

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

March 3, 2020

Lyle W. Cayce
Clerk

No. 19-60292
Summary Calendar

D.C. Docket No. 3:14-CR-114-2

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

CHRISTOPHER RAYNARD KIDD,

Defendant - Appellant

Appeal from the United States District Court
for the Southern District of Mississippi

Before BARKSDALE, ELROD, and DUNCAN, Circuit Judges.

J U D G M E N T

This cause was considered on the record on appeal and the briefs on file.

It is ordered and adjudged that the judgment of the District Court is affirmed.



Certified as a true copy and issued
as the mandate on Mar 25, 2020

Attest:

Lyle W. Cayce
Clerk, U.S. Court of Appeals, Fifth Circuit

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Appeals from the United States District Court
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USDC No. 3:14-CR-114-2

Before BARKSDALE, ELROD, and DUNCAN, Circuit Judges.

PER CURIAM:*

Christopher Raynard Kidd was convicted by a jury of conspiracy to distribute, and distribution of, 50 grams or more of methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1) and 846. He was sentenced to, *inter alia*, 366-months' imprisonment on each count, to be served concurrently.

Kidd asserts the district court erred in determining between his trial and sentencing that he was competent during his trial and was sufficiently

* Pursuant to 5th Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

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competent to be sentenced. In addition, Kidd claims his third attorney, High, provided ineffective assistance of counsel.

A district court's competency finding "may not be set aside on review unless it is clearly arbitrary or unwarranted". *United States v. Dockins*, 986 F.2d 888, 890 (5th Cir. 1993) (citation omitted). To be competent to stand trial, defendant must have "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and ha[ve] a rational as well as factual understanding of the proceedings against him". *Godinez v. Moran*, 509 U.S. 389, 396 (1993) (internal quotation marks and citations omitted). "A defendant who has it within his voluntary control to . . . cooperat[e], is not incompetent merely because he refuses to cooperate". *United States v. Simpson*, 645 F.3d 300, 306 (5th Cir. 2011) (alterations in original) (internal quotation marks and citation omitted).

Kidd contends his incompetence was demonstrated by: (1) his representation by four different attorneys before and during his trial and sentencing; (2) his placement in shackles during his trial; (3) his failure to present evidence at trial; and (4) determinations by his mental-health expert that he suffered from a chronic paranoid personality disorder and was incompetent to stand trial or be sentenced.

Kidd points to two of his attorneys' withdrawals before trial; but, during his evaluation by forensic psychologist Dr. Channell, Kidd reported the withdrawals were based on: (1) his unwillingness to sign one attorney's speedy-trial waiver, premised on the attorney's inability to attend a hearing due to medical issues; and (2) his failure to "click" with another attorney because of the attorney's advice to accept a plea deal. Moreover, although Kidd cites his problems with his third attorney, High, High testified Kidd's frustration with him arose due to his refusal to allow Kidd to keep copies of

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discovery materials and his discussing the Government's plea offer. High testified he was able to communicate with Kidd and Kidd was able to assist in his defense.

Regarding the court's authorizing the use of leg restraints on Kidd at trial, the court explained there was an essential state interest in restraining him because, *inter alia*: there had been attempted murders and other threats among Kidd's co-defendants, demonstrating tensions ran high among them; several co-defendants would be testifying against Kidd and sitting in close proximity to him in the courtroom; and Kidd seemed erratic and agitated throughout the trial.

Although Kidd asserts his failure to present evidence demonstrated his behaving irrationally, he does not cite evidence in the record regarding the reasoning behind this defense strategy or showing it was based on his inability to communicate with counsel. Nor does he provide any case law demonstrating that holding the Government to its burden of proof constitutes incompetence, especially where, as here, Kidd stated he did not believe the jury would credit testimony of his co-defendants because they were offered lesser sentences in exchange for their testimony.

Kidd's remaining assertions rely primarily on defense-expert Dr. O'Brien's conclusions that Kidd had paranoid personality disorder and was not able to sufficiently communicate with his attorney. These conclusions, however, conflicted with Dr. Channell's, who had previously evaluated Kidd over the course of approximately four months, diagnosing him with antisocial personality disorder and determining he was sufficiently able to communicate with his attorney.

As the factfinder regarding Kidd's competence, the district court had sole discretion to decide what weight to accord Dr. O'Brien's and Dr. Channell's

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conflicting opinions. *See Albany Ins. Co. v. Anh Thi Kieu*, 927 F.2d 882, 894 (5th Cir. 1991) (citation omitted). The court ultimately determined Kidd was competent after considering two competency hearings, Dr. Channell's and Dr. O'Brien's reports, testimony by High and Kidd's prior prison warden, prison incident reports and correspondence, the parties' assertions, and the court's own observations of Kidd during his trial, which extended over three years. Based on review of the record, Kidd has not demonstrated the court's competency determination was clearly arbitrary or unwarranted.

Regarding Kidd's contending High was ineffective, "Sixth Amendment claims of ineffective assistance of counsel should not be [considered] on direct appeal, unless they were previously presented to the trial court". *United States v. Isgar*, 739 F.3d 829, 841 (5th Cir. 2014) (citation omitted). When the claim was not raised in district court, as in this instance, it will be considered on appeal "only in rare cases in which the record allows a reviewing court to fairly evaluate the merits of the claim". *Id.* (internal quotation marks and citation omitted).

While High testified at the competency hearing regarding his ability to communicate with Kidd, and the court made factual findings at the hearing, the focus of that hearing and the findings was Kidd's competency—not High's effectiveness *vel non*. In short, the record was not sufficiently developed in district court regarding this issue. We, therefore, decline to reach this issue, without, of course, prejudice to collateral review.

AFFIRMED.

APPENDIX B

V.

Defendant's Attorney

after a plea of not guilty.

Date _____

DEFENDANT: CHRISTOPHER RAYNARD KIDD
CASE NUMBER: 3:14cr114DPJ-FKB-002

IMPRISONMENT

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

336 months as to both counts, 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 _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

☐

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

a _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____

DEPUTY UNITED STATES MARSHAL

DEFENDANT: CHRISTOPHER RAYNARD KIDD

CASE NUMBER: 3:14cr114DPJ-FKB-002

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of :

5 years per count, 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 for domestic violence. *(check if applicable)*

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

DEFENDANT: CHRISTOPHER RAYNARD KIDD
CASE NUMBER: 3:14cr114DPJ-FKB-002

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: CHRISTOPHER RAYNARD KIDD

CASE NUMBER: 3:14cr114DPJ-FKB-002

SPECIAL CONDITIONS OF SUPERVISION

1) The defendant shall submit his or her person, property, house, residence, vehicle, papers, or office, to a search conducted by a United States probation officer. Failure to submit to a search may be grounds for revocation of release. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that the defendant has violated a condition of his supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.

2) The defendant shall provide any requested business or personal financial information to the supervising probation officer, and shall not open any new lines of credit without prior permission, until the fine is paid in full.

DEFENDANT: CHRISTOPHER RAYNARD KIDD

CASE NUMBER: 3:14cr114DPJ-FKB-002

CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 200.00 (\$100 per count)	\$	\$ 2,500.00	\$

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

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

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

<u>Name of Payee</u>	<u>Total Loss**</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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TOTALS	\$ _____	0.00	\$ _____	0.00
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☐ Restitution amount ordered pursuant to plea agreement \$ _____

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

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

☒ the interest requirement is waived for the ☒ fine ☐ restitution.

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

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

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

DEFENDANT: CHRISTOPHER RAYNARD KIDD
CASE NUMBER: 3:14cr114DPJ-FKB-002

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 \$ 2,700.00 due immediately, balance due
- ☐ not later than _____, or
☒ in accordance with ☐ C, ☒ D, ☐ E, or ☒ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☒ Payment in equal monthly (e.g., weekly, monthly, quarterly) installments of \$ 50.00 over a period of XX XX (e.g., months or years), to commence 60 days (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:

In the event the full amount of restitution is not paid in full prior to the termination of supervised release, the defendant is ordered to enter into a written agreement with the Financial Litigation Unit of the U.S. Attorney's Office for payment of the remaining balance. Additionally, the value of any future discovered assets may be applied to offset the balance of criminal monetary penalties. The defendant may be included in the Treasury Offset Program, allowing qualified federal benefits to be applied to offset the balance of criminal monetary penalties.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

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

☐ Joint and Several

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

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVT A assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.