No.

IN THE SUPREME COURT OF THE UNITED STATES

ANTHONY WAYNE HAMILTON,
Petitioner,

vs.

UNITED STATES, Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CELIA RUMANN
Counsel of Record
P.O. Box 24458,
Tempe, Arizona 85285
(480) 862-6637
rumannlaw@cox.net
CJA Appointed Attorney for Petitioner Hamilton

QUESTIONS PRESENTED

1. Whether a Hobbs Act robbery, which statutorily can be committed by a threat of future harm, categorically qualifies as a crime of violence under 18 U.S.C. § 924(c), given this Court's ruling in *Stokeling v. Florida*, which explained that in order for a robbery to qualify as a crime of violence, it must necessarily involve a "physical confrontation and struggle."

PARTIES TO THE PROCEEDING

All parties to this appeal are listed in the caption, and the Petitioner is not a corporation.

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PETITION FOR WRIT OF CERTIORARI

The Petitioner, Anthony Wayne Hamilton ("Mr. Hamilton"), respectfully requests that a Writ of Certiorari be issued to review the Memorandum Decision of the United States Court of Appeals for the Ninth Circuit entered on January 22, 2020. As relevant to this petition, this decision held that Hobbs Act robbery under 18 U.S.C. § 1951 qualifies as a crime of violence under 18 U.S.C. § 924(c).

This decision conflicts with the analysis of this Court in *Stokeling, v. United States*, 139 S.Ct. 544, 550 (2019), so as to warrant exercise of this Court's discretion to grant certiorari, as fully explained below.

OPINION BELOW

On January 22, 2020, the United States Court of Appeals for the Ninth Circuit issued a Memorandum Decision in Ninth Circuit case number 17-10490, which affirmed in part and remanded in part. The relevant decisions and orders of the Ninth Circuit and the United States District Court for the District of Arizona are reproduced in the attached Appendix.

JURISDICTION

The United States District Court for the District of Arizona (Tuchi, D.J.) had jurisdiction over the federal criminal charges against Mr. Hamilton pursuant to 18 U.S.C. § 3231. The district court entered its final judgment on November 7, 2017.

[CR 122.][1] Mr. Hamilton timely filed his notice of appeal on November 16, 2017. [FRAP 4(b)(1); C.A. Doc. 1; CR 126.] The Ninth Circuit had jurisdiction over Mr. Hamilton's appeal pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a). Mr. Hamilton filed a timely opening brief on August 30, 2018. C.A. Doc. 20. Mr. Hamilton filed a supplemental brief on February 22, 2019. C.A. Doc. 37. On May 7, 2019, the government filed its response. C.A. Doc. 41. Mr. Hamilton replied on September 16, 2019. C.A. Doc. 57. The Ninth Circuit held oral argument on the case on December 6, 2019. C.A. Doc. 47.

The Ninth Circuit issued its Memorandum Disposition on January 22, 2020, affirming Mr. Hamilton's convictions. C.A. Doc. 77. This Petition is thus being filed within 90 days entry of judgment, pursuant to Supreme Court Rules 13.1. This Court has jurisdiction under 28 U.S.C. § 1254(1).

1. "CR" refers to the District Court's Clerk's Record; "ER" refers to Appellant's Excerpt of Record; "RT" refers to the transcripts of the proceedings. "C.A. Doc" refers the Ninth Circuit Docket.

CONSTITUTIONAL AND OTHER PERTINENT PROVISIONS

The Fifth Amendment to the United States Constitution provides in pertinent part: Nor shall any person "be deprived of life, liberty, or property, without due process of law."

U.S. CONST. amend. V.

18 U.S.C. § 1951: Hobbs Act Robbery

The term "robbery" means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.

18 U.S.C.A. § 1951 (West)

18 U.S.C. § 924(c)(3)(B): Crime of Violence Definition

(3) For purposes of this subsection the term "crime of violence" means an offense that is and felony and . . . (B) by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

18 U.S.C.A. § 924(c)(3)(B) (West)

STATEMENT OF THE CASE

On March 8, 2016, the grand jury returned a thirty-seven-count indictment against Mr. Hamilton. This indictment charged Mr. Hamilton with thirty-six counts of interference of commerce by robbery/aiding and abetting, in violation of Title 18 U.S.C. §§ 1951(a) and 2, and one count of possessing a firearm during a crime of violence, in violation of Title 18 U.S.C. §§ 924(c). CR 16; ER-V3 287-91.

The indictment also included a forfeiture allegation. Mr. Hamilton pleaded not guilty. CR 23.

On May 17, 2017, the grand jury returned a superseding indictment. CR 79; ER-V3 259-68. This new indictment charged Mr. Hamilton with 11 counts of interference of commerce by robbery and 11 counts of use of a firearm in relation to a crime of violence. *Id.* Mr. Hamilton entered not guilty pleas to this superseding indictment on May 24, 2017. CR 86

Before trial, Mr. Hamilton filed an objection to the proposed jury instruction that the interference of commerce by robbery ("Hobbs Act") charges constituted crimes of violence. CR 87; ER-V3 269-75. Under the Due Process clause of the Fifth Amendment, he objected to the district court concluding and instructing the jury that the offenses were crimes of violence. Citing *Johnson v. United States*, 135 S. Ct. 2551 (2015), he argued that the statute did not define critical terms, "such that the court can determine that the physical force element was present." CR 87 at pp. 4-5; ER-V3 272-73.

The jury convicted Mr. Hamilton on all counts. CR 108; RT 6/12/17 at 969-74; ER-V2 35-40. The district court sentenced Mr. Hamilton to two hundred sixty years in prison on all counts. CR 122, RT 11/6/17 at 18. ER-V2 28. This custodial sentence was followed by five years of supervised release. *Id.* Mr. Hamilton is presently serving that sentence.

Mr. Hamilton timely filed his notice of appeal on November 16, 2017. CR 126; ER-V2 at 9-10. Similarly, he timely filed his opening brief. CR 204; ER-V2 at 19;

Dkt#19. On appeal, he argued his convictions should be reversed because: (1) the district court erred in concluding that a Hobbs Act Robbery qualifies as a crime of violence under 18 U.S.C. § 924(c) as a matter of law, and so instructed the jury; (2) the district court plainly erred in instructing the jury that a generalized fear satisfied the elements of a Hobbs Act robbery; (3) the district court plainly erred in admitting cellular site tracking information secured in the absence of a warrant as required by the Fourth Amendment; (4) the district court plainly erred in admitting expert testimony in the absence of notice, instruction, or any safeguard to ensure the jury understood how to evaluate this blended fact/expert testimony; and (5) that the district court erred in ignoring Mr. Hamilton's statement at sentencing that he was dissatisfied with the service of his appointed lawyer and proceeded to sentence him to 260 years in custody. In a supplemental brief filed on February 22, 2019, Mr. Hamilton argued that the district court erred in sentencing Mr. Hamilton to consecutive terms of 25 years for each 924(c) count.

On January 22, 2020, the Ninth Circuit Court of Appeals affirmed in part, and remanded in part. It rejected all of Mr. Hamilton's arguments, save that the district court erred in ignoring Mr. Hamilton's statement at sentencing that he was dissatisfied with the service of his appointed lawyer and proceeding to sentence him to 260 years in custody. On this issue, the court remanded to the district court for that court to "properly evaluate the source and nature of Hamilton's expressed dissatisfaction with his attorney, and if necessary, to assign new counsel for resentencing." *United States v. Hamilton*, 2020 WL 362943, *2.

On the Hobbs Act issue, the court held that Hobbs Act robbery is a crime of violence.

It explained:

> [T]he district court [did not] err by instructing the jury that a violation of the Hobbs Act is a crime of violence under § 924(c). Precedent dictates that Hobbs Act Robbery is a "crime of violence" for the purposes of 18 U.S.C. § 924(c). Aside from this court's statement in *Mendez* that Hobbs Act Robbery "indisputably qualifies as a crime of violence," *United States v. Mendez*, 992 F.2d 1488, 1491 (9th Cir. 1993), offenses very similar to Hobbs Act Robbery have been categorized as crimes of violence for the purposes of statutes analogous to § 924(c). See *United States v. Selfa*, 918 F.2d 749, 751 (9th Cir. 1990) (federal bank robbery). *Stokeling v. United States*, 139 S. Ct. 544, 551 (2019), precludes Hamilton's argument that common-law force is insufficient.

Hamilton, 2020 WL 362942, *2.

REASONS FOR GRANTING THE WRIT

THIS COURT SHOULD GRANT THE WRIT BECAUSE THE DECISION OF THE NINTH CIRCUIT COURT OF APPEALS CONFLICTS WITH THIS COURT'S DECISION IN *STOKELING V. UNITED STATES*, 139 S.CT. 544, 551 (2019), BECAUSE THE STATUTE IMPOSES LIABILITY FOR ROBBERY IN THE ABSENCE OF A REQUIREMENT THAT FORCE BE USED DURING THE TAKING OF THE PROPERTY.

The Ninth Circuit's decision conflicts with clearly established precedent of this Court and, therefore, this Court should grant certiorari and reverse this erroneous holding. The circuit court's ruling is inconsistent with this Court's holding in *Stokeling v. United States*, 139 S.Ct. 544 (2019). The court below's decision impermissibly held that robberies that categorically do not require the potential of violence nonetheless satisfy the physical force requirement of 18 U.S.C. § 924(c)(2)(B).

In *Stokeling*, this Court analyzed whether the physical force requirement under 18 U.S.C. § 924(e), the Armed Career Criminal Act (ACCA), was meant to include traditional common law robbery committed by "force or violence," and the Court held that it did. The Court found that historically the terms "force" and "violence" were used interchangeably in common law prohibitions against robbery. This legal landscape was found to be understood by Congress when drafting 18 U.S.C. § 924. The Court held that the traditional force necessary to effectuate robbery under the common was included in the ACCA formulation of "physical force." The Court then found that Florida statute's requirement was also consistent with the common law approach and therefore, robbery under Florida law met this element under 18 U.S.C. 924(e).

In finding that common law robbery necessarily was included under the "physical force" requirement, the Court focused on robbery's requirement that the victim's will be overpowered, which "necessarily involves a physical confrontation and struggle." *Stokeling*, 139 S.Ct. at 550. The Court held that the "elements clause encompasses robbery offenses that require the criminal to overcome the victim's resistance." *Id*. "The altercation need not cause pain or injury or even be prolonged; it is the physical contest between the criminal and the victim that is itself 'capable of causing physical pain or injury.'" *Id*. at 553 (internal citation omitted). The Court emphasized the required *potential* for physical injury.

18 U.S.C. § 924(c) requires mandatory minimum sentences following conviction for possession or use of a firearm during a crime of violence. 18 U.S.C. §

924(c). "Crime of violence" under 924(c) is defined using the same elements test as is used for "violent felony" under 924(e). The court below, in analyzing whether Hobbs Act robbery also meets the same elements test (under 924(c)), impermissibly disregarded this Court's holding in *Stokeling* and permitted crimes with no potential for physical altercation or injury to satisfy the elements test as a crime of violence. *Hamilton*, 2020 WL 362943, *2.

Because the Ninth Circuit's holding is inconsistent with this Court's binding precedent in *Stokeling*, the Court should exercise its discretion to grant the requested writ. Supreme Court Rule 10. Therefore, Mr. Hamilton respectfully requests this Court to grant the writ, and reverse the Ninth Circuit, and remand this matter for further proceedings.

CONCLUSION

For the reasons stated above, this Court should grant the Writ.

Respectfully submitted: March 29, 2020.

s/Celia Rumann
CELIA RUMANN
CJA Appointed *Counsel of Record*
P.O. Box 24458
Tempe, Arizona 85285
(480) 862-6637
rumannlaw@cox.net
Attorney for Petitioner Hamilton

APPENDIX

I.

Memorandum Decision of the Ninth Circuit, in United States v. Hamilton,
Affirming in Part and Remanding in Part
(Issued January 22, 2020)
(A1-A8)

II.

Judgment of the United States for the District of Arizona
(Issued November 7, 2017)
(A9-A13)

FILED

JAN 22 2020

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. ANTHONY WAYNE HAMILTON, Defendant-Appellant.	No. 17-10490 D.C. No. 2:16-cr-00268-JJT-1 MEMORANDUM[*]

Appeal from the United States District Court
for the District of Arizona
John Joseph Tuchi, District Judge, Presiding

Argued and Submitted December 6, 2019
San Francisco, California

Before: W. FLETCHER and MILLER, Circuit Judges, and PREGERSON,[**] District Judge.

Anthony Hamilton was tried and convicted of eleven counts of Hobbs Act Robbery, in violation of 18 U.S.C. § 1951(a), and eleven counts of Possessing and Brandishing a Firearm During and in Relation to a Crime of Violence, in violation

[*] This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

[**] The Honorable Dean D. Pregerson, United States District Judge for the Central District of California, sitting by designation.

of 18 U.S.C. § 924(c). He now challenges his convictions on several grounds. The convictions stand, but we remand the case for the district court to inquire into Hamilton's dissatisfaction with his attorney at sentencing.

The district court did not violate Hamilton's Fourth Amendment right by admitting the cell phone site location information ("CSLI"). This claim was not preserved with an objection at trial, and the defense did not allege good cause for that failure in the opening brief. But even if the issue had been properly preserved, it is meritless. In 2018, the Supreme Court ruled that the acquisition of CSLI does constitute a search under the Fourth Amendment. *Carpenter v. United States*, 138 S. Ct. 2206, 2217 (2018). But the Ninth Circuit has since ruled that "CSLI acquired pre-*Carpenter* is admissible – so long as the Government satisfied the [Stored Communications Act]'s then-lawful requirements – under *Krull*'s good-faith exception." *United States v. Korte*, 918 F.3d 750, 759 (9th Cir. 2019) (applying *Illinois v. Krull*, 480 U.S. 340, 342 (1987)). There is no dispute about whether law enforcement complied with the Stored Communications Act. No Fourth Amendment violation occurred.[1]

[1]Appellant's Stipulated Motion to Supplement the Record (Dkt. 15) is granted. However, the supplemental material does not change the above analysis.

Hamilton contends that the district court committed reversible error by permitting a law enforcement officer to testify as an expert without Rule 16 compliance or a specific jury instruction. Because this issue was not preserved, we review for plain error. *United States v. Freeman*, 498 F.3d 893, 905 (9th Cir. 2007); *United States v. Conti*, 804 F.3d 977, 981 (9th Cir. 2015). The officer's testimony was not expert testimony because he did not rely on "specialized knowledge." Fed. R. Ev. 701 (Advisory Committee notes); *United States v. Barragan*, 871 F.3d 689, 704 (9th Cir. 2017) ("[T]he line between lay and expert opinion depends on the *basis* of the opinion, not its subject matter.") (emphasis added). Rather, Pluta's testimony incorporated information "rationally based on [his] perception" during the investigation. Fed. R. Evid. 701.

The district court instructed the jury that a Hobbs Act Robbery occurs, in relevant part, when "the defendant induced [the victims] to part with property by wrongful use of the [sic] actual or threatened force, violence, or fear." Hamilton alleges that the district court committed reversible error by omitting "of injury" from the phrase "fear *of injury*." The defense cites no cases for the proposition that the omission of the phrase 'of injury' was error. But even if it was error, the error did not affect Hamilton's substantial rights because the error did not prejudice him or affect the outcome of the proceedings. *United States v. Olano*, 507 U.S. 725,

734 (1993). The record is replete with examples of the robbery victims expressing fear – not generalized fear, but fear "of injury." The defense offers no concrete analysis about how the addition of the phrase 'of injury' would have altered the proceedings.

Nor did the district court err by instructing the jury that a violation of the Hobbs Act is a crime of violence under § 924(c). Precedent dictates that Hobbs Act Robbery is a "crime of violence" for the purposes of 18 U.S.C. § 924(c). Aside from this court's statement in *Mendez* that Hobbs Act Robbery "indisputably qualifies as a crime of violence," *United States v. Mendez*, 992 F.2d 1488, 1491 (9th Cir. 1993), offenses very similar to Hobbs Act Robbery have been categorized as crimes of violence for the purposes of statutes analogous to § 924(c). *See United States v. Selfa*, 918 F.2d 749, 751 (9th Cir. 1990) (federal bank robbery). *Stokeling v. United States*, 139 S. Ct. 544, 551 (2019), precludes Hamilton's argument that common-law force is insufficient.

Hamilton is not entitled to resentencing under the First Step Act. Because his conviction is on appeal and has not yet become final, the law at the time of the appellate decision – including the First Step Act – governs. *See Henderson v. United States*, 568 U.S. 266, 271–73 (2013). Therefore, the question is whether the First Step Act, on its own terms, grants Hamilton resentencing. It does not.

Section 403 of the First Step Act excludes Hamilton because his sentence has already been "imposed." *Cf. United States v. Davis*, 139 S. Ct. 2319, 2324 n.1 ("In 2018, Congress changed the law so that, *going forward*, only a second § 924(c) violation committed 'after a prior [§ 924(c)] conviction ... has become final' will trigger the 25-year minimum.") (emphasis added) (citation omitted); *United States v. McDonald*, 611 F.2d 1291, 1292 (9th Cir. 1980) ("The sentence sought to be vacated *was imposed on October 8, 1976* following the vacation of a sentence *previously imposed on November 6, 1972*, under which appellant was granted probation.") (emphasis added) (identifying the imposition of a sentence as a discrete moment in time).

However, the district court did err by failing to inquire when, during sentencing, Hamilton expressed dissatisfaction with his attorney. "When a trial court is informed of a conflict between trial counsel and a defendant, the trial court should question the attorney or defendant privately and in depth and examine available witnesses[.]" *Daniels v. Woodford*, 428 F.3d 1181, 1200–01 (9th Cir. 2005) (quotation marks and citations omitted). In cases where the trial court conducted no inquiry into the nature and extent of the conflict between a defendant and counsel, or even an insufficiently searching inquiry, we have found an abuse of discretion in the court's denial of a motion to substitute counsel. *Id.* at 1200–01;

United States v. Moore, 159 F.3d 1154, 1160–61 (9th Cir. 1998); *Velazquez*, 855 F.3d 1021, 1035, 1037 (9th Cir. 2017). Here, Defendant's unambiguous statement that he was not satisfied with his attorney — in conjunction with counsel's acknowledgment that, as a result of that dissatisfaction, she had no information other than what was contained in the presentence report — was sufficient to put the district court on notice that some conflict existed. Because the district court conducted no inquiry at all, denying Hamilton's motion was an abuse of discretion. We remand for the court to properly evaluate the source and nature of Hamilton's expressed dissatisfaction with his attorney and, if necessary, to assign new counsel for re-sentencing.

AFFIRMED IN PART, REVERSED AND REMANDED IN PART.

United States v. Hamilton, No. 17-10490

MILLER, J., concurring in part and dissenting in part:

I join in the court's disposition and reasoning, except as to the last paragraph. I agree that it is a good practice for a court to inquire further when a defendant expresses dissatisfaction with counsel, but our case law does not require it to do so. In *Daniels v. Woodford*, 428 F.3d 1181, 1200 (9th Cir. 2005), we held that a court must question counsel and the defendant after being "informed of a conflict" between them. But Hamilton's simple "no" in response to the question "have you been satisfied with the representation that [counsel] has given you" did not inform the court of a conflict. Still less was that one-word answer a motion to substitute counsel. Treating it as such is unwarranted in light of Hamilton's history of seeking new counsel. After Hamilton's prior counsel moved to withdraw, the court granted the motion but explained to Hamilton that "[t]he fact that you're dissatisfied or may be dissatisfied with an attorney is not a reason for me to give a new lawyer," and that only a conflict that "breaks down . . . the relationship or the communication" would create "a potential for . . . ineffective assistance of counsel" establishing a basis for substitution. And although counsel stated that Hamilton had not told her of any corrections to the presentence report, she did not attribute that to his dissatisfaction or to a breakdown in their relationship. I do not

believe the district court abused its discretion in declining to hold a hearing on a motion that Hamilton did not make, so I would affirm the judgment in all respects.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America

v.

Anthony Wayne Hamilton

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

No. CR-16-00268-001-PHX-JJT

Kristina Sitton Matthews (CJA)
Attorney for Defendant

USM#: 55895-408

THERE WAS A VERDICT OF guilty on 6/12/2017 as to Counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22 of the Superseding Indictment.

ACCORDINGLY, THE COURT HAS ADJUDICATED THAT THE DEFENDANT IS GUILTY OF THE FOLLOWING OFFENSE(S): violating Title 18, U.S.C. §1951(a), Robbery, a Class C Felony offense, as charged in Counts 1, 3, 5, 7, 9, 11, 13, 15, 17, 19 and 21 of the Superseding Indictment; Title 18, U.S.C. §924(c), Possessing Firearm During Crime of Violence, a Class A Felony offense, as charged in Count 2 of the Superseding Indictment; Title 18, U.S.C. §924(c), Possessing Firearm During Crime of Violence, a Class A Felony offense, as charged in Counts 4, 6, 8, 10, 12, 14, 16, 18, 20 and 22 of the Superseding Indictment.

IT IS THE JUDGMENT OF THIS COURT THAT the defendant is committed to the custody of the Bureau of Prisons for a term of **TWO-HUNDRED and SIXTY (260) YEARS**, which consists of **THIRTY-SIX (36) MONTHS** on Counts 1, 3, 5, 7, 9, 11, 13, 15, 17, 19 and 21, said counts to run concurrently, and **EIGHTY-FOUR (84) MONTHS** on Count 2, said count to run consecutively to all other counts and **THREE HUNDRED (300) MONTHS** on Counts 4, 6, 8, 10, 12, 14, 16, 18, 20 and 22, said counts to run consecutively to each other and all other counts with credit for time served. The court recommends that the Bureau of Prisons place the defendant in the 500-hour substance abuse treatment program. The court also recommends that the Bureau consider designating the defendant to a facility in the Southwest Region, if it is otherwise consistent with the primary recommendation of placement in the 500-hour substance abuse treatment program. Upon release from imprisonment, the defendant shall be placed on supervised release for a term of **THIRTY-SIX (36) MONTHS** on Counts 1, 3, 5, 7, 9, 11, 13, 15, 17, 19 and 21 and **SIXTY (60) MONTHS** on Counts 2, 4, 6, 8, 10, 12, 14, 16, 18, 20 and 22, said counts to run concurrently.

IT IS FURTHER ORDERED that defendant's interest in the following property shall be forfeited to the United States: one Glock 19, 9mm handgun, serial number HYH938, one magazine from the Glock 19, and 15 rounds of ammunition from the Glock 19 magazine, and a total of $1,522 in US currency.

CRIMINAL MONETARY PENALTIES

The defendant shall pay to the Clerk the following total criminal monetary penalties:

SPECIAL ASSESSMENT: $2,200.00 **FINE:** WAIVED **RESTITUTION:** $1,758.24

The defendant shall pay a special assessment of $2,200.00 which shall be due immediately.

The Court finds the defendant does not have the ability to pay a fine and orders the fine waived.

The defendant shall pay restitution to the following victim(s) in the following amount(s):

Circle K, in the amount of $89.00; Mobil, in the amount of $288.00; Superpumper, in the amount of $489.29; Chevron, in the amount of $891.95.

The defendant shall pay a total of $3,958.24 in criminal monetary penalties, due immediately. Having assessed the defendant's ability to pay, payments of the total criminal monetary penalties are due as follows: Balance is due in equal monthly installments of $70.00 over a period of 57 months to commence 60 days after the release from imprisonment to a term of supervised release.

If incarcerated, payment of criminal monetary penalties are due during imprisonment at a rate of not less than $25 per quarter and payment shall be made through the Bureau of Prisons' Inmate Financial Responsibility Program. Criminal monetary payments shall be made to the Clerk of U.S. District Court, Attention: Finance, Suite 130, 401 West Washington Street, SPC 1, Phoenix, Arizona 85003-2118. Payments should be credited to the various monetary penalties imposed by the Court in the priority established under 18 U.S.C. § 3612(c). The total special assessment of $2,200.00 shall be paid pursuant to Title 18, United States Code, Section 3013 for Count 20, 22 of the Superseding Indictment.

Any unpaid balance shall become a condition of supervision and shall be paid within 90 days prior to the expiration of supervision. Until all restitutions, fines, special assessments and costs are fully paid, the defendant shall immediately notify the Clerk, U.S. District Court, of any change in name and address. The Court hereby waives the imposition of interest and penalties on any unpaid balances.

SUPERVISED RELEASE

It is ordered that while on supervised release, the defendant must comply with the mandatory and standard conditions of supervision as adopted by this court, in General Order 17-18, which incorporates the requirements of USSG §§ 5B1.3 and 5D1.2. Of particular importance, the defendant must not commit another federal, state, or local crime during the term of supervision. Within 72 hours of sentencing or release from the custody of the Bureau of Prisons the defendant must report in person to the Probation Office in the district to which the defendant is released. The defendant must comply with the following conditions:

MANDATORY CONDITIONS

1) You must not commit another federal, state or local crime.
2) You must not unlawfully possess a controlled substance. The use or possession of marijuana, even with a physician's certification, is not permitted.

3) You must refrain from any unlawful use of a controlled substance. The use or possession of marijuana, even with a physician's certification, is not permitted. Unless suspended by the Court, 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.

STANDARD CONDITIONS

1) You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of sentencing or 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.

SPECIAL CONDITIONS

The following special conditions are in addition to the conditions of supervised release or supersede any related standard condition:

1) You shall provide all financial documentation requested by the probation office.

2) You shall participate in a mental health program as directed by the probation officer which may include taking prescribed medication. You shall contribute to the cost of treatment in an amount to be determined by the probation officer.

3) You shall submit your person, property, house, residence, vehicle, papers, or office, to a search conducted by a probation officer. Failure to submit to a search may be grounds for revocation of release. You shall warn any other occupants that the premises may be subject to searches pursuant to this condition.

4) You shall participate as instructed by the probation officer in a program of substance abuse treatment which may include testing for substance abuse. You shall contribute to the cost of treatment in an amount to be determined by the probation officer.

5) You shall abstain from all use of alcohol or alcoholic beverages.

6) You are prohibited from making major purchases in excess of $1,000, incurring new financial obligations, or entering into any financial contracts without the prior approval of the probation officer.

THE COURT FINDS that you have been sentenced in accordance with the terms of the plea agreement and that you have waived your right to appeal and to collaterally attack this matter. The waiver has been knowingly and voluntarily made with a factual basis and with an understanding of the consequences of the waiver.

The Court may change the conditions of probation or supervised release or extend the term of supervision, if less than the authorized maximum, at any time during the period of probation or

supervised release. The Court may issue a warrant and revoke the original or any subsequent sentence for a violation occurring during the period of probation or supervised release.

The Court orders commitment to the custody of the Bureau of Prisons.

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

Date of Imposition of Sentence: **Monday, November 06, 2017**

Dated this 7th day of November, 2017.

Honorable John J. Tuchi
United States District Judge

RETURN

I have executed this Judgment as follows: _____

_____, the institution

defendant delivered on _____ to _____ at _____

designated by the Bureau of Prisons with a certified copy of this judgment in a Criminal case.

_____ By: _____

United States Marshal Deputy Marshal