

APPENDIX A

COPY OF THE EIGHTH CIRCUIT COURT OF APPEALS'S MANDATE DATED ON 03/05/2020
AND ORDER DATED ON 02/26/2020

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

No: 20-1017

United States of America

Appellee

v.

Viengxay Chantharath

Appellant

Appeal from U.S. District Court for the District of South Dakota - Sioux Falls
(4:10-cr-40004-KES-1)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

February 26, 2020

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

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

No: 20-1017

United States of America

Appellee

v.

Viengxay Chantharath

Appellant

Appeal from U.S. District Court for the District of South Dakota - Sioux Falls
(4:10-cr-40004-KES-1)

MANDATE

In accordance with the judgment of 01/06/2020, and pursuant to the provisions of Federal Rule of Appellate Procedure 41(a), the formal mandate is hereby issued in the above-styled matter.

March 05, 2020

Clerk, U.S. Court of Appeals, Eighth Circuit

APPENDIX B

COPY OF THE EIGHTH CIRCUIT COURT OF APPEALS' JUDGMENT TO AFFIRM THE
U.S DISTRICT COURT'S ORDER DATED ON 01/06/2020

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

No: 20-1017

United States of America

Plaintiff - Appellee

v.

Viengxay Chantharath

Defendant - Appellant

Appeal from U.S. District Court for the District of South Dakota - Sioux Falls
(4:10-cr-40004-KES-1)

JUDGMENT

Before COLLOTON, GRUENDER, and KELLY, Circuit Judges.

This court has reviewed the original file of the United States District Court. It is ordered by the court that the judgment of the district court is summarily affirmed. See Eighth Circuit Rule 47A(a).

January 06, 2020

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

United States Court of Appeals
For The Eighth Circuit
Thomas F. Eagleton U.S. Courthouse
111 South 10th Street, Room 24.329
St. Louis, Missouri 63102

Michael E. Gans
Clerk of Court

VOICE (314) 244-2400
FAX (314) 244-2780
www.ca8.uscourts.gov

January 06, 2020

Mr. Viengxay Chantharath
U.S. PENITENTIARY
09163-041
P.O. Box 300
Waymart, PA 18472-0000

RE: 20-1017 United States v. Viengxay Chantharath

Dear Mr. Chantharath:

Enclosed is a copy of the dispositive order in the referenced appeal. Please note that FRAP 40 of the Federal Rules of Appellate Procedure requires any petition for rehearing to be filed within 14 days after entry of judgment. Counsel-filed petitions must be filed electronically in CM/ECF. Paper copies are not required. This court strictly enforces the 14 day period. **No grace period for mailing is granted** for pro-se-filed petitions. A petition for rehearing or a motion for an extension of time must be filed with the Clerk's office within the 14 day period.

Michael E. Gans
Clerk of Court

CMD

Enclosure(s)

cc: Mr. John E. Haak
Ms. Connie Larson
Mr. Matthew W. Thelen

District Court/Agency Case Number(s): 4:10-cr-40004-KES-1

APPENDIX C

COPY OF CHANTHARATH'S REHEARING AND EN BANC REHEARING PETITION FILED
ON 01/14/2020

APPENDIX-D

Copy of the U.S District Court's Order Denying Motion to Reduce
Sentence dated on 12/16/2019

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. VIENGXAY CHANTHARATH, Defendant.	4:10-CR-40004-01-KES ORDER DENYING MOTION TO REDUCE SENTENCE
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Defendant, Viengxay Chantharath, appearing pro se, filed a motion to reduce his sentence under the First Step Act. Docket 950. By the standing order of January 10, 2019, the Federal Public Defender for the District of South Dakota was appointed to represent all defendants who filed pro se pleadings seeking relief under the First Step Act. An Assistant Federal Public Defender filed a notice of intent to not supplement Chantharath's motion. Docket 951. The government responded to defendant's motion opposing it. Docket 954.

The court may modify an imposed term of imprisonment only when expressly permitted by statute or by Rule 35 of the Federal Rules of Criminal Procedure. 18 U.S.C. § 3582(c)(1)(B). "Section 404 is the only provision [of the First Step Act] that applies retroactively to defendants who have already been sentenced." *United States v. Gonzalez-Oseguera*, Crim. No. 06-00593, 2019 WL 1270916, at *1 (D. Haw. Mar. 19, 2019). "Section 404 permits the district courts to reduce a sentence retroactively based on the revised statutory

penalties of the Fair Sentencing Act of 2010, Pub. Law 111-220; 124 Stat. 2372. *See* First Step Act § 404(a).” *Id.* “The Fair Sentencing Act of 2010 modified the statutory sentencing range only for crack cocaine offenses.” *Id.*

Chantharath was found guilty after a jury trial of Conspiracy to distribute 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers, a Schedule II controlled substance, all in violation of 21 U.S.C. §§ 841(a)(1) and 846. *See* Dockets 497 and 614. Because Chantharath was convicted of a methamphetamine offense, he is not eligible for a reduction of his imprisonment under the First Step Act. *See* Order Denying Motion for Reduction of Sentence, *United States v. Running Hawk*, 5:12-cr-50137-JLV (D.S.D. Dec. 4, 2019), Docket 47. *See also* *Gonzalez-Oseguera*, 2019 WL 1270916, at *1; *United States v. Jackson*, No. 2:03-cr-0110, 2019 WL 3936303 (E.D. Cal. Aug. 20, 2019), at *1.

No good cause appearing, it is

ORDERED that the motion for reduction of sentence (Docket 950) is denied.

DATED December 16, 2019.

BY THE COURT:

/s/ Karen E. Schreier

KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE

APPENDIX-E

Copy of the defendant-appellant's 7th Superseding Indictment filed
on 09/07/2011

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

FILED

SEP 07 2011

[Signature]
CLERK

UNITED STATES OF AMERICA,

Plaintiff,

vs.

VIENGXAY CHANTHARATH,
a/k/a "OG,"
MARIO MALDONADO,
a/k/a "Marco,"
PATRICIO GUZMAN-ORTIZ,
ROSENDO GARCIA-NAVARRO,
a/k/a "Truck Driver,"
JOEL RAMIREZ-DEDIOS,
a/k/a Joel Dedios-Ramirez,
a/k/a Joel Dedios,
a/k/a Joel Ramirez De Dios,
RICARDO AYALA LUIS,
a/k/a Ricardo Ayala-Luis,
a/k/a Ricardo Luis-Ayala,
MARSHAL JAMES SANCHEZ,
FELICIA ANN OMARA,
MICHELLE CHERIE FEISS, and
RODNEY JAMES NEWCOMB,

Defendants.

CR10-40004-01, 04, 06, 11, 12, 13,
14, 15, 16, 17

SEVENTH SUPERSEDING
INDICTMENT (REDACTED)

Conspiracy to Distribute a Controlled
Substance

21 U.S.C. §§ 841(a)(1) and 846

The Grand Jury charges:

Between on or about the summer of 2008 and on or about March 4, 2011,
in the District of South Dakota and elsewhere, Viengxay Chantharath, a/k/a
"OG," Mario Maldonado, a/k/a "Marco," Patricio Guzman-Ortiz, Rosendo Garcia-
Navarro, a/k/a "Truck Driver," Joel Ramirez-Dedios, a/k/a Joel Dedios-Ramirez,

a/k/a Joel Dedios, a/k/a Joel Ramirez De Dios, Ricardo Ayala Luis, a/k/a Ricardo Ayala-Luis, a/k/a Ricardo Luis-Ayala, Marshal James Sanchez, Felicia Ann Omara, Michelle Cherie Feiss, and Rodney James Newcomb, did knowingly and intentionally combine, conspire, confederate, and agree together, with others known and unknown to the Grand Jury, to knowingly and intentionally distribute 500 grams or more of a mixture and substance containing methamphetamine, a Schedule II controlled substance, in violation of 21 U.S.C. §§ 841(a)(1) and 846.

FORFEITURE ALLEGATION

1. The allegations contained in Count 1 of this Seventh Superseding Indictment are hereby realleged and incorporated by reference for the purpose of alleging forfeitures pursuant to 21 U.S.C. § 853.

2. Pursuant to 21 U.S.C. § 853, upon conviction of the offense alleged in Count 1 of this Seventh Superseding Indictment, the Defendant, Rosendo Garcia-Navarro, a/k/a "Truck Driver," shall forfeit to the United States any property constituting, and derived from, any proceeds obtained, directly or indirectly, as the result of such offense and any property used, and intended to be used, in any manner or part, to commit, and to facilitate the commission of, the offense, including, but not limited to, the following:

1. ASSETS

- (a) \$60,126.00 in United States currency;
- (b) \$40,020.00 in United States currency; and

- (c) Contents seized from Wells Fargo Bank account #XXXXXX3876 including \$3,936.16.


2. SUBSTITUTE ASSETS

If any of the above-described forfeitable property, as a result of any act or omission of Defendant Rosendo Garcia-Navarro, a/k/a "Truck Driver":

- (a) cannot be located upon the exercise of due diligence;
- (b) has been transferred or sold to, or deposited with, a third party;
- (c) has been placed beyond the jurisdiction of the Court;
- (d) has been substantially diminished in value; or
- (e) has been commingled with other property which cannot be divided without difficulty;


the United States shall be entitled to forfeiture of substitute property pursuant to 21 U.S.C. § 853(p).

A TRUE BILL:



Foreperson

BRENDAN V. JOHNSON
UNITED STATES ATTORNEY

By: 

APPENDIX-H

Copy of the defendant-appellant's final judgment filed on 01/30/2012

UNITED STATES DISTRICT COURT

District of South Dakota, Southern Division

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

vs.

VIENGXAY CHANTHARATH, A/K/A "OG"

Case Number: 4:10CR40004-01

USM Number: 09163-041

FILED

JAN 30 2012

Scott Hendricks Leuning
Defendant's Attorney


CLERK

THE DEFENDANT:

- ☐ pleaded guilty to count(s)
- ☐ pleaded nolo contendere to count(s) which was accepted by the court.
- ☒ was found guilty on count(s) 1 of the Seventh Superseding Indictment after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21 U.S.C. §§ 846 and 841(a)(1)-	Conspiracy to Distribute a Controlled Substance	03/04/2011	1ssssss

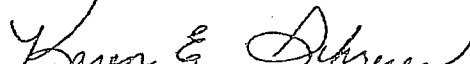
The defendant is sentenced as provided in this judgment. The sentence is imposed pursuant the statutory and constitutional authority vested in this court.

- ☐ 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 must notify the court and United States attorney of any material changes in economic circumstances.

01/30/2012

Date of Imposition of Judgment


Signature of Judge

Karen E. Schreier, Chief Judge
Name and Title of Judge

January 30, 2012
Date

001

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CASE NUMBER: 4:10CR40004-01

IMPRISONMENT

- ☒ The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:
Life without release.
- ☐ 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. _____
- ☐ as notified by the United States Marshal.
- ☐ as notified by the Probation or Pretrial Services Offices.

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

002

DEFENDANT: VIENGXAY CHANTHAKATH, AKA
CASE NUMBER: 4:10CR40004-01

CRIMINAL MONETARY PENALTIES

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

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

- ☐ The determination of restitution is deferred until .
An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.
- ☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority Or Percentage</u>
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TOTALS \$ _____ \$ _____

- ☐ Restitution amount ordered pursuant to plea agreement \$
- ☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☐ The court determined that the defendant does not have the ability to pay interest, and it is ordered that:
- ☐ the interest requirement is waived for the ☐ fine ☐ restitution.
- ☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

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

DEFENDANT: VIENGXAY CHANTHARATH, A/K/A "OO"
CASE NUMBER: 4:10CR40004-01

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 \$ 100.00 due immediately.
- ☐ not later _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below); or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, ☐ F below); or
- C ☐ Payment in equal weekly (e.g., weekly, monthly, quarterly) installments of \$ over a period of (e.g., months or years), to commence (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal weekly (e.g., weekly, monthly, or 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 of the criminal monetary penalties shall be due in regular quarterly installments of _____ of the deposits in the defendant's inmate trust account while the defendant is in custody. Any portion of the monetary obligation(s) not paid in full prior to the defendant's release from custody shall be due in monthly installments of _____, such payments to begin, _____ days following the defendant's release; 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 the court.

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

☐ Joint and Several

Defendant and Co-Defendant Names and Case Number (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:

005

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

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