

APPENDIX

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UNPUBLISHEDUNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-4095

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JABARR RYEHEINE RUDOLPH,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at
Wilmington. James C. Dever III, District Judge. (7:16-cr-00116-D-11)

Submitted: February 20, 2020

Decided: March 24, 2020

Before AGEE, FLOYD, and HARRIS, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Jennifer H. Rose, LAW OFFICE OF JENNIFER HAYNES ROSE, Cary, North Carolina,
for Appellant. Robert J. Higdon, Jr., United States Attorney, Jennifer P. May-Parker,
Assistant United States Attorney, Philip A. Rubin, Assistant United States Attorney,
OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Without the benefit of a plea agreement, Jabarr Ryeheine Rudolph pled guilty to conspiracy to distribute and possess with intent to distribute an unspecified quantity of cocaine, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(C), 846 (2018), and five substantive counts of distributing unspecified quantities of heroin, in violation of 21 U.S.C. § 841(a)(1).¹ At sentencing, the district court resolved several factual disputes in a manner adverse to Rudolph, including, as relevant to this appeal, sustaining the attributable drug quantity determination and the two-level obstruction of justice enhancement recommended in the presentence report. And, because it found that Rudolph engaged in conduct that obstructed justice, the court also declined to reduce Rudolph's offense level to reflect his acceptance of responsibility. Finally, the court departed upwardly from Rudolph's advisory Guidelines range, pursuant to U.S. Sentencing Guidelines Manual § 4A1.3(a), p.s. (2018), and sentenced Rudolph to the statutory maximum term of 240 months' imprisonment on each count of conviction, to be served concurrently. At the end of the sentencing hearing, the court observed that, even if it erred in its Guidelines computations, it would impose the same 240-month term as an upward variant sentence because this was the appropriate sentence given the facts of this case.

Rudolph presents three arguments for review, all of which relate to his sentence. In his first argument, Rudolph contends that the district court committed reversible error in

¹ Although Rudolph was also charged with use or possession of a firearm in furtherance of a drug trafficking offense, and aiding and abetting, in violation of 18 U.S.C. §§ 924(c)(1)(A), 2 (2018), he was acquitted of this charge following a multi-day jury trial.

determining the drug quantity attributable to him for sentencing purposes by relying on facts that were not (a) found by a jury or admitted by Rudolph; or (b) proven by direct evidence. In his next two arguments, Rudolph maintains the court clearly erred in applying the obstruction of justice enhancement and in refusing to award the recommended acceptance of responsibility reduction. We affirm.

We reject the first components of Rudolph’s opening argument, which assign legal error to the district court’s sentencing process, because they are contrary to established precedent. Specifically, in *Alleyne v. United States*, the Supreme Court ruled that “facts that increase mandatory minimum sentences must be submitted to the jury,” but reaffirmed the established principle that “broad sentencing discretion, informed by judicial factfinding, does not violate the Sixth Amendment.” 570 U.S. 99, 116 (2013). The district court’s attributable drug quantity determination here did not increase Rudolph’s statutory sentencing exposure but, rather, was used to determine his advisory Guidelines range. As this is perfectly within bounds of federal sentencing jurisprudence, we discern no error in the court’s reaching this factual finding at sentencing instead of requiring that it be found by a jury. *See United States v. Booker*, 543 U.S. 220, 233 (2005) (“[W]hen a trial judge exercises his discretion to select a specific sentence within a defined range, the defendant has no right to a jury determination of the facts that the judge deems relevant.”); *United States v. Benkahla*, 530 F.3d 300, 312 (4th Cir. 2008) (“Sentencing judges may find facts relevant to determining a Guidelines range by a preponderance of the evidence, so long as that Guidelines sentence is treated as advisory and falls within the statutory maximum authorized by the jury’s verdict.”). We also reject Rudolph’s alternative contention that

the district court's factual sentencing determinations must be based on conduct admitted by the defendant. *See United States v. Alvarado Perez*, 609 F.3d 609, 614 (4th Cir. 2010) ("[T]he district court was entitled to consider relevant conduct that was not admitted by [defendant] in determining an appropriate sentencing decision."); *see also United States v. Grubbs*, 585 F.3d 793, 799 (4th Cir. 2009) ("[A] sentencing court may consider uncharged and acquitted conduct in determining a sentence, as long as that conduct is proven by a preponderance of the evidence.").

Rudolph's opening argument also has a fact-related component—to wit: that there was a lack of direct evidence to support the district court's factual determinations related to the attributable drug quantity determination—through which Rudolph contests the reliability and viability of the Government's sentencing evidence. Accordingly, despite being intertwined with the legal challenges to the district court's sentencing process, this claim is properly viewed as a challenge to the district court's computation of Rudolph's base offense level. Framed as such, and given that the other issues on appeal assign error to the district court's Guidelines computations, the remainder of this appeal challenges the procedural reasonableness of Rudolph's sentence.

We review every federal sentence—whether it is within, above, or below the Guidelines range—for reasonableness, applying an abuse of discretion standard. *Gall v. United States*, 552 U.S. 38, 51 (2007); *see United States v. Provance*, 944 F.3d 213, 217 (4th Cir. 2019). In so doing, we examine the sentence for "significant procedural error," including "failing to calculate (or improperly calculating) the Guidelines range." *Gall*, 552 U.S. at 51.

“It is well established that we will not vacate a sentence if we determine that the district court’s improper calculation of the Guidelines advisory sentencing range was harmless.” *United States v. Mills*, 917 F.3d 324, 330 (4th Cir. 2019). As the Government suggests, we need not resolve the challenged Guidelines rulings but may instead, “proceed directly to an assumed error harmlessness inquiry,” because the district court alternatively announced that it would impose the same 240-month sentence as an upward variance. *United States v. Gomez-Jimenez*, 750 F.3d 370, 382 (4th Cir. 2014) (internal quotation marks omitted). A sentencing error is harmless if: “(1) the district court would have reached the same result even if it had decided the [G]uidelines issue the other way, and (2) the sentence would be reasonable even if the [G]uidelines issue had been decided in the defendant’s favor.” *Mills*, 917 F.3d at 330 (internal quotation marks omitted). Here, the first prong of this inquiry is easily met, as the district court explicitly stated that it would have imposed “the same sentence as an alternative variant sentence” (J.A. 1576-77),² regardless of its resolution of the challenged Guidelines issues, *see Gomez-Jimenez*, 750 F.3d at 383 (holding first component is satisfied when the sentencing court “expressly state[s] in a separate and particular explanation that it would have reached the same result”).

In determining whether the imposed sentence would be substantively reasonable, this court “consider[s] whether the sentencing court acted reasonably both with respect to its decision to impose such a sentence and with respect to the extent of the divergence from

² Citations to the “J.A.” refer to the joint appendix submitted by the parties.

the sentencing range.” *United States v. Washington*, 743 F.3d 938, 944 (4th Cir. 2014) (internal quotation marks omitted). “While a district court’s explanation for the sentence must support the degree of the variance, it need not find extraordinary circumstances to justify a deviation from the Guidelines[.]” *United States v. Spencer*, 848 F.3d 324, 327 (4th Cir. 2017) (citation and internal quotation marks omitted). Because our review is ultimately for an abuse of discretion, we accord “due deference to the district court’s decision that the [18 U.S.C.] § 3553(a) [(2018)] factors, on a whole, justify the extent of the variance.” *United States v. Zuk*, 874 F.3d 398, 409 (4th Cir. 2017) (internal quotation marks omitted). In this posture, even if we “might reasonably conclude that a different sentence is appropriate, that conclusion, standing alone, is an insufficient basis to vacate the district court’s chosen sentence.” *Id.* (alterations and internal quotation marks omitted).

Upon review, we conclude that Rudolph’s 240-month sentence does not amount to an abuse of discretion. The district court provided a detailed explanation for the sentence that was both rooted in the relevant § 3553(a) factors and responsive to Rudolph’s sentencing arguments. Specifically, the district court began its analysis by acknowledging Rudolph’s role in the underlying drug trafficking conspiracy, with which the court was very familiar having presided over multiple trials and guilty pleas for the involved defendants, and that Rudolph pled guilty to six serious drug trafficking offenses. The court further commented that Rudolph’s heroin distribution efforts contributed to the overall opioid crisis, which had a severe negative impact on the community.

The court also identified Rudolph’s unabated criminality and high likelihood of recidivism as two of the primary concerns in this case. On these points, the court described

Rudolph as a committed criminal who had not previously been deterred from crime despite receiving a substantial sentence following his conviction for second-degree murder. The court also emphasized that Rudolph accrued criminal history points for crimes committed while incarcerated. Finally, the court observed the aggravating nature of the facts related to the obstruction enhancement and further opined that recordings of Rudolph's jailhouse calls demonstrated that Rudolph was not remorseful and presented a high risk of recidivating.

It is thus clear from the record that the court tied the selected sentence to the § 3553(a) factors of the nature and circumstances of the offense; Rudolph's history and characteristics; and the need to impose a sentence that would provide both general and specific deterrence, reflect the seriousness of the offense conduct, and protect the public from future crime committed by Rudolph. Accordingly, we hold that any error in the court's calculation of Rudolph's Guidelines range was harmless because the court's explanation renders the selected 240-month sentence reasonable. *See United States v. Hargrove*, 701 F.3d 156, 161 (4th Cir. 2012) ("A sentencing error is harmless if the resulting sentence was not longer than that to which the defendant would otherwise be subject." (alteration and internal quotation marks omitted)).

We therefore affirm the criminal judgment. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

FILED: March 24, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-4095
(7:16-cr-00116-D-11)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

JABARR RYEHEINE RUDOLPH

Defendant - Appellant

JUDGMENT

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

UNITED STATES DISTRICT COURT

Eastern District of North Carolina

UNITED STATES OF AMERICA) **JUDGMENT IN A CRIMINAL CASE**
v.)
JABARR RYEHEINE RUDOLPH) Case Number: 7:16-CR-116-11-D
) USM Number: 62875-056
) Thomas Reston Wilson
) Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) 1, 11, 12, 13, 14 and 15 of the Indictment

pleaded nolo contendere to count(s) _____ which was accepted by the court.

was found guilty on count(s) _____ 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. § 846, 21 U.S.C. § 841(b)(1)(C) and 21 U.S.C. § 841(a)(1)	Conspiracy to Distribute and Possess With Intent to Distribute A Quantity of Cocaine	10/26/2016	1

The defendant is sentenced as provided in pages 2 through 9 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) 16 of the Indictment

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.

1/28/2019
Date of Imposition of Judgment

J. Dever
Signature of Judge

James C. Dever III, United States District Judge
Name and Title of Judge

1/28/2019
Date

DEFENDANT: JABARR RYEHEINE RUDOLPH
CASE NUMBER: 7:16-CR-116-11-D

ADDITIONAL COUNTS OF CONVICTION

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count (s)</u>
21 U.S.C. § 841(a)(1), 21 U.S.C. § 841(b)(1)(C)	Distribution of a Quantity of Heroin	10/26/2016	11, 12, 13
21 U.S.C. § 841(a)(1), 21 U.S.C. § 841(b)(1)(C)	Distribution of a Quantity of Heroin and Aiding and Abetting	10/26/2016	14, 15

DEFENDANT: JABARR RYEHEINE RUDOLPH
CASE NUMBER: 7:16-CR-116-11-D

IMPRISONMENT

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

Counts 1, 11, 12, 13, 14, and 15: 240 months per count, all terms shall be served concurrently - (Total term: 240 months)

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

*See page 4**

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: JABARR RYEHEINE RUDOLPH
CASE NUMBER: 7:16-CR-116-11-D

ADDITIONAL IMPRISONMENT TERMS

The court recommends that the defendant receive intensive substance abuse treatment and vocational and educational training opportunities. The court recommends that the defendant be housed separately from all co-defendants during the entire term of imprisonment, to include: Antonio Kevin McKoy, James Daniel McKoy, Bryant Douglas Carr, Anthony Lee Barnes, Jr., Tony Chevallier, Jafa McKoy, Deames Frederick Henry, Earl Jeffrey Melvin, Darryl Clifton McKoy, Brandin O'Brian Smith, William Darrell Garner, Craig Anthony Melvin, Braylynn Spencer, Greg Bright, Bryan Derrick Carr, Ryan Eric Carr, Donald Ray Garner, Derrick Tyrone Ingram, Derrell Eugene Wilson, David Fitzgerald Williams, Robert Antonio Parker, Harry Thomas Oates, Jr., and Russell Condell Bell, Jr.

DEFENDANT: JABARR RYEHEINE RUDOLPH
CASE NUMBER: 7:16-CR-116-11-D

SUPERVISED RELEASE

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

Counts 1, 11, 12, 13, 14, and 15: 3 years per count, all such terms shall run concurrently - (Total term: 3 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. *(check if applicable)*
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. You must participate in an approved program for domestic violence. *(check if applicable)*

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

DEFENDANT: JABARR RYEHEINE RUDOLPH
CASE NUMBER: 7:16-CR-116-11-D

STANDARD CONDITIONS OF SUPERVISION

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

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

U.S. Probation Office Use Only

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

Defendant's Signature _____

Date _____

DEFENDANT: JABARR RYEHEINE RUDOLPH
CASE NUMBER: 7:16-CR-116-11-D

ADDITIONAL STANDARD CONDITIONS OF SUPERVISION

The defendant shall not incur new credit charges or open additional lines of credit without approval of the probation office.

The defendant shall provide the probation office with access to any requested financial information.

The defendant shall participate as directed in a program approved by the probation office for the treatment of narcotic addiction, drug dependency, or alcohol dependency which will include urinalysis testing or other drug detection measures and may require residence or participation in a residential treatment facility.

The defendant shall participate in a program of mental health treatment, as directed by the probation office.

The defendant shall consent to a warrantless search by a United States probation officer or, at the request of the probation officer, any other law enforcement officer, of the defendant's person and premises, including any vehicle, to determine compliance with the conditions of this judgment.

The defendant shall participate in vocational training, as directed by the probation office.

The defendant shall cooperate in the collection of DNA as directed by the probation officer.

DEFENDANT: JABARR RYEHEINE RUDOLPH
CASE NUMBER: 7:16-CR-116-11-D**CRIMINAL MONETARY PENALTIES**

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

<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS \$ 600.00	\$	\$	\$

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

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

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

<u>Name of Payee</u>	<u>Total Loss**</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
TOTALS	\$ _____ 0.00	\$ _____ 0.00	

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: JABARR RYEHEINE RUDOLPH
CASE NUMBER: 7:16-CR-116-11-D

SCHEDULE OF PAYMENTS

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

A Lump sum payment of \$ _____ due immediately, balance due
 not later than _____, or
 in accordance with C, D, E, or F below; or

B Payment to begin immediately (may be combined with C, D, or F below); or

C Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F Special instructions regarding the payment of criminal monetary penalties:

The special assessment in the amount of \$600.00 shall be due in full immediately.

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

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

Joint and Several

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

The defendant shall pay the cost of prosecution.

The defendant shall pay the following court cost(s):

The defendant shall forfeit the defendant's interest in the following property to the United States:
The defendant shall forfeit to the United States the defendant's interest in the property specified in the Order of Forfeiture entered on January 28, 2019.

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.

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FILED: May 12, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-4095
(7:16-cr-00116-D-11)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

JABARR RYEHEINE RUDOLPH

Defendant - Appellant

O R D E R

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc.

For the Court

/s/ Patricia S. Connor, Clerk