

Appendix "1"

United States District Court

District of South Carolina

UNITED STATES OF AMERICA

AMENDED JUDGMENT IN A CRIMINAL CASE

VS.

FREDDIE LEE CURRY, a/k/a "Rat,"
a/k/a "King of da Hood"

Date of Original Judgment: 8/26/2015
(or Date of Last Amended Judgment)

Case Number: 1:08-729 (004 MBS)

USM Number: 15498-071

Daniel Leonardi

Defendant's Attorney

Reason for Amendment:

- ☐ Correction of Sentence on Remand (18 U.S.C. 3742(f)(1) and (2))
- ☐ Reduction of Sentence for Changed Circumstances (Fed.R. Crim. P. 35(b))
- ☐ Correction of Sentence by Sentencing Court (Fed.R.Crim.P.35(a))
- ☐ Correction of Sentence for Clerical Mistake (Fed.R.Crim.P.36)
- ☐ Modification of Supervision Conditions (18 U.S.C. §3563(c) or 3583(e))
- ☐ Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. §3582(c)(1))
- ☐ Modification of Imposed Term of Imprisonment for Retroactive Amendment(s) to the Sentencing Guidelines (18 U.S.C. §3582(c)(2))
- ☒ Direct Motion to District Court Pursuant to ☐ 28 U.S.C. §2255 or ☐ 18 U.S.C. §3559(c)(7) ☒ §404(b) of the First Step Act of 2018
- ☐ Modification of Restitution Order (18 U.S.C. §3664)

THE DEFENDANT:

- ☐ pleaded guilty to Count(s) _____ on _____.
- ☐ pleaded nolo contendere to Count(s) on which was accepted by the court.
- ☒ was found guilty on Counts 1, 16, and 17 of the Superseding Indictment on 6/19/09 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>
21:846	Please see Superseding Indictment	5/20/09	1
21:841(a)(1), (b)(1)(B) & (b)(1)(C)	Please see Superseding Indictment	4/8/08	16
21:841(a)(1), (b)(1)(C) & (b)(1)(D)	Please see Superseding Indictment	4/22/08	17

The defendant is sentenced as provided in pages 2 through 11 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☒ The defendant has been found not guilty on counts 18 of the Superseding Indictment.
- ☒ Count(s) 1, 13-18 of the Indictment; 13-15 of the Superseding Indictment ☐ is ☒ are dismissed on the motion of the United States.
- ☐ Forfeiture provision is hereby dismissed on motion of the United States Attorney.

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 any material changes in economic circumstances.

August 22, 2019

Date of Imposition of Judgment

/s/ Margaret B. Seymour

Signature of Judge

Margaret B. Seymour, Senior United States District Judge

Name and Title of Judge

September 11, 2019

Date

DEFENDANT: FREDDIE LEE CURRY
CASE NUMBER: 1:08-729**IMPRISONMENT**

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of two hundred sixty-two (262) months as to each count, to run concurrently.

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

☒ 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

AO 245B (SCDC Rev. 02/18) Judgment in a Criminal Case

Sheet 3 - Supervised Release

DEFENDANT: FREDDIE LEE CURRY
CASE NUMBER: 1:08-729

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of eight (8) years, consisting of eight (8) years as to count 1, six (6) years as to count 16, and six (6) years as to count 17, to run concurrently.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. §20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program of domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with the following special condition:

- 1) The defendant shall satisfactorily participate in a substance abuse treatment program, to include drug testing, as approved by U.S. Probation Office.

AO 245B (SCDC Rev. 02/18) Judgment in a Criminal Case
Sheet 3A- Supervised Release

DEFENDANT: FREDDIE LEE CURRY
CASE NUMBER: 1:08-729

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 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 _____

AO 245B (SCDC Rev. 02/18) Judgment in a Criminal Case

Sheet 5 - Criminal Monetary Penalties

DEFENDANT: FREDDIE LEE CURRY

CASE NUMBER: 1:08-729

CRIMINAL MONETARY PENALTIES

The defendant shall 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	\$ 300.00		\$	\$

☐ The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case(AO245C) 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>
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TOTALS	\$	\$
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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 judgment, pursuant to 18 U.S.C. §3612(f). All of the payment options on Sheet 5 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.

AO 245B (SCDC Rev. 02/18) Judgment in a Criminal Case
 Sheet 6 - Schedule of Payments

DEFENDANT: FREDDIE LEE CURRY
 CASE NUMBER: 1:08-729

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 \$ 300.00 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 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 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 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 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:

As directed in the Preliminary Order of Forfeiture, filed 4/1/10 and the said order is incorporated herein as part of this judgment.

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

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION

UNITED STATES OF AMERICA	)	CRIMINAL NO.:1:08-729
	)	
	)	JUDGMENT AND
v.	)	PRELIMINARY ORDER OF
	)	FORFEITURE
FREDDIE LEE CURRY	)	

1. On May 20, 2009, a Federal Grand Jury in the District of South Carolina returned a Superseding Indictment in which Defendant FREDDIE LEE CURRY, was charged in Count 1 with conspiracy to possess with intent to distribute and distribution of cocaine base, involving 50 grams or more of cocaine base, in violation of Title 21, United States Code, Sections 841(a)(1) and 846; in Counts 13 thru 16 with possession with intent to distribute and distribution of 5 grams or more of cocaine base (commonly known as "crack" cocaine), in violation of Title 21, United States Code, Section 841(a)(1), Count 17 with possession with intent to distribute a quantity of cocaine and a quantity of marijuana, in violation of 21 United States Code, Section 841(a)(1), and Count 18 with possession of a firearm in furtherance of a drug trafficking crime, in violation of Title 18, United States Code, Section 924(c)(1).

2. The Superseding Indictment provided that upon conviction of the Defendant, certain property enumerated therein and below, or equivalent substitute assets, would be subject to forfeiture to the United States pursuant to 18 U.S.C. §§ 924(d) and

981, 21 U.S.C. §§ 853 and 881, and 28 U.S.C. § 2461(c).

3. On June 19, 2009, FREDDIE LEE CURRY, was convicted after trial by jury of Count 1, conspiracy to possess with intent to distribute and distribution of cocaine base involving 50 grams or more, in violation of 21 U. S. C. §§ 841(a)(1) and 846, Count 16, possession with intent to distribute and distribution of 5 grams or more of cocaine base (commonly known as “crack” cocaine), in violation of 21 U.S.C. § 841(a)(1) and Count 17, possession with intent to distribute a quantity of cocaine and a quantity of marijuana, in violation of Title 21, United States Code, Section 841(a)(1).

4. Based upon the Defendant’s conviction after trial by jury for violating 21 U. S. C. §§ 841(a)(1) and 846, testimony and evidence presented at trial, and other matters appearing in the record, the court has determined that Defendant, FREDDIE LEE CURRY, has an interest in the below-described property, and such property is subject to forfeiture to the United States pursuant to 21 U. S. C. § 853 and 28 U. S.C. § 2461(c).

5. The court further finds the Government has established the requisite nexus between the property and the offenses for which Defendant has been convicted. Therefore, said property shall be forfeited to the United States, subject to the provisions of 21 U.S.C. § 853 governing third-party rights.

IT IS ORDERED:

1. All right, title and interest of Defendant, FREDDIE LEE CURRY, in and to the following property is hereby forfeited to the United States of America for

disposition in accordance with law, subject to the provisions of 21 U.S.C. § 853(n):

A. Cash:

- (1) \$500.81 in US Currency
Asset ID# 08-ATF-018461
- (2) \$660.77 in US Currency
Asset ID# 08-ATF-010498

2. Upon entry, this Order becomes final as to Defendant, FREDDIE LEE CURRY, and shall be made part of his sentence and included in the criminal Judgment.

3. Upon entry of this Order, the Bureau of Alcohol, Tobacco, Firearms and Explosives and the United States Marshals Service, or their designees are authorized to seize the above-described forfeited property as directed by the United States Attorney's Office. The United States Attorney is authorized to conduct proper discovery in identifying, locating, or disposing of the property, in accordance with Fed. R. Crim. P. 32.2(b)(3); and to commence proceedings that comply with statutes governing third party rights, if applicable.

4. The United States shall publish notice of this Order and its intent to dispose of the property in such manner as the United States Attorney General may direct. The United States may also, to the extent practicable, provide written notice to any person known to have an alleged interest in the said property.

5. Any person, other than the above named Defendant, asserting a legal interest in the subject property may, within thirty (30) days of the final publication of notice or

receipt of notice, whichever is earlier, petition the court for a hearing without a jury to adjudicate the validity of his alleged interest in the subject property, and for an amendment of the order of forfeiture, pursuant to 21 U.S.C. § 853(n)(6) and F. R. Crim. P. 32.2(c)(2).

6. Any petition filed by a third party asserting an interest in the above-referenced property shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the subject property, the time and circumstances of the petitioner's acquisition of the right, title or interest in such property, any additional facts supporting the petitioner's claim and the relief sought.

7. The United States shall have clear title to the said property following the court's determination of all third-party interests, or, if no petitions are filed, following the expiration of the period provided in 21 U.S.C. § 853(n)(2) for the filing of third-party petitions.

8. The court shall retain jurisdiction to enforce this Order and to amend it as necessary, pursuant to Fed. R. Crim. P. 32.2(e).

9. The Clerk, U.S. District Court, shall provide one (1) certified copy of this Order to the United States Attorney's Office for service of interested third parties and other purposes.

AND IT IS SO ORDERED.

S/MARGARET B. SEYMOUR
UNITED STATES DISTRICT JUDGE

March 31, 2010
Columbia, South Carolina

**FEDERAL PUBLIC DEFENDER
DISTRICT OF SOUTH CAROLINA**

Parks N. Small

Federal Public Defender

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McMillan Federal Building
Evans Street, Suite 105
P.O. Box 1873
Florence, S.C. 29503
Tel: (843) 662-1510
Fax: (843) 667-1355

Reply to: Columbia

September 12, 2019

DO NOT OPEN, EXCEPT IN PRESENCE OF ADDRESSEE ONLY.

Mr. Freddie Lee Curry, Inmate
Reg. No. 15498-071
FCI Yazoo City Low
FEDERAL CORRECTIONAL INSTITUTION
P.O. BOX 5000
YAZOO CITY, MS 39194

**RE: USA VS. FREDDIE LEE CURRIE
CRIMINAL NUMBER: 1:08-729**

Dear Mr. Curry:

Pursuant to the request of your attorney, Daniel C. Leonardi, Assistant Federal Public Defender, please find enclosed a copy of the **Amended Judgment** filed in your case on September 12, 2019.

Thank you for your attention herein.

Sincerely,

s/Carley P. Kersey
Carley P. Kersey
Legal Assistant

:cpk
Enclosures

Appendix "2"

UNPUBLISHED

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

No. 19-7353

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

FREDDIE LEE CURRY, a/k/a King of da Hood, a/k/a Rat,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Aiken.
Margaret B. Seymour, Senior District Judge. (1:08-cr-00729-MBS-4)

Submitted: January 31, 2020

Decided: February 5, 2020

Before WILKINSON and NIEMEYER, Circuit Judges, and SHEDD, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Freddie Lee Curry, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Freddie Lee Curry appeals the district court's order granting his motion for a sentence reduction pursuant to the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194 ("FSA"). Curry asserts that, when calculating his amended Guidelines range, the district court improperly considered his relevant conduct for drug quantity purposes. As such, he contends that his Guidelines range should have been lower, based only upon the drug amount found by the jury. Specifically, he asserts that the district court violated *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and *Alleyne v. United States*, 570 U.S. 99 (2013). We affirm.

Apprendi held "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." 530 U.S. 466, 490 (2000). *Alleyne* went a step further, declaring, "[m]andatory minimum sentences increase the penalty for a crime. It follows, then, that any fact that increases the mandatory minimum is an 'element' that must be submitted to the jury." 570 U.S. at 102. Curry asserts that *Apprendi* and *Alleyne* mandated that his Guidelines range be recalculated without consideration of his relevant conduct.

However, *Alleyne* and *Apprendi* have no application to Curry's sentence in this case. The district court's drug quantity determination at the original sentencing (and upon consideration of his FSA motion) did not increase Curry's statutory mandatory minimum or maximum sentence, but rather was used only to determine his advisory Guidelines range.

Alleyne itself recognized that “broad sentencing discretion, informed by judicial factfinding, does not violate the Sixth Amendment.” 570 U.S. at 116.

When considering Curry’s FSA motion, the district court correctly found that Curry was eligible for a sentencing reduction under the FSA, given the change in his statutory sentencing range based upon the drug quantity found by the jury. *See United States v. Wirsing*, 943 F.3d 175, 185-86 (4th Cir. 2019). However, in determining whether to grant the motion and the extent of the reduction, the district court is not required to calculate an amended Guidelines range without consideration of relevant conduct. Instead, the Sentencing Guidelines calculations are simply adjusted “as if” the current lower drug offense sentences were in effect at the time of the commission of the offense. *United States v. Hegwood*, 934 F.3d 414, 417-19 (5th Cir. 2019).

Accordingly, we affirm. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

Appendix "3"

FILED: March 3, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-7353
(1:08-cr-00729-MBS-4)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

FREDDIE LEE CURRY, a/k/a King of da Hood, a/k/a Rat

Defendant - Appellant

O R D E R

The court strictly enforces the time limits for filing petitions for rehearing and petitions for rehearing en banc in accordance with Local Rule 40(c). The petition in this case is denied as untimely.

For the Court--By Direction

/s/ Patricia S. Connor, Clerk