

Petition Appendix

[9] A challenge to a condition of supervised release is normally reviewed for abuse of discretion, but here, we review for plain error because Haverkamp failed to challenge this condition in the district court. *See United States v. Green*, 618 F.3d 120, 122 (2d Cir. 2010); *United States v. Dupes*, 513 F.3d 338, 343 (2d Cir. 2008). As noted above, in the sentencing context “the plain error doctrine should not be applied stringently.” *Gamez*, 577 F.3d at 397; *Williams*, 399 F.3d at 457.

[10–12] A condition of supervised release must be related to sentencing purposes and must impose no greater restraint on liberty than is reasonably necessary to accomplish sentencing objectives. *United States v. Johnson*, 446 F.3d 272, 277 (2d Cir. 2006). A district court is required to make an “individualized assessment” when determining whether to impose special conditions of supervised release. *United States v. Betts*, 886 F.3d 198, 202 (2d Cir. 2018). There must be a reasonable relationship between the factors considered by the district court in the individualized assessment and the special condition of release being challenged. *See Johnson*, 446 F.3d at 281.

[13] The computer monitoring condition in question was reasonably related to the nature of Haverkamp’s offense. He admitted to a history of sexual contact with children, both online and in person. Given these considerations, it was not plain error for the district court to impose this condition.⁴

We have considered Haverkamp’s remaining arguments and find them to be without merit. Accordingly, we AFFIRM in part and VACATE in part the judgment of the district court and REMAND for

4. We are not called upon to decide and we do not decide whether this condition would have

further proceedings consistent with this opinion.



UNITED STATES of America,
Appellee,

v.

Kolongi RICHARDSON, Defendant-
Appellant.

No. 19-412-cr
August Term 2019

United States Court of Appeals,
Second Circuit.

Submitted: February 3, 2020

Decided: May 5, 2020

Background: Defendant pled guilty in the United States District Court for the Northern District of New York, Glenn T. Suddaby, Chief Judge, to distribution and possession with intent to distribute controlled substance, and he appealed.

Holdings: The Court of Appeals, Menashi, Circuit Judge, held that:

- (1) application note to career offender sentencing guideline did not impermissibly expand guideline’s definition of “controlled substance offense” by including inchoate offenses;
- (2) defendant’s federal conviction for conspiracy to distribute controlled substance constituted predicate “controlled substance offense”; and

been appropriate had the standard not been plain error.

(3) defendant's 210-month sentence was not substantively unreasonable.

Affirmed.

1. Criminal Law \Leftrightarrow 1156.2

Court of Appeals reviews sentence's procedural and substantive reasonableness under deferential abuse-of-discretion standard.

2. Criminal Law \Leftrightarrow 1134.75

In reviewing sentence's reasonableness, Court of Appeals' procedural inquiry focuses primarily on sentencing court's compliance with its statutory obligation to consider statutory sentencing factors, while substantive inquiry assesses length of sentence imposed in light of those factors. 18 U.S.C.A. § 3553(a).

3. Sentencing and Punishment \Leftrightarrow 30

Sentence is substantively unreasonable if it is manifestly unjust or shocks conscience.

4. Criminal Law \Leftrightarrow 1134.75

In reviewing sentence's reasonableness, Court of Appeals will set aside district court's substantive determination only in exceptional cases where trial court's decision cannot be located within range of permissible decisions.

5. Criminal Law \Leftrightarrow 1139, 1158.34

When defendant has preserved claim that district court erred in its application of sentencing guidelines, Court of Appeals reviews issues of law de novo, issues of fact under clearly erroneous standard, and mixed questions of law and fact either de novo or under clearly erroneous standard depending on whether question is predominantly legal or factual.

6. Sentencing and Punishment \Leftrightarrow 1257

Sentencing Commission's application note to career offender sentencing guide-

line did not impermissibly expand guideline's definition of "controlled substance offense" by including inchoate offenses. U.S.S.G. § 4B1.2(b).

7. Sentencing and Punishment \Leftrightarrow 1257

Defendant's federal conviction for conspiracy to distribute controlled substance constituted predicate "controlled substance offense" under career offender sentencing guideline, despite defendant's contention that statute of conviction had no overt act requirement. Comprehensive Drug Abuse Prevention and Control Act of 1970 §§ 401, 406, 21 U.S.C.A. §§ 841(a)(1), 846; U.S.S.G. § 4B1.2(b).

See publication Words and Phrases for other judicial constructions and definitions.

8. Sentencing and Punishment \Leftrightarrow 1408

Defendant's 210-month career offender sentence for distribution and possession with intent to distribute controlled substance was not substantively unreasonable, despite defendant's contention that district court assigned too much weight to his criminal history and did not adequately account for his need for mental health and substance abuse treatment, where sentence was within Guidelines range, and district court observed that while defendant had experienced "terrible" family trouble as well as mental health and substance abuse challenges, his past criminal conduct—including drug trafficking, escape from federal prison, and illegal gun possession—was serious and persisted despite repeated intervention by law enforcement. 18 U.S.C.A. § 3553(a); Comprehensive Drug Abuse Prevention and Control Act of 1970 § 401, 21 U.S.C.A. § 841(a)(1).

On Appeal from the United States District Court for the Northern District of New York

Rajit S. Dosanjh, Assistant United States Attorney (Nicolas Commandeur, Assistant United States Attorney, on the brief), for Grant C. Jaquith, United States Attorney for the Northern District of New York, Syracuse, New York, for Appellee.

Melissa A. Tuohey, Assistant Federal Public Defender, for Lisa A. Peebles, Federal Public Defender, Syracuse, New York, for Defendant-Appellant.

Before: WALKER, CHIN, and MENASHI, Circuit Judges.

MENASHI, Circuit Judge:

Kolongi Richardson appeals a judgment, entered February 5, 2019, following a guilty plea, sentencing him principally to 210 months' imprisonment for distribution and possession with intent to distribute a controlled substance in violation of 21 U.S.C. § 841(a)(1). On appeal, Richardson challenges the procedural and substantive reasonableness of his sentence.

Richardson argues that (1) the district court erred procedurally when it determined that his prior convictions for conspiracy to distribute a controlled substance and attempted criminal sale of a controlled substance qualify as controlled substance offenses under the career offender guideline, U.S.S.G. § 4B1.2(b), and (2) the sentence was substantively unreasonable because the court assigned too much weight to his criminal history and did not adequately account for his need for mental health and substance abuse treatment. We reject Richardson's arguments and affirm the judgment below.

FACTS

On September 21, 2018, Richardson pleaded guilty to distribution and possession with intent to distribute a controlled substance in violation of 21 U.S.C. § 841(a)(1). At sentencing, the district

court concluded that Richardson qualified for the career offender enhancement of U.S.S.G. § 4B1.1 and sentenced him principally to 210 months' imprisonment. The Sentencing Guidelines provide for such an enhancement where, *inter alia*, "the instant offense of conviction is a felony that is either a crime of violence or a controlled substance offense" and "the defendant has at least two prior felony convictions of either a crime of violence or a controlled substance offense." U.S.S.G. § 4B1.1. The district court found that Richardson met both criteria—his conviction under 21 U.S.C. § 841(a)(1) was a felony controlled substance offense, and he had two prior felony controlled substance offense convictions. In 2005, Richardson was convicted of conspiracy to distribute and possession with intent to distribute cocaine and cocaine base in violation of 21 U.S.C. §§ 841(a)(1) and 846, and in 2012, Richardson was convicted of attempted criminal possession of a controlled substance in the third degree in violation of N.Y. Penal Law ("N.Y.P.L.") § 220.16(1). The district court imposed an additional six-year term of supervised release that included mandatory participation in mental health and substance abuse programs.

DISCUSSION

[1–4] This court "review[s] the procedural and substantive reasonableness of a sentence under a deferential abuse-of-discretion standard." *United States v. Yilmaz*, 910 F.3d 686, 688 (2d Cir. 2018) (per curiam). "The procedural inquiry focuses primarily on the sentencing court's compliance with its statutory obligation to consider the factors detailed in 18 U.S.C. § 3553(a), while the substantive inquiry assesses the length of the sentence imposed in light of the § 3553(a) factors." *United States v. Castillo*, 896 F.3d 141, 148 (2d Cir. 2018). A sentence is substantively

unreasonable if it is “manifestly unjust” or “shock[s] the conscience.” *United States v. Rigas (Rigas II)*, 583 F.3d 108, 122-24 (2d Cir. 2009). We will “set aside a district court’s substantive determination only in exceptional cases where the trial court’s decision ‘cannot be located within the range of permissible decisions.’” *United States v. Cavera*, 550 F.3d 180, 189 (2d Cir. 2008) (en banc) (quoting *United States v. Rigas (Rigas I)*, 490 F.3d 208, 238 (2d Cir. 2007)) (emphasis omitted).

[5] When the defendant has preserved a claim that the district court erred in its application of the sentencing guidelines, “[w]e review issues of law *de novo*, issues of fact under the clearly erroneous standard, [and] mixed questions of law and fact either *de novo* or under the clearly erroneous standard depending on whether the question is predominantly legal or factual.” *United States v. Seloutsky*, 409 F.3d 114, 119 (2d Cir. 2005) (internal citations omitted).

I

A “controlled substance offense” is “an offense under federal or state law, punishable by imprisonment for a term exceeding one year, that prohibits the manufacture, import, export, distribution, or dispensing of a controlled substance . . . or the possession of a controlled substance . . . with intent to manufacture, import, export, distribute, or dispense.” U.S.S.G. § 4B1.2. Application Note 1 to § 4B1.2 further defines “controlled substance offense” to “include the offenses of aiding and abetting, conspiring, and attempting to commit such offenses.” U.S.S.G. § 4B1.2 cmt. n.1.

A

[6] Prior to his conviction in this case, Richardson was twice convicted of felonies relating to drug-trafficking—conspiracy to

distribute a controlled substance in violation of 21 U.S.C. §§ 841(a)(1) and 846 and attempted criminal possession of a controlled substance in violation of N.Y.P.L. § 220.16(1). As Application Note 1 interprets § 4B1.2(b), these prior felony convictions qualify as controlled substance offenses. Nevertheless, Richardson argues that these convictions are not controlled substance offenses under § 4B1.2(b), properly understood, because Application Note 1 impermissibly expands the guideline’s definition of “controlled substance offense” to include inchoate offenses. According to Richardson, the text of § 4B1.2(b) does not bear that interpretation. *See Stinson v. United States*, 508 U.S. 36, 38, 113 S.Ct. 1913, 123 L.Ed.2d 598 (1993) (“[C]ommentary in the Guidelines Manual that interprets or explains a guideline is authoritative unless it . . . is inconsistent with, or a plainly erroneous reading of, that guideline.”). This argument is foreclosed by our decision in *United States v. Tabb*, 949 F.3d 81 (2d Cir. 2020). In that case, this court concluded that *United States v. Jackson*, 60 F.3d 128 (2d Cir. 1995), which upheld the authority of the Sentencing Commission to adopt Application Note 1, precludes any further argument “that Application Note 1 improperly conflicts with the guideline text.” *Tabb*, 949 F.3d at 87. While *Jackson* focused on the consistency of Application Note 1 with the authorizing statute rather than the guideline, this court concluded that “there is no way to reconcile” *Jackson*’s holding with a challenge such as Richardson’s. *Id.*

Regardless of the scope of *Jackson*’s holding, Richardson’s argument cannot prevail because Application Note 1 is not “inconsistent with, or a plainly erroneous reading of” § 4B1.2. *Stinson*, 508 U.S. at 38, 113 S.Ct. 1913. Section 4B1.2 defines “controlled substance offense” as an offense under federal or state law “that prohibits the manufacture, import, export, dis-

tribution, or dispensing of a controlled substance.” To “prohibit” means, among other things, “to prevent [or] hinder.” *Prohibit*, *Oxford English Dictionary* (online ed. 2020); *see also United States v. Lange*, 862 F.3d 1290, 1295 (11th Cir. 2017). The Sentencing Commission adopted an interpretation of § 4B1.2 that is not inconsistent with the guideline when it concluded that an offense that forbids “aiding and abetting, conspiring, and attempting to” manufacture, import, export, distribute, or dispense a controlled substance is an offense that “prohibits” those activities. *See U.S.S.G. § 4B1.2 cmt. n.1*. A ban on attempting to distribute a controlled substance, for example, “hinders” the distribution of the controlled substance. *See Lange*, 862 F.3d at 1295. This conclusion accords with the majority of circuits that have addressed this question,¹ and it underlies the decision in *Tabb* that the “purported distinction” between *Jackson*’s holding that the Sentencing Commission had the authority to include inchoate offenses within the definition of “controlled substance offense” and the conclusion that Application Note 1 is not inconsistent with the guideline is “without substance.” 949 F.3d at 87.

B

[7] Richardson also argues that his conviction under 21 U.S.C. § 846 cannot

1. *See United States v. Adams*, 934 F.3d 720, 729 (7th Cir. 2019) (concluding that Application Note 1’s “inclusion of conspiracy d[oes] not conflict with the text of the Guideline itself”); *United States v. Crum*, 934 F.3d 963, 966 (9th Cir. 2019); *United States v. Mendoza-Figueroa*, 65 F.3d 691, 694 (8th Cir. 1995) (en banc) (concluding that Application Note 1 “is a reasonable interpretation of the career offender guidelines”); *United States v. Smith*, 54 F.3d 690, 693 (11th Cir. 1995); *United States v. Piper*, 35 F.3d 611, 617 (1st Cir. 1994) (concluding that Application Note 1 “comports sufficiently with the letter, spirit, and

serve as a predicate offense under Application Note 1 because Section 846 narcotics conspiracy has no overt act requirement. This argument also contradicts our holdings in *Tabb* and *Jackson*. *See Tabb*, 949 F.3d at 88 (“The text and structure of Application Note 1 demonstrate that it was intended to include Section 846 narcotics conspiracy.”); *Jackson*, 60 F.3d at 133 (“[D]rug conspiracy convictions pursuant to 21 U.S.C. [§] 846 . . . qualify as controlled substance offenses.”) (citing *United States v. Whitaker*, 938 F.2d 1551, 1553-54 (2d Cir. 1991) (per curiam)). Accordingly, the district court did not err when it applied the career offender sentencing enhancement.

II

[8] Richardson also challenges the substantive reasonableness of his sentence, arguing that the court assigned too much weight to his criminal history and did not adequately account for his need for mental health and substance abuse treatment. We conclude that Richardson’s sentence is not substantively unreasonable because it is not “manifestly unjust” and does not “shock the conscience.” *Rigas II*, 583 F.3d at 122-24. The district court imposed a within-Guidelines sentence after considering the § 3553(a) factors, including Richardson’s personal and criminal history and the need for the sentence imposed.

aim of the guideline to bring it within the broad sphere of the Sentencing Commission’s interpretive discretion’); *United States v. Hightower*, 25 F.3d 182, 187 (3d Cir. 1994). *But see United States v. Havis*, 927 F.3d 382, 386-87 (6th Cir. 2019) (en banc) (“The text of § 4B1.2(b) controls, and it makes clear that attempt crimes do not qualify as controlled substance offenses.”); *United States v. Winstead*, 890 F.3d 1082, 1091 (D.C. Cir. 2018) (“Section 4B1.2(b) presents a very detailed ‘definition’ of controlled substance offense that clearly excludes inchoate offenses.”).

The district court observed that while Richardson had experienced “terrible” family trouble as well as mental health and substance abuse challenges, his past criminal conduct—including drug trafficking, an escape from federal prison, and illegal gun possession—was serious and persisted despite repeated intervention by law enforcement. J. App’x 128-34. In light of these circumstances, the district court’s decision to sentence Richardson to 210 months’ imprisonment fell well within the range of permissible decisions. *See United States v. Thavaraja*, 740 F.3d 253, 259 (2d Cir. 2014). Accordingly, we conclude that Richardson’s sentence is substantively reasonable.

CONCLUSION

We **AFFIRM** the district court’s judgment because Richardson’s sentence was both procedurally and substantively reasonable.



UNITED STATES of America,
Appellee,

v.

Dusan MLADEN, aka David Mladen,
Defendant-Appellant.

Docket No. 18-0616
August Term, 2019

United States Court of Appeals,
Second Circuit.

Appeal Argued: October 21, 2019

Motion Submitted: February 25, 2020

Decided: May 6, 2020

Background: Defendant pled guilty in the United States District Court for the Dis-

trict of Connecticut, Jeffrey Alker Meyer, J., to making false statements to federal official, and he appealed. While appeal was pending, defendant died. Defense counsel moved for abatement of all proceedings against defendant.

Holdings: The Court of Appeals, Kearse, Senior Circuit Judge, held that:

- (1) defendant’s death during pendency of his direct appeal did not warrant abatement of his conviction, and
- (2) defendant’s death warranted vacatur of imposed terms of imprisonment and supervised release, and for entry of order that fine imposed at sentencing be repaid to his estate.

Motion granted in part and denied in part; appeal dismissed.

1. Criminal Law **1070**

Under doctrine of abatement, if defendant dies while his direct appeal as of right is pending, his death ordinarily requires not only dismissal of appeal, but also eradication of all proceedings had in prosecution from its inception.

2. Criminal Law **1070**

Doctrine of abatement is principally animated by two considerations: (1) interests of justice ordinarily require that defendant not stand convicted without resolution of his appeal’s merits, and (2) to extent that judgment of conviction orders incarceration or other sanctions that are designed to punish defendant, that purpose can no longer be served.

3. Criminal Law **303.50**

In complete abatement ab initio, everything associated with case is extinguished, leaving defendant as if he had never been indicted or convicted.

UNITED STATES DISTRICT COURT

Northern District of New York

UNITED STATES OF AMERICA

v.

KOLONGI RICHARDSON

JUDGMENT IN A CRIMINAL CASE

Case Number: DNYN518CR000213-001

USM Number: 12856-052

Randi Juda Bianco, OFPD
4 Clinton Square, 3rd Floor
Syracuse, NY 13202
315-701-0080

Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) 1 of the Information on 09/21/2018.
 pleaded nolo contendere to count(s) which was accepted by the court.
 was found guilty on count(s) of the on after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

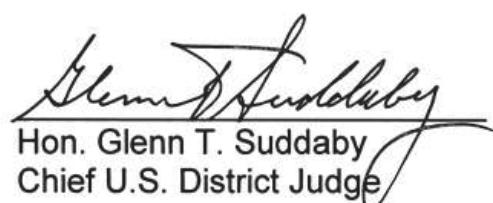
<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C)	Distribution and Possession with the Intent to Distribute a Controlled Substance	05/23/2018	1

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed in accordance with 18 U.S.C. § 3553 and the Sentencing Guidelines.

The defendant has been found not guilty on count(s)
 Count(s) is are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

February 1, 2019
Date of Imposition of Judgment


Hon. Glenn T. Suddaby
Chief U.S. District Judge

February 5, 2019
Date

DEFENDANT: Kolongi Richardson
CASE NUMBER: DNYN518CR000213-001

IMPRISONMENT

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

210 months

The court makes the following recommendations to the Bureau of Prisons:

The Court recommends the defendant participate in substance abuse treatment while incarcerated with the Bureau of Prisons.
The Court recommends the defendant be placed in a facility as close to his family in Syracuse, New York as possible.

The defendant is remanded to the custody of the United States Marshal.
 The defendant shall surrender to the United States Marshal for this district:
 at a.m. p.m. on.
 as notified by the United States Marshal.
 The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
 before 2 p.m. on.
 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 _____

at _____ with a certified copy of this judgment.

UNITED STATES MARSHAL

BY DEPUTY UNITED STATES MARSHAL

DEFENDANT: Kolongi Richardson
CASE NUMBER: DNYN518CR000213-001

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of: **6 years**

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. *(deselect if inapplicable)*
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)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that you pay in accordance with the Schedule of Payments sheet of this judgment.

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

DEFENDANT: Kolongi Richardson
CASE NUMBER: DNYN518CR000213-001

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.
14. You must provide the probation officer with access to any requested financial information.
15. You must submit your person, and any property, house, residence, vehicle, papers, effects, computer, electronic communications devices, and any data storage devices or media, to search at any time, with or without a warrant, by any federal probation officer, or any other law enforcement officer from whom the Probation Office has requested assistance, with reasonable suspicion concerning a violation of a condition of probation or supervised release or unlawful conduct by you. Any items seized may be removed to the Probation Office or to the office of their designee for a more thorough examination.

DEFENDANT: Kolongi Richardson
CASE NUMBER: DNYN518CR000213-001

SPECIAL CONDITIONS OF SUPERVISION

1. You must participate in a program for substance abuse which will include testing for use of controlled substances, controlled substance analogues, and alcohol. This may include outpatient treatment as recommended by the treatment provider based upon your risk and needs. You may also be required to participate in inpatient treatment upon recommendation of the treatment provider and upon approval of the Court. The probation office will approve the location, frequency, and duration of outpatient treatment. You must abide by the rules of any treatment program which may include abstaining from the use of any alcohol. You must contribute to the cost of any evaluation and/or treatment in an amount to be determined by the probation officer based on your ability to pay and the availability of third party payments.
2. You must participate in a mental health program which may include medical, psychological, or psychiatric evaluation and outpatient treatment as recommended by the treatment provider based upon your risk and needs. You may also be required to participate in inpatient treatment upon recommendation of the treatment provider and upon approval of the Court. The probation office will approve the location, frequency, and duration of outpatient treatment. You must abide by the rules of the program which may include a medication regimen. You must contribute to the cost of any evaluation and/or treatment in an amount to be determined by the probation officer based on your ability to pay and the availability of third party payments.

DEFENDANT'S ACKNOWLEDGMENT OF APPLICABLE CONDITIONS OF SUPERVISION

Upon a finding of a violation of probation or supervised release, I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

The conditions of supervision have been read to me. I fully understand the conditions and have been provided a copy of them. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant

Date

U.S. Probation Officer/Designated Witness

Date

DEFENDANT: Kolongi Richardson
CASE NUMBER: DNYN518CR000213-001

CRIMINAL MONETARY PENALTIES

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

<u>TOTALS</u>	<u>Assessment</u>	<u>JVTA Assessment *</u>	<u>Fine</u>	<u>Restitution</u>
	\$ 100	\$ N/A	\$ Waived	\$ N/A

- 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>
<u>Totals</u>	<u>\$</u>	<u>\$</u>	<u>\$</u>

- 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: Kolongi Richardson
CASE NUMBER: DNYN518CR000213-001**SCHEDULE OF PAYMENTS**

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A In full immediately; or
- B Lump sum payment of \$ due immediately; balance due
 - not later than, or
 - in accordance with D, E, F, or G below; or
- C Payment to begin immediately (may be combined with D, E, or G below); or
- D Payment in equal installments of \$ over a period of, to commence after the date of this judgment; or
- E Payment in equal installments of \$ over a period of, to commence after release from imprisonment to a term of supervision; or
- F Payment during the term of supervised release will commence within 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
- G Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to **Clerk, U.S. District Court, Federal Bldg., 100 S. Clinton Street, P.O. Box 7367, Syracuse, N.Y. 13261-7367**, unless otherwise directed by the court, the probation officer, or the United States attorney. If a victim cannot be located, the restitution paid to the Clerk of the Court for that victim shall be sent to the Treasury, to be retrieved when the victim is located.

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 Court gives notice that this case involves other defendants who may be held jointly and severally liable for payment of all or part of the restitution ordered herein and may order such payment in the future.
- 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: The items specified in the preliminary order of forfeiture dated 12/14/18.

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) JVTA Assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.