

No. \_\_\_\_\_

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IN THE  
SUPREME COURT OF THE UNITED STATES

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LEE MONTEZ THOMPSON,

*Petitioner*

v.

UNITED STATES OF AMERICA

*Respondent*

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APPENDIX

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## APPENDIX A

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

United States Court of Appeals  
Fifth Circuit

**FILED**

February 4, 2020

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

LEE MONTEZ THOMPSON,

Defendant-Appellant

---

Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:18-CR-115-1

---

Before CLEMENT, HIGGINSON, and ENGELHARDT, Circuit Judges.

STEPHEN A. HIGGINSON, Circuit Judge:\*

Lee Montez Thompson was convicted of one charge of possession of a firearm by a felon and was sentenced to serve 120 months in prison and a three-year term of supervised release. He argues that the district court plainly erred by not explicitly addressing whether he should be credited with time served in state custody under U.S.S.G. § 5G1.3(b)(1) and by concluding that he had attempted to obstruct justice and imposing a corresponding adjustment under U.S.S.G. § 3C1.1.

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\* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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. 18-11520

To establish plain error, a defendant must show an error that is clear or obvious and that affects his substantial rights. *Puckett v. United States*, 556 U.S. 129, 135 (2009). If the defendant makes this showing, this court has the discretion to correct the error, provided that it seriously affects the fairness, integrity, or public reputation of judicial proceedings. *Id.* Establishing plain error “is difficult, ‘as it should be.’” *Id.* (quoting *United States v. Dominguez Benitez*, 542 U.S. 74, 83 n.9 (2004)). Thompson has not met this standard.

The presentence report (PSR) explicitly acknowledged § 5G1.3(b)(1). In turn, the PSR was incorporated by reference at the sentencing hearing. At sentencing, the district court also recognized that there was a related state sentence by ordering Thompson’s federal and state sentences to run concurrently. The district court went on to justify its departure from the United States Sentencing Commission Guidelines by noting Thompson’s “bad criminal history” and by relying on the 18 U.S.C. § 3553(a) factors.

The district court did not plainly err in its sentence under § 5G1.3(b)(1) because it is not clear under current law that a district court must orally address § 5G1.3(b)(1) at sentencing even though this provision is explicit in the PSR. See *United States v. Trejo*, 610 F.3d 308, 319 (5th Cir. 2010); *United States v. Green*, 647 F. App’x 507, 507–08 (5th Cir. 2016) (unpublished); *United States v. Estrada*, 312 F. App’x 664, 667 (5th Cir. 2009) (unpublished); *United States v. Figueroa*, 215 F. App’x 343, 344 (5th Cir. 2007) (unpublished). As noted, the district court explicitly recognized the existence of a related state sentence and justified its departure from the Guidelines pursuant to § 3553(a). There is nothing in the record to indicate that the district court misapprehended § 5G1.3(b)(1). For these reasons, Thompson has not shown plain error in connection with this claim.

No. 18-11520

Thompson's § 3C1.1 claim likewise fails. Thompson argues that the district court plainly erred when it applied the obstruction-of-justice enhancement to his sentencing calculations. His argument hinges on a factual issue as to which we see no clear error.

AFFIRMED; MOTION DENIED.<sup>1</sup>

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<sup>1</sup> Thompson's motion to supplement the record with his state convictions or, alternately, for judicial notice, is denied as moot.

## APPENDIX B

U.S. DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
FILED  
Page 1 of 5 PageID 139

NOV - 9 2018	CLERK, U.S. DISTRICT COURT By _____ Deputy
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UNITED STATES OF AMERICA

§

v.

§

Case Number: 4:18-CR-115-A(01)

LEE MONTEZ THOMPSON

§

**JUDGMENT IN A CRIMINAL CASE**

The government was represented by Assistant United States Attorney Douglas A. Allen. The defendant, LEE MONTEZ THOMPSON, was represented by Federal Public Defender through Assistant Federal Public Defender Jaidee Serrano.

The defendant pleaded guilty on June 28, 2018 to the one count indictment filed on May 16, 2018. Accordingly, the court ORDERS that the defendant be, and is hereby, adjudged guilty of such count involving the following offense:

<u>Title &amp; Section / Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count</u>
18 U.S.C. §§ 922(g)(1) & 924(a)(2) Felon in Possession of Firearm	April 27, 2017	1

As pronounced and imposed on November 9, 2018, 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 120 months. The sentence shall run concurrently with the undischarged terms of imprisonment in Case Nos. 1496639D and 1496637D in the 432nd District Court of Tarrant County, Texas.

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

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 participate in mental health treatment services as directed by the probation officer until successfully discharged, which services may include prescribed medications by a licensed physician, with the defendant contributing to the costs of services rendered at a rate of at least \$25 per month.
6. The defendant shall participate in a program approved by the probation officer for treatment of narcotic or drug or alcohol dependency that will include testing for the detection of substance use, abstaining from the use of alcohol and all other intoxicants during and after completion of treatment, contributing to the costs of services rendered at the rate of at least \$25 per month.
7. 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.

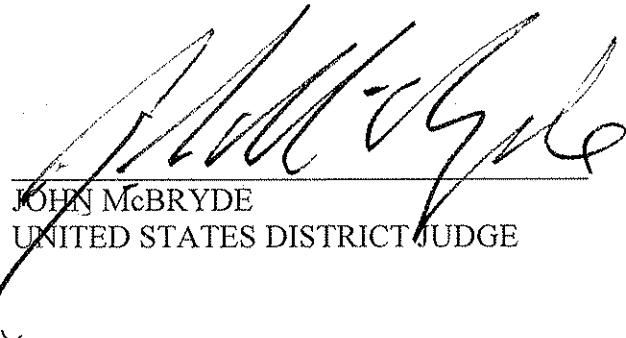
FORFEITURE

Pursuant to 18 U.S.C. § 924(d) and 28 U.S.C. § 2461(c), it is hereby ordered that defendant's interest in the following property is condemned and forfeited to the United States: a Hi-Point, model CF380, .380 ACP caliber pistol, bearing serial number P908868, including any ammunition, magazines, and/or accessories recovered with the firearm(s).

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 9th day of November, 2018.

  
JOHN McBRYDE  
UNITED STATES DISTRICT JUDGE

RETURN

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

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Defendant delivered on \_\_\_\_\_, 2018 to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this Judgment.

United States Marshal for the  
Northern District of Texas

By \_\_\_\_\_  
Deputy United States Marshal

## APPENDIX C

1 THE UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF TEXAS  
3 FORT WORTH DIVISION

4 UNITED STATES OF AMERICA, ) CASE NO. 4:18-CR-115-A  
5 )  
6 VERSUS )  
7 LEE MONTEZ THOMPSON (01), )  
8 Defendant. ) 11:05 A.M.

9  
10 VOLUME 1 OF 1  
11 TRANSCRIPT OF REARRAIGNMENT  
12 BEFORE THE HONORABLE JOHN McBRYDE  
13 UNITED STATES DISTRICT COURT JUDGE

**A P P E A R A N C E S:**

14 FOR THE GOVERNMENT: MR. JOHN BRADFORD  
15 UNITED STATES DEPARTMENT OF JUSTICE  
16 NORTHERN DISTRICT OF TEXAS  
17 801 Cherry Street, Suite 1700  
18 Fort Worth, Texas 76102-6882  
19 Telephone: 817.252.5200  
20  
21 FOR THE DEFENDANT: MS. JAIDEE SERRANO  
22 ASSISTANT FEDERAL PUBLIC DEFENDER  
23 NORTHERN DISTRICT OF TEXAS  
24 819 Taylor Street, Room 9A10  
25 Fort Worth, Texas 76102  
Telephone: 817.978.2753  
26  
27 COURT REPORTER: MS. DEBRA G. SAENZ, CSR, RMR, CRR  
28 501 W. 10th Street, Room 424  
29 Fort Worth, Texas 76102  
Telephone: 817.850.6661  
E-Mail: debbie.saenz@yahoo.com  
30  
31 Proceedings reported by mechanical stenography, transcript  
32 produced by computer.

1

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## PROCEEDINGS

June 28, 2018 - 11:05 a.m.

*COURT SECURITY OFFICER:* All rise.

4 Hear ye, hear ye, hear ye, the United States  
5 District Court for the Northern District of Texas at Fort  
6 Worth is now in session, the Honorable John McBryde presiding.

7 Let us pray. God bless the United States and this  
8 Honorable Court. Amen.

9                   Please be seated.

11 ALL PRESENT: Morning, Your Honor.

13 This defendant is here to waive the return of an indictment  
14 and to plead guilty to an information. It's Case Number  
15 4:18-CR-127-A, United States of America versus Ruben Joe  
16 Isaac.

17 And Mr. Smith is here for the government, and  
18 Mr. Davis is here for the defendant.

19 I'll have the defendant raise his right hand to be  
20 sworn.

21 (Defendant Isaac sworn)

22                   THE COURT: Mr. Isaac, do you understand that you're  
23 now under oath and that if you answer any of my questions  
24 falsely, your answers could later be used against you in a  
25 prosecution for perjury or making a false statement?

1 DEFENDANT ISAAC: Yes, I do, Your Honor.

2 THE COURT: Do you read, write, understand, and  
3 speak the English language proficiently?

4 DEFENDANT ISAAC: Yes, I do.

5 THE COURT: What is your full name?

6 DEFENDANT ISAAC: Ruben Joe Isaac.

7 THE COURT: Okay. My understanding is that you're  
8 here today with the intent to waive the return of an  
9 indictment and to proceed on the basis of an information filed  
10 by the United States Attorney charging you with the offense of  
11 possession with intent to distribute a controlled substance,  
12 referring to methamphetamine, and that you then plan to plead  
13 guilty -- assuming the Court accepts that waiver, you then  
14 plan to plead guilty to that offense.

15 Is that what your plan is?

16 DEFENDANT ISAAC: Yes, sir.

17 THE COURT: Okay. Why don't you and Mr. Davis step  
18 back just a minute, and we'll be back to you shortly.

19 I'm next calling Case Number 4:18-CR-139-A. It's  
20 United States of America versus Tavarus Anthony Harris.

21 And Mr. Gatto is here for the government in that  
22 case, and Mr. Lehmann -- Mr. Brown.

23 You're filling in for Mr. Lehmann?

24 MR. BROWN: Yes, Your Honor.

25 THE COURT: Mr. Brown's here for the defendant.

1                   I'll have the defendant raise his right hand to be  
2 sworn.

3                   (Defendant Harris sworn)

4                   *THE COURT:* Mr. Harris, do you understand that  
5 you're now under oath and that if you answer any of my  
6 questions falsely, your answers could later be used against  
7 you in a prosecution for perjury or making a false statement?

8                   *DEFENDANT HARRIS:* Yes, Your Honor.

9                   *THE COURT:* Do you read, write, understand, and  
10 speak the English language proficiently?

11                   *DEFENDANT HARRIS:* Yes, Your Honor.

12                   *THE COURT:* What is your full name?

13                   *DEFENDANT HARRIS:* Tavarus Anthony Harris.

14                   *THE COURT:* My understanding is that you're here  
15 today with the intent to waive the return of an indictment as  
16 to the offense of unlawful possession of a firearm by a felon,  
17 and then, assuming the Court accepts that waiver, then you  
18 plan to plead guilty to that offense based on an information  
19 that the United States Attorney filed in this case charging  
20 you with that offense on June -- looks like June 20, 2018.

21                   Is that what you plan to do today?

22                   *DEFENDANT HARRIS:* Yes, sir.

23                   *THE COURT:* Okay. Why don't you and Mr. Brown step  
24 back just a minute.

25                   Okay. I'm next calling forward Clifford Michael

1 Mays. It's Case Number 4:18-CR-112-A, United States of  
2 America versus Clifford Michael Mays.

3 And the government is represented by Mr. Bradford,  
4 and the defendant is represented by Jaidee Serrano of the  
5 Public Defender's Office.

6 I'll have the defendant, Mr. Mays, raise his right  
7 hand to be sworn.

8 (Defendant Mays sworn)

9 *THE COURT:* Mr. Mays, do you understand that you're  
10 now under oath and that if you answer any of my questions  
11 falsely, your answers could later be used against you in a  
12 prosecution for perjury or making a false statement?

13 *DEFENDANT MAYS:* Yes, Your Honor.

14 *THE COURT:* Do you read, write, understand, and  
15 speak the English language proficiently?

16 *DEFENDANT MAYS:* Yes, Your Honor.

17 *THE COURT:* What is your full name?

18 *DEFENDANT MAYS:* Clifford Michael Mays.

19 *THE COURT:* Okay. My understanding is that you've  
20 already pleaded not guilty to the offense charged by the  
21 indictment in this case, and that's the offense of felon in  
22 possession of firearm, and that you're here today with the  
23 intent to change that plea from not guilty to a plea of  
24 guilty.

25 Is that what your plan is today?

1 DEFENDANT MAYS: Yes, Your Honor.

2 THE COURT: Okay. Why don't you and Ms. Serrano  
3 step back just a minute.

4 Well, you represent the next defendant, too, don't  
5 you?

6 MS. SERRANO: Yes, Your Honor.

7 THE COURT: Okay. I'll call forward now in Case  
8 Number 4:18-CR-115-A, it's United States of America versus Lee  
9 Montez Thompson.

10 And Mr. Bradford's here for the government, and  
11 Ms. Serrano is here for the defendant.

12 I'll have the defendant raise his right hand to be  
13 sworn.

14 (Defendant Thompson sworn)

15 THE COURT: Do you understand, Mr. Thompson, that  
16 you're now under oath and that if you answer any of my  
17 questions falsely, your answers could later be used against  
18 you in a prosecution for perjury or making a false statement?

19 DEFENDANT THOMPSON: Yes, Your Honor.

20 THE COURT: Do you read, write, understand, and  
21 speak the English language proficiently?

22 DEFENDANT THOMPSON: Yes, Your Honor.

23 THE COURT: What is your full name?

24 DEFENDANT THOMPSON: Lee Montez Thompson, Your  
25 Honor.

1                   THE COURT: Okay. My understanding is that you  
2 previously have pleaded not guilty to the offense charged by  
3 the indictment in this case, and that's the offense of felon  
4 in possession of firearm, and my further understanding is that  
5 you're here today with the intent to change that plea of not  
6 guilty to a plea of guilty to that offense.

7                   Is that what you plan to do today?

8                   DEFENDANT THOMPSON: Yes, Your Honor.

9                   THE COURT: Okay. Bearing in mind that all three  
10 of -- all four of the defendants in front of me, defendants  
11 Isaac, Harris, Mays, and Thompson, are planning to plead  
12 guilty to a felony offense, I'm going to give each of you some  
13 explanations that are very important. They are explanations  
14 about your constitutional rights that you could assert if you  
15 were to persist in your plea of not guilty, if you've already  
16 made it, or if you were to plead guilty to the offense that  
17 you're here today to deal with, so listen closely.

18                   You and each of you may, if you choose, plead not  
19 guilty to any offense charged against you or persist in that  
20 plea if it already has been made. If you plead not guilty,  
21 the Constitution of the United States guarantees to you the  
22 following rights:

23                   The right to a speedy and public trial by a jury in  
24 this district.

25                   The right at such a trial for you to confront, that

1 is, to see, hear, and cross-examine all witnesses against you.

2 The right at your trial to testify and present  
3 evidence and to compel the attendance of witnesses.

4 The right to be represented by counsel, a counsel  
5 appointed by the Court for you, if necessary, at trial and at  
6 every other stage of the proceeding.

7 You cannot be compelled to testify and you are to be  
8 protected from compelled self-incrimination. The decision of  
9 whether you will testify or not is a matter in which your  
10 judgment will control.

11 The United States Government must prove your guilt  
12 beyond a reasonable doubt.

13 If you're found guilty, you have a right to appeal  
14 your conviction.

15 Defendant Isaac, have you understood the  
16 explanations I've given you about your constitutional rights?

17 *DEFENDANT ISAAC:* Yes, sir.

18 *THE COURT:* Defendant Harris, have you understood  
19 the explanations I've given you about your constitutional  
20 rights?

21 *DEFENDANT HARRIS:* Yes, sir.

22 *THE COURT:* Defendant Mays, have you understood the  
23 explanations I've given you about your constitutional rights?

24 *DEFENDANT MAYS:* Yes, Your Honor.

25 *THE COURT:* Defendant Thompson, have you understood

1 the explanations I've given you about your constitutional  
2 rights?

3 *DEFENDANT THOMPSON:* Yes, Your Honor.

4 *THE COURT:* Bearing in mind the intent of each of  
5 you to plead guilty to a felony offense, I'm going to give you  
6 some further explanations that are very important, so listen  
7 closely.

8 If you plead guilty and if such a plea is accepted  
9 by the Court, there will not be a further trial of any kind.  
10 So by pleading guilty, you waive the right to a trial, as well  
11 as those other rights associated with a trial as I've  
12 described them. Generally a defendant who is accused of a  
13 crime cannot plead guilty unless he is actually guilty of that  
14 crime.

15 In federal court, the judge determines the penalty  
16 if a defendant is convicted, whether it is on a verdict of a  
17 jury or on a plea of guilty.

18 Other than the staff of the court, the Court has not  
19 and will not talk to anyone about the facts of your case,  
20 except here in your presence, where you, your attorney, and  
21 representatives of the government are all present.

22 If you should be convicted, you and your lawyer each  
23 will be given an opportunity to present to the Court any pleas  
24 for leniency. The penalty will be decided on the basis of the  
25 facts set forth in the Presentence Report and facts heard

1 here.

2                   You should never depend or rely upon any statement  
3 or promise by anyone, whether connected with a law enforcement  
4 agency, or the government, or anyone else as to what penalty  
5 will be assessed against you.

6                   Should you decide to plead guilty, your plea of  
7 guilty must not be induced or prompted by promises, mental  
8 pressure, threats, force, coercion, or pressure of any kind.  
9 A plea of guilty must be purely voluntary, and you should  
10 plead guilty only because you are guilty and for no other  
11 reason.

12                   Now, the offense to which you propose to plead  
13 guilty is a felony. An adjudication of guilt of such an  
14 offense may deprive a defendant of valuable rights, such as  
15 the right to vote, to hold public office, to serve on a jury,  
16 to possess any kind of firearm, and other rights.

17                   If convicted on a plea of guilty or at trial, a  
18 defendant who is not a United States citizen may be removed  
19 from the United States, denied citizenship, and denied  
20 admission to the United States in the future.

21                   Defendant Isaac, have you understood those  
22 additional explanations I've given you?

23                   *DEFENDANT ISAAC:* Yes, Your Honor.

24                   *THE COURT:* Defendant Harris, have you understood  
25 those additional explanations I've given you?

1                   *DEFENDANT HARRIS:* Yes, Your Honor.

2                   *THE COURT:* Defendant Mays, have you understood the  
3 additional explanations I've given you?

4                   *DEFENDANT MAYS:* Yes, Your Honor.

5                   *THE COURT:* Defendant Thompson, have you understood  
6 the additional explanations I've given you?

7                   *DEFENDANT THOMPSON:* Yes, Your Honor.

8                   *THE COURT:* I'm going to give all of you now some  
9 explanations about the sentencing process. They are very  
10 important, bearing in mind your intent to plead guilty, so  
11 listen closely.

12                  Under the Sentencing Reform Act of 1984, the United  
13 States Sentencing Commission has issued guidelines for judges  
14 to follow in determining the sentence in a criminal case.  
15 Those guidelines have been determined to be advisory only, but  
16 they are important because the Court must take the guideline  
17 sentencing ranges into account when sentencing a defendant.

18                  Now, before I go any further, I want to ask each of  
19 you a question.

20                  Defendant Isaac, have you and your attorney  
21 discussed how the sentencing guidelines might apply to your  
22 case?

23                  *DEFENDANT ISAAC:* Yes, Your Honor.

24                  *THE COURT:* Defendant Harris, have you and your  
25 attorney discussed how the sentencing guidelines might apply

1 to your case?

2 DEFENDANT HARRIS: Yes, Your Honor.

3 THE COURT: Defendant Mays, have you and your  
4 attorney discussed how the sentencing guidelines might apply  
5 to your case?

6 DEFENDANT MAYS: Yes, Your Honor.

7 THE COURT: Defendant Thompson, have you and your  
8 attorney discussed how the sentencing guidelines might apply  
9 to your case?

10 DEFENDANT THOMPSON: Yes, Your Honor.

11 THE COURT: Okay. Continuing on with my  
12 explanations about the sentencing process:

13 In determining your sentence, the Court is obligated  
14 to calculate the sentencing guideline ranges applicable to  
15 your case and is required to consider those ranges, possible  
16 departures under the sentencing guidelines, and other  
17 sentencing factors under 18 United States Code Section  
18 3553(a).

19 The Court is not bound by facts that are stipulated  
20 between the defendant on the one hand and the government on  
21 the other. The Court can impose punishment that might  
22 disregard stipulated facts or take into account facts not  
23 mentioned in the stipulated facts. You might not be permitted  
24 to withdraw your plea of guilty if that were to occur.

25 The Court will not be able to determine the

1 guideline sentence for your case until after the Presentence  
2 Report has been completed and you and the government have had  
3 an opportunity to challenge the facts and conclusions reported  
4 by the probation officer.

5 After the Court has determined what guidelines apply  
6 to a case, the Court has the authority in some circumstances  
7 to impose a sentence that is more severe or less severe than  
8 the sentence called for by the guidelines.

9 Under some circumstances, the defendant or the  
10 government might have the right to appeal any sentence the  
11 Court imposes.

12 Parole has been abolished, and if you're sentenced  
13 to prison, you will not be released on parole.

14 Now, as soon as the sentencing (sic) is over as to  
15 each of you today, your attorney will go across the hall with  
16 a form that's been provided and arrange a time when the  
17 probation officer who will be assigned to your case can  
18 interview you, and I'll add that the degree of your  
19 cooperation with the probation officer can be a factor in the  
20 severity of your sentence. That's something you'll want to  
21 discuss with your attorney.

22 The purpose of that interview is so the probation  
23 officer can obtain from you information you have relevant to  
24 the sentencing process. In addition to obtaining information  
25 from you on that subject, the probation officer will obtain

1 information from other sources, such as the prosecutor, the  
2 investigating agency, perhaps your family members, perhaps  
3 your employer or former employers, and maybe other sources.

4 Once the probation officer has enough information to  
5 form opinions as to which of the sentencing guidelines are  
6 applicable to your case and what the sentencing ranges in your  
7 case are, the probation officer will prepare a written  
8 document called a Presentence Report and will put in that  
9 document his or her opinions on that subject.

10 In addition, the probation officer will put in that  
11 document a recitation of facts that he or she relied on in  
12 reaching those opinions. Once the report as to you has been  
13 completed, the attorneys in your case will get copies of it,  
14 and you'll get a copy of the one applicable to you, and I'll  
15 get the original.

16 When you receive your copy of the Presentence Report  
17 applicable to you, study it very carefully. I rely very  
18 heavily on that report in determining what sentence to impose  
19 in a case, so it needs to be as complete and as accurate as  
20 possible.

21 If you conclude or think there's anything in the  
22 report applicable to you that's incorrect or if you think  
23 something is left out of the report that ought to be in it,  
24 tell your lawyer because your lawyer has the right to object  
25 to the report, and presumably will if you tell him something

1 that's a basis for a legal objection, and then I'll rule on  
2 those objections at or before the sentencing hearing.

3 Now, the sentencing hearing in the case of Defendant  
4 Isaac and Defendant Harris will be at 10:00 a.m. on  
5 November 2, 2018.

6 In the case of Defendant Mays and Defendant  
7 Thompson, the sentencing hearing as to each of you will be at  
8 10:00 a.m. on November 9, 2018.

9 In the case of each of you, the sentencing hearing  
10 will be before me in this courtroom. Of course, you and your  
11 attorney each will be permitted to speak on your behalf at the  
12 sentencing hearing.

13 I'll be signing an order today that fixes that time  
14 and date for sentencing, the dates I've given you, as to each  
15 of you, and the attorneys in each of your cases will receive  
16 copies of the order applicable to that case, and each  
17 defendant's attorney will see that his client receives a copy.

18 Defendant Isaac, have you understood all the  
19 explanations I've given you about the sentencing process?

20 *DEFENDANT ISAAC:* Yes, Your Honor.

21 *THE COURT:* Defendant Harris, have you understood  
22 all the explanations I've given you about the sentencing  
23 process?

24 *DEFENDANT HARRIS:* Yes, sir, Your Honor.

25 *THE COURT:* Defendant Mays, have you understood all

1 the explanations I've given you about the sentencing process?

2 DEFENDANT MAYS: Yes, Your Honor.

3 THE COURT: Defendant Thompson, have you understood  
4 all the explanations I've given you about the sentencing  
5 process?

6 DEFENDANT THOMPSON: Yes, Your Honor.

7 THE COURT: The next comments I'm going to make are  
8 directed to defendants Isaac and Harris, each of whom is here  
9 today with the intent to waive the return of an indictment.

10 Defendant Mays and Defendant Thompson and their  
11 attorneys can be seated now, and I'll call y'all back in just  
12 a minute, but I want Defendant Isaac and Defendant Harris and  
13 their attorneys to remain here so I can give you some further  
14 explanations that are pertinent to the plan to waive the  
15 return of an indictment.

16 *(Proceedings held in other cases, not requested)*

17 (Continuing with Defendant Thompson only:)

18 THE COURT: Okay. I'll call back now defendant Lee  
19 Montez Thompson in Case Number 4:18-CR-115-A.

20 Mr. Bradford's here for the government and  
21 Ms. Serrano is here for the defendant.

22 Mr. Thompson, I'm going to get some personal  
23 information about you before we go any further.

24 What is your age and date of birth?

25 DEFENDANT THOMPSON: My age is 24 years. My

1 birthday is XXXXXXXXXXXX, 1992, Your Honor.

2 THE COURT: How far did you go in school?

3 DEFENDANT THOMPSON: I was home-schooled most of my  
4 life, but I did get a GED.

5 THE COURT: You did what?

6 DEFENDANT THOMPSON: Got a GED.

7 THE COURT: Okay. What kind of work have you been  
8 doing?

9 DEFENDANT THOMPSON: I used to work for Blue Apron  
10 in Arlington, Texas, part of a line production.

11 THE COURT: You are rather soft-spoken, whether you  
12 realize it or not, so do speak up toward the microphone so the  
13 court reporter can hear exactly what you're saying and I can  
14 hear it better, too.

15 DEFENDANT THOMPSON: Yes, sir, Your Honor.

16 THE COURT: That's better. You did a good job then.

17 You have received a -- well, let me ask you some  
18 more questions about your personal situation. Hold on just a  
19 minute.

20 Have you ever been -- are you currently under the  
21 care of a physician or psychiatrist for anything now?

22 DEFENDANT THOMPSON: No, sir, Your Honor.

23 THE COURT: Have you been at any time in the last  
24 six months?

25 DEFENDANT THOMPSON: No, sir, Your Honor.

1                   *THE COURT:* Have you ever been hospitalized or  
2 treated for narcotics addiction or alcoholism?

3                   *DEFENDANT THOMPSON:* No, sir, Your Honor.

4                   *THE COURT:* As far as you're concerned, do you  
5 suffer from any kind of emotional or mental disability or  
6 problem?

7                   *DEFENDANT THOMPSON:* No, sir, Your Honor.

8                   *THE COURT:* Are you now under the influence of  
9 alcohol or any kind of drug?

10                  *DEFENDANT THOMPSON:* No, sir, Your Honor.

11                  *THE COURT:* Do you consider that you're of sound  
12 mind so you know what's going on from time to time?

13                  *DEFENDANT THOMPSON:* Yes, sir, Your Honor.

14                  *THE COURT:* Do you understand you're here today with  
15 the intent to plead guilty to the offense charged by the  
16 indictment in this case, that is, the offense of felon in  
17 possession of firearm?

18                  *DEFENDANT THOMPSON:* Yes, sir, Your Honor.

19                  *THE COURT:* And do you have any reason to think,  
20 Ms. Serrano, that your client's not fully competent to enter  
21 such a plea?

22                  *MS. SERRANO:* No, Your Honor.

23                  *THE COURT:* Do you have any reason to think that  
24 such a plea on the part of your client would not be knowing  
25 and voluntary?

1 MS. SERRANO: No, Your Honor.

2 THE COURT: You have received a copy of the  
3 indictment, Mr. Thompson, and you've read it?

4 DEFENDANT THOMPSON: Yes, sir, Your Honor.

5 THE COURT: You know exactly what you're charged  
6 with?

7 DEFENDANT THOMPSON: Yes, sir, Your Honor.

8 THE COURT: Unless there's a waiver of the reading  
9 of it, I'm going to have it read aloud at this time.

10 MS. SERRANO: We waive the reading, Your Honor.

11 THE COURT: I have a document that's been handed up  
12 to me, Mr. Thompson, that looks like it's signed by you. It's  
13 called a Factual Resume. I'll hold it up so you can see what  
14 I'm talking about.

15 Do you see that document?

16 DEFENDANT THOMPSON: Yes, sir, Your Honor.

17 THE COURT: Did you sign it?

18 DEFENDANT THOMPSON: Yes, sir, Your Honor.

19 THE COURT: Did you read it carefully before you  
20 signed it?

21 DEFENDANT THOMPSON: Yes, sir, Your Honor.

22 THE COURT: Did you understand everything it said  
23 before you signed it?

24 DEFENDANT THOMPSON: Yes, sir, Your Honor.

25 THE COURT: Did you discuss with Ms. Serrano the

1 legal meaning of everything in it and the legal effect of you  
2 signing it before you signed it?

3 DEFENDANT THOMPSON: Yes, sir, Your Honor.

4 THE COURT: And did you understand the explanations  
5 she gave you?

6 DEFENDANT THOMPSON: Yes, sir, Your Honor.

7 THE COURT: Well, you understand the next thing I'm  
8 going to go over with you then because they are in that  
9 document, but they are important enough I'm going to review  
10 them with you again.

11 The first thing is under the heading, Elements of  
12 the Offense, and those are the things the government has to  
13 prove to a jury beyond a reasonable doubt to cause you to be  
14 convicted of the offense charged by the indictment in your  
15 case if you were to persist in your plea of not guilty, and  
16 these things would have to be proved by a jury -- by the  
17 government to a jury beyond a reasonable doubt:

18 First, that you knowingly possessed the firearm  
19 that's described in the indictment.

20 DEFENDANT THOMPSON: Yes, sir, Your Honor.

21 THE COURT: Well, let me keep going.

22 The first thing is that you knowingly possessed a  
23 Hi-Point, model CF380, .380 ACP caliber pistol, bearing serial  
24 number P908868. That's the first thing.

25 The second thing the government would have to prove

1 is that before you possessed that firearm, you had been  
2 convicted in a court of a crime punishable by imprisonment for  
3 a term in excess of 1 year, that is, a felony offense.

4 And the third thing is that your possession of that  
5 firearm was in and affecting interstate commerce, that is,  
6 before you possessed it, it had traveled at sometime from one  
7 state to another.

8 Now, do you understand those are the things the  
9 government would have to prove to a jury beyond a reasonable  
10 doubt to cause you to be convicted of the offense charged by  
11 the indictment --

12 DEFENDANT THOMPSON: Yes, sir.

13 THE COURT: -- in this case if you were to persist  
14 in your plea of not guilty?

15 DEFENDANT THOMPSON: Yes, sir, Your Honor.

16 THE COURT: I'm sorry? I didn't --

17 DEFENDANT THOMPSON: Yes, sir, Your Honor.

18 THE COURT: And do you admit that all of those facts  
19 exist in this case?

20 DEFENDANT THOMPSON: Yes, sir, Your Honor.

21 THE COURT: The next thing I'm going to review  
22 with you are the penalties you're subjecting yourself to, if  
23 you plead guilty to that offense, and they are set forth on  
24 the first page of that Factual Resume, and those penalties  
25 are:

1                   A term of imprisonment of 10 years; plus, payment of  
2 a fine of \$250,000; plus, service of a term of supervised  
3 release of 3 years, and that would start once you've completed  
4 your sentence of imprisonment; plus, you would have to make  
5 restitution to any victims of your criminal conduct, if any of  
6 them suffered a loss, or you could be required to make  
7 community restitution, and restitution could be mandatory  
8 under the law; plus, you would be required to pay \$100 as a  
9 special assessment, and that would be payable at the time of  
10 sentencing.

11                   Plus, if you were to violate any condition of that  
12 supervised release, it could be revoked and you could be sent  
13 back to prison and could be required to serve another term of  
14 imprisonment that could be as long as your term of supervised  
15 release, that is, the 3-year term of supervised release that  
16 you would be subjecting yourself to once you completed your  
17 sentence of imprisonment.

18                   Now, do you understand you're subjecting yourself  
19 to all of those penalties and punishments if you plead  
20 guilty?

21                   DEFENDANT THOMPSON: Yes, sir, Your Honor.

22                   THE COURT: Mr. Bradford, I noticed that in D under  
23 penalties, it has that language that I thought y'all had quit  
24 putting in these saying that he agrees that his restitution  
25 arises from all relevant conduct. I don't think it hurts

1 anything there, but I think that's legally inappropriate  
2 nowadays.

3 MR. BRADFORD: Yeah, I don't believe that that  
4 is -- that was probably put in there in error, Your Honor. I  
5 don't think it effects the plea, but it's not to be usually  
6 included in that.

7 THE COURT: Ms. Serrano, that shouldn't be in there,  
8 the part about him agreeing that his restitution includes  
9 restitution arising from all relevant conduct, but I don't  
10 think it hurts anything to have it in there. If you want to  
11 take it out, I'll have him do that.

12 MS. SERRANO: If we can have it redacted and just  
13 continue with the proceeding, that would be fine, Your  
14 Honor.

15 THE COURT: You would rather have it taken out?

16 MS. SERRANO: Yes, please.

17 THE COURT: Okay. I'll hand it back to you,  
18 Mr. Bradford.

19 MR. BRADFORD: May I approach, Your Honor?

20 THE COURT: Yes.

21 (Pause in Proceedings)

22 MS. SERRANO: Your Honor, would you like  
23 Mr. Thompson to sign it?

24 THE COURT: Yes, get him to initial that, too.

25 DEFENDANT THOMPSON: Thank you, Your Honor.

1                   *MR. BRADFORD:* May I approach, Your Honor?

2                   *THE COURT:* Yes.

3                   Mr. Thompson, the words in the D paragraph,  
4 subparagraph, on the first page, the words "and which the  
5 defendant agrees may include restitution arising from all  
6 relevant conduct, not limited to that arising from the offense  
7 of conviction alone", all those words have been marked out and  
8 it looks like you initialed it.

9                   Did you put your initials by that marking out?

10                  *DEFENDANT THOMPSON:* Yes, sir, Your Honor.

11                  *THE COURT:* And is that okay with you that they  
12 marked that out?

13                  *DEFENDANT THOMPSON:* Yes, sir, Your Honor.

14                  *THE COURT:* Okay. Have you been satisfied with  
15 Ms. Serrano as your attorney?

16                  *DEFENDANT THOMPSON:* Yes, sir, Your Honor.

17                  *THE COURT:* Do you have any complaint whatsoever  
18 with anything she's done or failed to do during the time she's  
19 been representing you?

20                  *DEFENDANT THOMPSON:* No, sir, Your Honor.

21                  *THE COURT:* And I take it, Ms. Serrano, your  
22 client's willing to plead guilty without a plea agreement  
23 because it's just a one-count indictment?

24                  *MS. SERRANO:* That is correct, Your Honor.

25                  *THE COURT:* Mr. Thompson, other than your indication

1 that you'll plead guilty to the offense -- you'll change your  
2 plea from not guilty to guilty to the offense charged by the  
3 indictment in this case, other than that, do you have any  
4 deal, understanding, or agreement, either directly or through  
5 your attorney, with the government?

6 DEFENDANT THOMPSON: No, sir, Your Honor.

7 THE COURT: Has anyone used any force or made any  
8 promise or assurance to you of any kind or threatened you in  
9 any way in an effort to induce you to enter a plea of guilty  
10 in this case?

11 DEFENDANT THOMPSON: No, sir, Your Honor.

12 THE COURT: Has anyone mentally, physically, or in  
13 any other way attempted in any way to force you to plead  
14 guilty in this case?

15 DEFENDANT THOMPSON: No, sir, Your Honor.

16 THE COURT: If you plead guilty, will that plea be  
17 voluntary on your part?

18 DEFENDANT THOMPSON: Yes, sir, Your Honor.

19 THE COURT: Do you understand that if you plead  
20 guilty and if that plea is accepted by the Court, you will be  
21 adjudged guilty of the offense charged by the indictment in  
22 this case, and your punishment will be assessed somewhere  
23 within the range of punishment provided by statute, and your  
24 sentence will be within the range provided by statute?

25 Do you understand those things?

1 DEFENDANT THOMPSON: Yes, sir, Your Honor.

2 THE COURT: Do you understand that if you plead  
3 guilty and then end up getting a sentence that's more severe  
4 than you hoped it would be, you'll still be bound by your plea  
5 of guilty and won't have a right to withdraw it?

6 DEFENDANT THOMPSON: Yes, sir.

7 THE COURT: Do you understand those things?

8 DEFENDANT THOMPSON: Yes, sir, Your Honor.

9 THE COURT: With the knowledge you now have, how do  
10 you plead to the offense charged by the indictment in this  
11 case, that is, the offense of felon in possession of a  
12 firearm, guilty or not guilty?

13 DEFENDANT THOMPSON: Guilty, Your Honor.

14 THE COURT: Is that consistent with your advice to  
15 the defendant, Ms. Serrano?

16 MS. SERRANO: Yes, Your Honor.

17 THE COURT: Okay. I'll accept that plea on  
18 condition that there is a factual basis to support it, and  
19 I'll ask that the stipulation of facts in the Factual Resume  
20 be read aloud at this time.

21 MR. BRADFORD: May it please the Court.

22 Stipulation of Facts: On or about April 27, 2017,  
23 in the Fort Worth Division of the Northern District of Texas,  
24 the defendant, Lee Montez Thompson, having been convicted of a  
25 crime punishable by imprisonment for a term in excess of 1

1 year, did knowingly and unlawfully possess in and affecting  
2 interstate or foreign commerce the following firearm: A  
3 Hi-Point, model CF380, .380 ACP caliber pistol, bearing serial  
4 number P908868.

5 On April 27, 2017, Arlington police were searching  
6 for Thompson as a suspect in an aggravated assault. They  
7 received information that he might be located at 714 Ridgeglen  
8 Drive, Arlington, Texas. Upon searching the area near  
9 entrance to apartment 401, officers found five .380-caliber  
10 empty shell casings.

11 Thompson was located on April 28, 2018, at 212 West  
12 Pioneer, Apartment 6, Arlington, Texas. Thompson was found  
13 lying on a bed in the master bedroom. On the floor near him  
14 was found a Hi-Point, model CF380, .380 ACP caliber pistol,  
15 bearing serial number P908868. Subsequent tool mark analysis  
16 matched the firearm to the casings found at 714 Ridgeglen  
17 Drive, Arlington, Texas. Thompson had been previously  
18 convicted of a felony offense, that is, a crime punishable by  
19 imprisonment in excess of 1 year.

20 On August 18, 2017, an ATF Interstate Nexus expert  
21 reviewed the Hi-Point, model CF380, .380 ACP caliber pistol,  
22 bearing serial number P908868, and determined it was not  
23 manufactured in the State of Texas. Thus, before April 27,  
24 2017, the Hi-Point, model CF380, .380 ACP caliber pistol,  
25 bearing serial number P908868, had traveled in interstate or

1 foreign commerce to reach the State of Texas.

2 THE COURT: You've heard those stipulation of facts  
3 read, Mr. Thompson.

4 Are all of them true?

5 DEFENDANT THOMPSON: Yes, sir, Your Honor.

6 THE COURT: Are they consistent with your  
7 understanding of the true facts, Ms. Serrano?

8 MS. SERRANO: Yes, Your Honor.

9 THE COURT: Okay. I'll order the Factual Resume  
10 filed.

11 The Court finds in the case of United States of  
12 America versus Lee Montez Thompson that the defendant is fully  
13 competent and capable of entering an informed plea, and that  
14 his plea of guilty to the offense charged by the indictment in  
15 this case is a knowing and voluntary plea supported by an  
16 independent basis in fact containing each of the essential  
17 elements of that offense, and that such plea did not result  
18 from force, threats, or promises.

19 His plea of guilty is, therefore, accepted, and he  
20 is now adjudged guilty of the offense charged by the  
21 indictment in this case.

22 Okay. The defendant's remanded to custody, and the  
23 attorneys are excused.

24 MS. SERRANO: Thank you, Your Honor.

25 DEFENDANT THOMPSON: Thank you, Your Honor.

1                   COURT SECURITY OFFICER: All rise.

2                   *(End of Proceedings)*

3                   **REPORTER'S CERTIFICATE**

4                   I, Debra G. Saenz, CSR, RMR, CRR, certify that the  
5                   foregoing is a true and correct transcript from the record  
6                   of proceedings in the foregoing entitled matter.

7                   I further certify that the transcript fees format  
8                   comply with those prescribed by the Court and the Judicial  
9                   Conference of the United States.

10                  Signed this 21st day of January, 2019.

11

12                  /s/ Debra G. Saenz

13                  DEBRA G. SAENZ, CSR, RMR, CRR  
14                  Texas CSR No. 3158  
15                  Official Court Reporter  
16                  The Northern District of Texas  
17                  Fort Worth Division

18

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