

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

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IN THE  
SUPREME COURT OF THE UNITED STATES

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RONALD LYNN THOMAS,

*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

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No. 19-10262  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

February 13, 2020

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

RONALD LYNN THOMAS,

Defendant-Appellant

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:18-CR-234-1

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Before KING, GRAVES, and WILLETT, Circuit Judges.

PER CURIAM:\*

Ronald Lynn Thomas appeals the sentence imposed following his guilty plea to one count of bank robbery. He argues that the district court erred in applying a two-level enhancement under U.S.S.G. § 2B3.1(b)(2)(F) because the evidence fails to show that he made a threat of death. The Government disputes this. However, we need not decide the issue because the record indicates any alleged error was harmless.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Although a misapplication of the Sentencing Guidelines is a procedural error that normally requires us to reverse a sentence, such error is harmless, and does not mandate reversal, if it “did not affect the district court’s selection of the sentence imposed.” *United States v. Richardson*, 676 F.3d 491, 511 (5th Cir. 2012) (quoting *Williams v. United States*, 503 U.S. 193, 203 (1992)). In this circuit, there are two ways to show harmless error if the wrong guidelines range is employed. *United States v. Guzman-Rendon*, 864 F.3d 409, 411 (5th Cir. 2017). “One is to show that the district court considered both ranges (the one now found incorrect and the one now deemed correct) and explained that it would give the same sentence either way.” *Id.* The other method is for the proponent of the sentence to make a convincing showing “(1) that the district court would have imposed the same sentence had it not made the error, and (2) that it would have done so for the same reasons it gave at the prior sentencing.” *United States v. Ibarra-Luna*, 628 F.3d 712, 714 (5th Cir. 2010).

The Government argues that it meets the first test. Thomas does not dispute this argument, and we find it to be supported by the record. The pre-sentence report (PSR) applied the threat-of-death enhancement in calculating a guidelines range of 57-71 months, while a subsequent Addendum identified a range of 46-57 months without the enhancement. The district court adopted the findings “in these documents”—evidently referring to the PSR and the Addendum—at the sentencing hearing, where it also heard the 46-to-57-month range urged by Thomas’s counsel. The court then imposed a 60-month sentence that it explained primarily by reference to Thomas’s criminal history, which included many convictions not counted under the Guidelines. In addition, the court twice affirmed that its sentence would be the same even if it was wrong about the threat-of-death enhancement.

Based on the foregoing, we are satisfied that the district court considered both potential guidelines ranges and was determined to impose the same sentence regardless of which applied. The alleged error is therefore harmless. *See Guzman-Rendon*, 864 F.3d at 411; *Richardson*, 676 F.3d at 511.

AFFIRMED.

## APPENDIX B

**UNITED STATES DISTRICT COURT**  
NORTHERN DISTRICT OF TEXAS  
Fort Worth Division

UNITED STATES OF AMERICA

**JUDGMENT IN A CRIMINAL CASE**

v.

RONALD LYNN THOMAS

Case Number: 4:18-CR-00234-O(01)  
U.S. Marshal's No.: 57591-177  
John Bradford, Assistant U.S. Attorney  
William Hermesmeyer, Attorney for the Defendant

On November 7, 2018 the defendant, RONALD LYNN THOMAS, entered a plea of guilty as to Count One of the Indictment filed on September 19, 2018. Accordingly, the defendant is adjudged guilty of such Count, which involves the following offense:

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 2113(a)	Bank Robbery	8/21/2018	One

The defendant is sentenced as provided in pages 2 through 4 of this judgment. The sentence is imposed pursuant to Title 18, United States Code § 3553(a), taking the guidelines issued by the United States Sentencing Commission pursuant to Title 28, United States Code § 994(a)(1), as advisory only.

The defendant shall pay immediately a special assessment of \$100.00 as to Count One of the Indictment filed on September 19, 2018.

The defendant shall notify the United States Attorney for this district within thirty 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.

Sentence imposed February 25, 2019.

  
REED O'CONNOR  
U.S. DISTRICT JUDGE

Signed February 28, 2019.

Judgment in a Criminal Case

Defendant: RONALD LYNN THOMAS

Case Number: 4:18-CR-00234-O(1)

## IMPRISONMENT

The defendant, RONALD LYNN THOMAS, is hereby committed to the custody of the Federal Bureau of Prisons (BOP) to be imprisoned for a term of **Sixty (60) months** as to Count One of the Indictment filed on September 19, 2018.

The Court recommends to the BOP that the defendant be allowed to participate in the Residential Drug Treatment Program, if eligible. The Court further recommends that the defendant be housed at an FCI facility within the Northern District of Texas area, if possible.

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

## SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of **Two (2) years** as to Count One of the Indictment filed on September 19, 2018.

While on supervised release, in compliance with the standard conditions of supervision adopted by the United States Sentencing Commission, the defendant shall:

- (1) not leave the judicial district without the permission of the Court or probation officer;
- (2) report to the probation officer as directed by the Court or probation officer and submit a truthful and complete written report within the first five (5) days of each month;
- (3) answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- (4) support the defendant's dependents and meet other family responsibilities;
- (5) work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- (6) notify the probation officer within seventy-two (72) hours of any change in residence or employment;
- (7) refrain from excessive use of alcohol and 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;
- (8) not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- (9) not associate with any persons engaged in criminal activity and not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- (10) permit a probation officer to visit the defendant at any time at home or elsewhere and permit confiscation of any contraband observed in plain view by the probation officer;
- (11) notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer;
- (12) 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; and,
- (13) notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and permit the probation officer to make such notifications and to

Judgment in a Criminal Case  
Defendant: RONALD LYNN THOMAS  
Case Number: 4:18-CR-00234-O(1)

confirm the defendant's compliance with such notification requirement, as directed by the probation officer.

In addition the defendant shall:

not commit another federal, state, or local crime;

not possess illegal controlled substances;

not possess a firearm, destructive device, or other dangerous weapon;

cooperate in the collection of DNA as directed by the U.S. probation officer;

report in person to the U.S. Probation Office in the district to which the defendant is released from the custody of the Federal Bureau of Prisons within 72 hours of release;

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;

take notice that if, upon commencement of the term of supervised release, any part of the \$9,250 restitution ordered by this judgment remains unpaid, the defendant shall make payments on such unpaid amount at the rate of at least \$50 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;

provide to the probation officer complete access to all business and personal financial information; and,

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 (copayment) at the rate of at least \$25 per month.

#### **FINE/RESTITUTION**

The Court does not order a fine or costs of incarceration because the defendant does not have the financial resources or future earning capacity to pay a fine or costs of incarceration.

Pursuant to the Mandatory Victims Restitution Act of 1996, the defendant is ordered to pay restitution in the amount of \$9,250.00, payable to the U.S. District Clerk, Choose a Location. Restitution shall be payable immediately and any unpaid balance shall be payable during incarceration. Restitution shall be disbursed as follows:

Judgment in a Criminal Case  
Defendant: RONALD LYNN THOMAS  
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Restitution of \$9,250.00 to:

**WELLS FARGO BANK**

If upon commencement of the term of supervised release any part of the restitution remains unpaid, the defendant shall make payments on such unpaid balance in monthly installments of not less than 10 percent of the defendant's gross monthly income, or at a rate of not less than \$50 per month, whichever is greater. Payment shall begin no later than 60 days after the defendant's release from confinement and shall continue each month thereafter until the balance is paid in full. In addition, at least 50 percent of the receipts received from gifts, tax returns, inheritances, bonuses, lawsuit awards, and any other receipt if money shall be paid toward the unpaid balance within 15 days of receipt. This payment plan shall not affect the ability of the United States to immediately collect payment in full through garnishment, the Treasury Offset Program, the Inmate Financial Responsibility Program, the Federal Debt Collection Procedures Act of 1990 or any other means available under federal or state law. Furthermore, it is ordered that interest on the unpaid balance is waived pursuant to 18 U.S.C. § 3612(f)(3).

**RETURN**

I have executed this judgment as follows:

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Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

at \_\_\_\_\_, with a certified copy of this judgment.

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United States Marshal

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BY  
Deputy Marshal