

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JEFFREY CHLEO BROWN,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

APPENDIX

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Northern District of Texas

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 19-10103

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

JEFFREY CHLEO BROWN,

Defendant - Appellant

Appeal from the United States District Court
for the Northern District of Texas

ON PETITION FOR REHEARING

Before KING, GRAVES, and WILLETT, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing is *denied*

ENTERED FOR THE COURT:

Caron Dennis, Esq.
UNITED STATES CIRCUIT JUDGE

APPENDIX B

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 19-10103
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED
December 5, 2019

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JEFFREY CHLEO BROWN,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:18-CR-242-1

Before KING, GRAVES, and WILLETT, Circuit Judges.

PER CURIAM:*

Jeffrey Chleo Brown appeals the sentence imposed following his guilty plea conviction for one count of wire fraud. The district court varied above the advisory guidelines range and sentenced him to 40 months in prison.

Brown contends that the district court violated Federal Rule of Criminal Procedure 32(i)(3)(B) because the court did not resolve a factual dispute during the sentencing hearing. He indicates that there was a controverted issue as to

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

No. 19-10103

the accuracy of a victim-impact statement filed by the president of the company where he used to work. Brown maintains that the district court was required to resolve whether the statement correctly represented that Brown's criminal acts—i.e., using company credit cards to make personal purchases and altering statements and bills to reflect that the purchases were valid business expenses—had substantial economic consequences for his employer and nearly caused its collapse.

The record reflects that Brown failed to raise the issue of Rule 32(i)(3)(B) at sentencing and did not otherwise argue that the district court did not resolve a disputed issue or make relevant findings or rulings. Thus, our review is for plain error. *See United States v. Reyna*, 358 F.3d 344, 349-50 (5th Cir. 2004) (en banc); *United States v. Esparza-Gonzales*, 268 F.3d 272, 274 (5th Cir. 2001).

Rule 32(i)(3)(B) states that a district court must, for any disputed portion of the presentence report or other controverted matter, rule on the dispute or determine that a ruling is unnecessary because the matter will not affect or be considered at sentencing. FED. R. CRIM. P. 32(i)(3)(B). We have not previously addressed whether Rule 32(i)(3)(B) requires resolution of disputed issues that arise from a victim-impact statement or mandates a ruling as to any contested issue—whether strictly factual or not—that is contested at sentencing. Given the lack of controlling authority, and in light of contrary jurisprudence from other courts, *see, e.g.*, *United States v. Petri*, 731 F.3d 833, 838-42 (9th Cir. 2013), any error by the district court in not resolving the alleged dispute in accordance with Rule 32(i)(3)(B) was not clear or obvious. *See Puckett v. United States*, 556 U.S. 129, 135 (2009); *United States v. Salinas*, 480 F.3d 750, 759 (5th Cir. 2007). Moreover, Brown has not shown a reasonable probability that he would have received a lower sentence but for the district court's alleged

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error. *See Puckett*, 556 U.S. at 135; *United States v. Davis*, 602 F.3d 643, 647 (5th Cir. 2010).

AFFIRMED.

APPENDIX C

United States District Court

Northern District of Texas
Fort Worth Division

UNITED STATES OF AMERICA

§

v.

§

Case Number: 4:18-CR-242-A(01)

JEFFREY CHLEO BROWN

§

CLERK, U.S. DISTRICT COURT

By _____
DeputyCORRECTED
JUDGMENT IN A CRIMINAL CASE

(This Corrected Judgment in a Criminal Case replaces the Judgment in a Criminal Case the court signed in this case on January 18, 2019.)

The government was represented by Assistant United States Attorney Nancy E. Larson. The defendant, JEFFREY CHLEO BROWN, was represented by Federal Public Defender through Assistant Federal Public Defender Brook Antonio, II.

The defendant pleaded guilty on October 5, 2018 to the one count information filed on September 24, 2018. Accordingly, the court ORDERS that the defendant be, and is hereby, adjudged guilty of such count involving the following offense:

<u>Title & Section / Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count</u>
18 U.S.C. § 1343 Wire Fraud	September 12, 2017	1

As pronounced and imposed on January 18, 2019, the defendant is sentenced as provided in this judgment.

The court ORDERS that the defendant immediately pay to the United States, through the Clerk of this Court, a special assessment of \$100.00.

The court further ORDERS that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence address, or mailing address, as set forth below, until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court, through the clerk of this court, and the Attorney General, through the United States Attorney for this district, of any material change in the defendant's economic circumstances.

IMPRISONMENT

The court further ORDERS that the defendant be, and is hereby, committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 40 months.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons on or before 2:00 P.M., on February 8, 2019. The defendant determine from the Office of the United States Marshal in Fort Worth, Texas, at least two business days before February 8, 2019, the identity and location of the institution at which he is to surrender.

SUPERVISED RELEASE

The court further ORDERS that, upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years and that while on supervised release, the defendant shall comply with the standard conditions ordered by this Court and shall comply with the following additional conditions:

1. The defendant shall not commit another federal, state, or local crime.
2. The defendant shall not unlawfully possess a controlled substance.
3. The defendant shall cooperate in the collection of DNA as directed by the U.S. Probation Officer, as authorized by the Justice for All Act of 2004.
4. The defendant shall refrain from any unlawful use of a controlled substance, submitting to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer pursuant to the mandatory drug testing provision of the 1994 crime bill.
5. The defendant shall not be employed in any fiduciary capacity or any position allowing access to credit or personal financial information of others, unless the defendant's employer whoever that might be at that time is fully aware of the offense of conviction and with the approval of the probation officer.
6. The defendant shall provide to the probation officer complete access to all business and personal financial information.
7. The defendant shall refrain from incurring new credit charges or opening additional lines of credit without approval of the probation officer.
8. The defendant shall maintain not more than one business or one personal checking account, and shall not open, maintain, be a signatory on, or otherwise use any other financial institution account without the prior approval of the probation officer.
9. If, upon commencement of the term of supervised release, any part of the \$255,736.50 restitution ordered by this judgment remains unpaid, the defendant shall make payments on such unpaid amount at the rate of at least \$500 per month, the first such payment to be made no later than 60 days after the defendant's release from confinement and another payment to be made on the same day of each month thereafter until the restitution amount is paid in full. Any unpaid balance of the restitution ordered by this judgment shall be paid in full 60 days prior to the termination of the term of supervised release.
10. The defendant shall also comply with the Standard Conditions of Supervision as hereinafter set forth.

Standard Conditions of Supervision

1. The defendant shall report in person to the probation office in the district to which the defendant is released within seventy-two (72) hours of release from the custody of the Bureau of Prisons.
2. The defendant shall not possess a firearm, destructive device, or other dangerous weapon.
3. The defendant shall provide to the U.S. Probation Officer any requested financial information.
4. The defendant shall not leave the judicial district where the defendant is being supervised without the permission of the Court or U.S. Probation Officer.
5. The defendant shall report to the U.S. Probation Officer as directed by the court or U.S. Probation Officer and shall submit a truthful and complete written report within the first five (5) days of each month.
6. The defendant shall answer truthfully all inquiries by the U.S. Probation Officer and follow the instructions of the U.S. Probation Officer.
7. The defendant shall support his dependents and meet other family responsibilities.
8. The defendant shall work regularly at a lawful occupation unless excused by the U.S. Probation Officer for schooling, training, or other acceptable reasons.
9. The defendant shall notify the probation officer at least ten (10) days prior to any change in residence or employment.
10. The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
11. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
12. The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the U.S. Probation Officer.
13. The defendant shall permit a probation officer to visit him at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the U.S. Probation Officer.
14. The defendant shall notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer.
15. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.

16. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

The court hereby directs the probation officer to provide defendant with a written statement that sets forth all the conditions to which the term of supervised release is subject, as contemplated and required by 18 U.S.C. § 3583(f).

FINE

The court did not order a fine because the defendant does not have the financial resource or future earning capacity to pay a fine.

RESTITUTION

The court further ORDERS defendant shall make full restitution, in the amount of \$255,736.50. Restitution is payable immediately, but non-payment will not be a violation of defendant's conditions of supervised release so long as defendant pays as provided in defendant's conditions of supervised release. All restitution payments shall be made by defendant to the Clerk of the U.S. District Court, 501 West 10th Street, Room 310, Fort Worth, Texas 76102, for disbursement to the victims whose names and loss amounts are listed below:

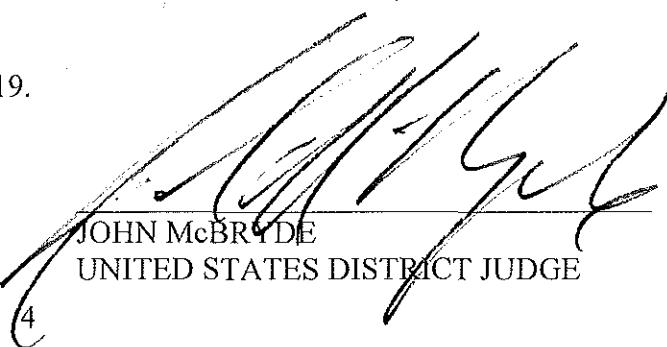
WCCO Belting, Inc.
1998 9th Street North
Wahpeton, North Dakota 58075
\$50,736.50

Travelers Insurance
Attn: Adjuster Jill James
385 Washington Street
Saint Paul, Minnesota 55102-1396
\$205,000.00
Policy Number: 0106224039

STATEMENT OF REASONS

The "Statement of Reasons" and personal information about the defendant are set forth on the attachment to this judgment.

Signed this the 25th day of January, 2019.


JOHN McBRYDE
UNITED STATES DISTRICT JUDGE
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RETURN

I have executed the imprisonment part of this Judgment as follows:

Defendant delivered on _____, 2019 to _____
at _____, with a certified copy of this Judgment.

United States Marshal for the
Northern District of Texas

By _____
Deputy United States Marshal