144], as supplemented [Doc. 26 at No. 3:11-CR-42 and Doc. 15 at No. 3:11-CR-144], will be **GRANTED**.

I. BACKGROUND

On April 5, 2011, a grand jury sitting in the Eastern District of Tennessee returned a three-count indictment charging Petitioner at all three counts with possession of a firearm by a convicted

¹ The Supreme Court has determined that *Johnson*, which invalidated the residual clause of the ACCA as unconstitutionally vague, announced a new “substantive rule that has retroactive effect in cases on collateral review.” *Welch v. United States*, 136 S. Ct. 1257, 1268 (2016); *see also In Re Watkins*, 810 F.3d 375, 381-85 (6th Cir. 2015).

felon, in violation of 18 U.S.C. § 922(g)(1) and § 924(e) [Doc. 1 at No. 3:11-CR-42]. On July 7, 2011, Petitioner entered a plea of guilty as to counts one through three of the indictment [Doc. 17 at No. 3:11-CR-42].

On August 8, 2011, the United States Attorney for the Western District of North Carolina filed a one-count information charging Petitioner with possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1) [Doc. 1-1 at No. 3:11-CR-144]. After consenting to a transfer of jurisdiction of the case from the Western District of North Carolina to the Eastern District of Tennessee [Doc. 1 at No. 3:11-CR-144], Petitioner entered a plea of guilty to count one of the information on December 29, 2012 [Doc. 9 at No. 3:11-CR-144].

The presentence investigation report (“PSIR”) identified seven previous convictions for a violent felony, committed on occasions different from one another, that qualified Petitioner as an armed career criminal under the ACCA: (1) a March 21, 2000, conviction for aggravated burglary in the Sevier County, Tennessee, Criminal Court [PSIR ¶ 35]; (2) four convictions on March 21, 2000, for four separate counts² of aggravated burglary in the Sevier County, Tennessee, Criminal Court [PSIR ¶ 36]; and (2) two convictions on April 27, 2005, for aggravated burglary in the Sevier County, Tennessee, Criminal Court [PSIR ¶¶ 39, 40]. As an armed career criminal, Petitioner was subject at each count to a statutory mandatory minimum sentence of 15 years to a maximum of

² The ACCA requires three previous convictions committed “on occasions different from one another.” 18 U.S.C. § 924(e)(1). The Sixth Circuit has held that “under the ACCA, a career criminal is one who has been convicted of three criminal ‘episodes.’” *United States v. Hockenberry*, 730 F.3d 645, 667 (6th Cir. 2013) (quoting *United States v. McCauley*, 548 F.3d 440, 448 (6th Cir. 2008)). “Although related to the entire course of events, an episode is a punctuated occurrence with a limited duration.” *McCauley*, 548 F.3d at 448. Accordingly, crimes that a defendant commits against different victims, in different places, and at different times, will generally be separate offenses. *Hockenberry*, 730 F.3d at 667. Thus, “even when convictions ‘were sentenced on the same day, they count separately for purposes of calculating an ACCA enhancement.’” *Id.* (quoting *United States v. Kearney*, 675 F.3d 571, 575 n. 5 (6th Cir. 2012)).

life and his advisory guideline sentencing range under the United States Sentencing Guidelines (“USSG”) was 188 to 235 months [PSIR ¶¶ 72, 73].

On February 29, 2012, Petitioner was sentenced to a term of imprisonment of 188 months, consisting of 188 months at each of counts one, two and three of the indictment at No. 3:11-CR-42 and count one of the information at No. 3:11-CR-144, all to be served concurrently, and a term of supervised release of 5 years, consisting of 5 years at each of counts one, two and three of the indictment at No. 3:11-CR-42 and count one of the information at No. 3:11-CR-144, all to run concurrently [Doc. 21 at No. 3:11-CR-42 and Doc. 11 at No. 3:11-CR-144]. Petitioner did not file a direct appeal.

On June 18, 2014, Petitioner, through court-appointed counsel, filed § 2255 motions in both cases challenging his armed career criminal status based on the Supreme Court’s decision in *Descamps v. United States*, 133 S. Ct. 2276 (2013) [Doc. 24 at No. 3:11-CR-42 and Doc. 13 at No. 3:11-CR-144]. On June 10, 2016, Petitioner, again through court-appointed counsel, filed supplements to his pending § 2255 motions raising an additional challenge to his armed career criminal status based on the Supreme Court’s invalidation of the ACCA residual clause in *Johnson* [Doc. 26 at No. 3:11-CR-42 and Doc. 15 at No. 3:11-CR-144].

The government’s motions to defer ruling on Petitioner’s motions pending an *en banc* decision from the Sixth Circuit in *United States v. Stitt*, 646 F. App’x 454 (6th Cir. 2016), were granted by the Court on November 4, 2016 [Doc. 29 at No. 3:11-CR-42 and Doc. 18 at No. 3:11-CR-144]. On June 27, 2017, the Sixth Circuit issued its *en banc* decision holding that a conviction of aggravated burglary under Tennessee law does not qualify as a violent felony predicate offense under the ACCA. *Stitt*, 860 F.3d at 856.

On July 27, 2017, the parties filed joint status reports agreeing that Petitioner no longer qualifies as an armed career criminal in light of *Johnson* and *Stitt* [Doc. 31 at No. 3:11-CR-42 and Doc. 20 at No. 3:11-CR-144].

II. ANALYSIS

A. TIMELINESS

Section 2255(f) places a one-year period of limitation on all petitions for collateral relief under § 2255 which runs from the latest of: (1) the date on which the judgment of conviction becomes final; (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action; (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence. 28 U.S.C. § 2255(f).

Claims based on the Supreme Court's opinion in *Johnson* satisfy the third sub-category—the assertion of a newly recognized right made retroactively applicable to cases on collateral review. *Welch*, 136 S. Ct. at 1268 (*Johnson* constitutes a new substantive rule of constitutional law made retroactively applicable on collateral review); *In Re Watkins*, 810 F.3d at 381–85. The one-year limitation period for filing a motion to vacate based on a right newly recognized by the Supreme Court runs from the date on which the Supreme Court initially recognized the right asserted, not from the date on which the right asserted was made retroactively applicable. *Dodd v. United States*, 545 U.S. 353, 357 (2005). Accordingly, *Johnson* triggered a renewed one-year

period of limitation beginning on the date of that decision, June 26, 2015, and running until June 26, 2016.

In this case, Petitioner filed the supplements to his § 2255 motions raising a *Johnson* claim on June 10, 2016, which falls safely within the one-year window for requesting collateral relief under *Johnson*.

B. STANDARD OF REVIEW

To obtain relief under 28 U.S.C. § 2255, a petitioner must demonstrate “(1) an error of constitutional magnitude; (2) a sentence imposed outside the statutory limits; or (3) an error of fact or law . . . so fundamental as to render the entire proceeding invalid.” *McPhearson v. United States*, 675 F.3d 553, 558–59 (6th Cir. 2012) (quoting *Mallett v. United States*, 334 F.3d 491, 496–97 (6th Cir. 2003)). He “must clear a significantly higher hurdle than would exist on direct appeal” and establish a “fundamental defect in the proceedings which necessarily results in a complete miscarriage of justice or an egregious error violative of due process.” *Fair v. United States*, 157 F.3d 427, 430 (6th Cir. 1998).

C. PETITIONER’S JOHNSON CLAIM

A felon who possesses a firearm normally faces a maximum penalty of 10 years’ imprisonment, 18 U.S.C. § 924(a)(2), and 3 years’ supervised release, 18 U.S.C. §§ 3559(a)(3) and 3583(b)(2). However, if that felon possesses the firearm after having sustained three prior convictions “for a violent felony or serious drug offense, or both,” the ACCA requires a 15-year minimum sentence, 18 U.S.C. § 924(e)(1), and increases the maximum supervised release term to 5 years, 18 U.S.C. §§ 3559(a)(1) and 3583(b)(1). The ACCA defines a “violent felony” as “any crime punishable by imprisonment for a term exceeding one year” that: (1) “has as an element the use, attempted use, or threatened use of physical force against the person of another” (the “use-of-

physical-force clause"); (2) "is burglary, arson, or extortion, involves use of explosives" (the "enumerated-offense clause"); or (3) "otherwise involves conduct that presents a serious potential risk of physical injury to another" (the "residual clause"). 18 U.S.C. § 924(e)(2)(B).

In *Johnson*, the Supreme Court determined that the residual clause of the ACCA is unconstitutionally vague and concluded "that imposing an increased sentence under the residual clause . . . violates the Constitution's guarantee of due process." 135 S. Ct. at 2563. *Johnson* did not automatically invalidate all ACCA sentences, however, emphasizing that its holding "d[id] not call into question application of the Act to the four enumerated offenses, or the remainder of the Act's definition of a violent felony." *Id.*; *see also United States v. Kemmerling*, 612 F. App'x 373, 376 (6th Cir. 2015) (explicitly finding that *Johnson* did not affect the ACCA's use-of-physical-force clause). Thus, under *Johnson*, an ACCA sentence only raises due process concerns, and thus is invalid, if it necessarily was based on predicate violent felonies that qualified as such only under the ACCA's residual clause.

In this case, all seven of Petitioner's predicate offenses were convictions for aggravated burglary in violation of Tenn. Code. Ann. § 39-14-403 [PSIR ¶¶ 35, 36, 39, 40]. Petitioner contends, *inter alia*, that aggravated burglary could qualify as a predicate offense only under the stricken residual clause of the ACCA. In response, the government initially cited then-binding Sixth Circuit precedent holding that a conviction for aggravated burglary under the Tennessee statute qualifies as an ACCA predicate under the enumerated-offense clause. *United States v. Nance*, 481 F.3d 882, 888 (6th Cir. 2007).

However, in the *en banc* *Stitt* decision, the Sixth Circuit overruled *Nance* and expressly held that aggravated burglary is not a violent felony for purposes of the ACCA. 860 F.3d at 860–61. Applying a categorical approach, the Court determined that the Tennessee aggravated burglary

statute “sweeps more broadly than generic burglary” and thus cannot qualify as a violent felony under the enumerated-offense clause. *Id.* at 861. Because the statute categorically is not a violent felony, and also is indivisible, the Sixth Circuit concluded that a conviction under the Tennessee aggravated burglary statute does not count as a violent felony under the ACCA. *Id.* at 862.

Because a conviction for aggravated burglary does not qualify as a violent felony under the first two clauses of § 924(e)(2)(B),³ and *Johnson* invalidated the residual clause, Petitioner’s aggravated burglary convictions under the Tennessee statute can no longer be used as predicate offenses under the ACCA. Furthermore, absent those convictions, Petitioner no longer has the requisite three prior convictions of a violent felony or a serious drug offense necessary to subject him to the ACCA’s enhanced penalties.

Accordingly, the *Johnson* and *Stitt* decisions dictate that Petitioner no longer can be designated an armed career criminal under § 924(e). As a result, the 188-month terms of imprisonment and 5-year terms of supervised release imposed by the Court at each count exceed the maximum authorized sentence of not more than 10 years’ imprisonment and not more than 3 years’ supervised release for a non-ACCA offender convicted of a violation of § 922(g)(1). *See* 18 U.S.C. § 924(a)(2) and 18 U.S.C. §§ 3559(a)(3) and 3583(b)(2). Under these circumstances, the Court finds a clear entitlement to § 2255 relief, as Petitioner has been subjected to “a sentence imposed outside the statutory limits.” *McPhearson*, 675 F.3d at 559.

Where a § 2255 claim has merit, a district court “shall vacate and set the judgment aside” and, “as may appear appropriate,” shall either “discharge the prisoner or resentence him or grant a

³ The parties acknowledge that aggravated burglary does not have as an element the use, attempted use or threatened use of force and therefore cannot qualify as a violent felony under the “use-of-physical-force” clause of the ACCA [Doc. 31 p. 2 at No. 3:11-CR-42 and Doc. 20 p. 2 at No. 3:11-CR-144].

new trial or correct the sentence.” 28 U.S.C. § 2255(b); *see also Ajan v. United States*, 731 F.3d 629, 633 (6th Cir. 2013).

Here, although the parties are in agreement that Petitioner is entitled to § 2255 relief, they disagree as to the most appropriate form of that relief. The government submits that the appropriate relief would be to correct and reduce Petitioner’s sentence to 120 months’ imprisonment and 3 years’ supervised release at each count, the applicable statutory maximums for a violation of § 922(g)(1) for a non-armed career criminal [Doc. 31 p. 3 at No. 3:11-CR-42 and Doc. 20 p. 3 at No. 3:11-CR-144]. Petitioner, however, asserts that his advisory guideline sentencing range under the current USSG would be 63 to 75 months and, because he already has served 63 months in custody, submits that his sentence should be corrected and reduced to a sentence of time served [*Id.*].

Due to the significant disparity in the parties’ proposed resolutions, the Court believes that the most appropriate form of relief in this case is to resentence Petitioner following a full resentencing hearing. The Court will direct the Probation Office to prepare an Addendum containing a re-calculation of Petitioner’s advisory guideline sentencing range under the current Guidelines Manual and detailing Petitioner’s post-sentencing conduct. A resentencing hearing will be set and the parties will be given an opportunity to submit sentencing memoranda prior to the hearing. The Court will enter an order accordingly.

III. CONCLUSION

For the reasons set forth herein, the Court finds that Petitioner is entitled to relief under § 2255 and will grant his § 2255 motions [Doc. 24 at No. 3:11-CR-42 and Doc. 13 at No. 3:11-CR-144], as supplemented [Doc. 26 at No. 3:11-CR-42 and Doc. 15 at No. 3:11-CR-144]. The

Judgment imposed by the Court on February 29, 2012 [Doc. 21 at No. 3:11-CR-42 and Doc. 11 at No. 3:11-CR-144], will be vacated and a resentencing hearing will be set. The United States Probation Office will be directed to provide the Court with information necessary for sentencing. The Clerk of Court will be directed to close the civil cases at Nos. 3:14-CV-270 and 3:14-CV-271.

AN APPROPRIATE ORDER WILL ENTER.

Pamela J. Gevers
UNITED STATES DISTRICT JUDGE

United States District Court

Eastern District of Tennessee

UNITED STATES OF AMERICA
v.
ROBBIE SHANE BATEMAN

**Amended*

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

Case Number: 3:11-CR-42 / 3:11-CR-144

Paula Voss

Defendant's Attorney

*Date of Original Judgment: February 29, 2012
(or Date of Last Amended Judgment)

Reason for Amendment:
Direct Motion to District Court Pursuant 28 U.S.C. 2255

THE DEFENDANT:

pleaded guilty to count(s): One, Two, and Three of the Indictment in Case 3:11-cr-42, and Count One of the Information in Case 3:11-cr-144.

pleaded nolo contendere to count(s) ____ which was accepted by the court.

was found guilty on count(s) ____ after a plea of not guilty.

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offense(s):

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Concluded</u>	<u>Date Offense Count Number(s)</u>
18:922(g)(1)	Felon in Possession of a Firearm	11/10/10, 12/20/10, 12/26/10	1-3
18:922(g)(1)	Felon in Possession of a Firearm	11/13/10	1

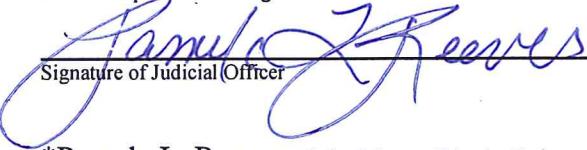
The defendant is sentenced as provided in pages 2 through 6 of this judgment and the Statement of Reasons. The sentence is imposed pursuant to the Sentencing Reform Act of 1984 and 18 U.S.C. §3553.

The defendant has been found not guilty on count(s) ____.

Count(s) ____ [] is [] are dismissed on the motion of the United States.

IT IS ORDERED that the defendant shall 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 shall notify the court and the United States attorney of any material change in the defendant's economic circumstances.

*October 13, 2017
Date of Imposition of Judgment


Signature of Judicial Officer

*Pamela L. Reeves, United States District Judge
Name & Title of Judicial Officer

14a 10-13-17
Date

DEFENDANT: ROBBIE SHANE BATEMAN
CASE NUMBER: 3:11-CR-42 / 3:11-CR-144

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of *71 months.

*This term consists of **71 months** as to Counts One, Two, and Three of Docket Number 3:11-CR-42, and Count One in Case 3:11-CR-144, all terms to be served concurrently.

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

The court recommends designation to the BOP Facility located in McCreary County, Kentucky, Manchester, Kentucky, or Coleman, Florida.

The court also directs the Bureau of Prisons to give the defendant full credit for all time served while in federal custody.

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

The defendant shall surrender to the United States Marshal for this district:

at ____ a.m. p.m. on ____.
 as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on ____.
 as notified by the United States Marshal.
 as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: ROBBIE SHANE BATEMAN
CASE NUMBER: 3:11-CR-42 / 3:11-CR-144

SUPERVISED RELEASE

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

*This term consists of terms of **3 years** on each of Counts One, Two and Three, of Docket Number 3:11-CR-42, and Count One of Docket Number 3:11-CR-144, all such terms to run concurrently.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

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

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

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- *The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

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

DEFENDANT: ROBBIE SHANE BATEMAN
CASE NUMBER: 3:11-CR-42 / 3:11-CR-144

SPECIAL CONDITIONS OF SUPERVISION

1. You shall participate in a program of testing and/or treatment for drug and/or alcohol abuse, as directed by the probation officer, until such time as you are released from the program by the probation officer.
2. You shall participate in a program of mental health treatment, as directed by the probation officer, until such time as you are released from the program by the probation officer. You shall waive all rights to confidentiality regarding mental health treatment in order to allow release of information to the supervising United States Probation Officer and to authorize open communication between the probation officer and the mental health treatment provider.
3. You shall take all medication prescribed by the treatment program as directed. If deemed appropriate by the treatment provider or the probation officer, you shall submit to quarterly blood tests to determine whether you are taking the medication as prescribed.

DEFENDANT: ROBBIE SHANE BATEMAN
CASE NUMBER: 3:11-CR-42 / 3:11-CR-144

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 6. The assessment is ordered in accordance with 18 U.S.C. § 3013.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
Totals:	\$ 400.00	\$	\$

[] The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

[] The defendant shall make restitution (including community restitution) to the following payees in the amounts 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, if the United States is a victim, all other victims, if any, shall receive full restitution before the United States receives any restitution, and all restitution shall be paid to the victims before any restitution is paid to a provider of compensation, pursuant to 18 U.S.C. §3664.

<u>Name of Payee</u>	<u>*Total Amount of Loss</u>	<u>Amount of Restitution Ordered</u>	<u>Priority Order or Percentage of Payment</u>
----------------------	------------------------------	--------------------------------------	--

TOTALS: \$__ \$__

[] If applicable, restitution amount ordered pursuant to plea agreement \$ __

The defendant shall pay interest on any fine or restitution of more than \$2500, unless the fine or restitution is paid in full before the fifteenth day after the date of 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 and/or [] restitution.

[] The interest requirement for the [] fine and/or [] restitution is modified as follows:

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

DEFENDANT: ROBBIE SHANE BATEMAN
CASE NUMBER: 3:11-CR-42 / 3:11-CR-144

SCHEDULE OF PAYMENTS

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

A Lump sum payment of \$ 400.00 due immediately, balance due
[] not later than ___, or
[] in accordance with [] C, [] D, or [] E or [] F below; or

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

C Payment in _____ (e.g., equal, 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 _____ (e.g., equal, 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 1__ (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 a period of imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. Unless otherwise directed by the court, the probation officer, or the United States attorney, all criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, shall be made to **U.S. District Court, 800 Market St., Suite 130, Knoxville, TN 37902**. Payments shall be in the form of a check or a money order, made payable to U.S. District Court, with a notation of the case number including defendant number.

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

[] Joint and Several

Defendant Name, Case Number, and Joint and Several Amount:

[] 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:

A Llama model Especial 38 Super, 9mm pistol, serial number 454161

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

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

ROBBIE SHANE BATEMAN,)	
)	
Petitioner,)	
)	
v.)	Nos. 3:11-CR-42-PLR-HBG
)	3:11-CR-144-PLR-HBG
UNITED STATES OF AMERICA,)	3:14-CV-270-PLR
)	3:14-CV-271-PLR
Respondent.)	

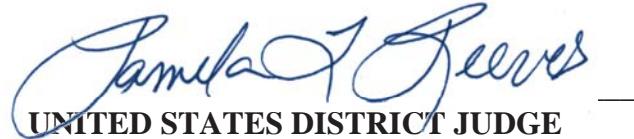
JUDGMENT ORDER

For the reasons expressed in the accompanying memorandum opinion filed herewith, it is
ORDERED and **ADJUDGED** that Petitioner's § 2255 motions [Doc. 24 at No. 3:11-CR-42 and
Doc. 13 at No. 3:11-CR-144], as supplemented [Doc. 26 at No. 3:11-CR-42 and Doc. 15 at No.
3:11-CR-144], be and hereby are **GRANTED**. The Judgment imposed on February 29, 2012
[Doc. 21 at No. 3:11-CR-42 and Doc. 11 at No. 3:11-CR-144] is **VACATED** and it hereby is
ORDERED that a resentencing hearing is **SCHEDULED** for **Friday, October 13, 2017 at 1:30**
p.m. in Knoxville, Tennessee. The United States Probation Office is **DIRECTED** to provide the
Court with information necessary for sentencing. In accordance with E.D. Tenn. L.R. 83.9(j), the
parties shall file all sentencing motions or sentencing memoranda at least 14 days before the
resentencing hearing.

In the absence of a waiver of appearance at sentencing, it is also hereby **ORDERED** that the Bureau of Prisons relinquish custody of Robbie Shane Bateman [Register No. 43795-074] to the United States Marshal, and that the United States Marshal transport Mr. Bateman from FCI-

Edgefield in Edgefield, South Carolina, to this district on or before **Friday, September 29, 2017** in order for him to meet with his attorney and prepare for his hearing. The Clerk's Office is **DIRECTED** to close the civil cases at Docket Nos. 3:14-CV-270 and 3:14-CV-271.

IT IS SO ORDERED.



UNITED STATES DISTRICT JUDGE