

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

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No. 18-60273  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**  
March 25, 2020

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JUDY HARMON,

Defendant-Appellant

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Appeal from the United States District Court  
for the Northern District of Mississippi  
USDC No. 1:16-CR-38-10

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Before WIENER, COSTA, and ENGELHARDT, Circuit Judges.

PER CURIAM.\*

Defendant-Appellant Judy Harmon appeals her sentence for conspiracy to possess methamphetamine with intent to distribute. Harmon raises two issues on appeal. She first complains that the district court procedurally erred in holding her accountable for 60 pounds of methamphetamine, contending that the trial testimony regarding drug quantity was inconsistent with notations in ledgers kept by her co-conspirators to track her drug purchases.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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She expressly contends that the district court did not sufficiently scrutinize the testimony and the ledgers and failed to provide a rationale for accepting the testimony over the ledgers.

Harmon does not dispute the Government's assertion that the ledgers cover only a portion of her nearly year-long involvement in the drug conspiracy. Her co-conspirator, Gerardo Lima, testified that the notations in a ledger detailing Harmon's activity during a single month were a low representation of the amount of drugs that she generally obtained from him and sold to her customers. The ledgers are not inconsistent with Lima's testimony that he generally provided Harmon with nearly 10 pounds of methamphetamine a month for almost a year. Lima's testimony as to the amount of drugs he supplied to Harmon was consistent with the testimony of Harmon's customers regarding the quantities they purchased. In light of the record as a whole, the district court's factual finding of 60 pounds was plausible and does not amount to clear error. *See United States v. Betancourt*, 422 F.3d 240, 246 (5th Cir. 2005).

Next, Harmon insists – for the first time on appeal – that, contrary to Federal Rule of Criminal Procedure 32, the Due Process Clause, and U.S.S.G. § 6A1.3, p.s., the district court erred in failing to provide her with notice of its intention to rely at sentencing on evidence outside the record. She complains specifically of the court's consideration of Lima's testimony from the sentencing hearing of another co-conspirator, Thomas Scruggs, in making its factual finding of drug quantity.

Notwithstanding the absence of notice, the offense conduct contained in Harmon's presentence report, which was based on Lima's testimony at Harmon's trial, sufficiently supports a drug quantity finding of 60 pounds and a resulting offense level of 36. Harmon "ha[d] actual knowledge of the facts on

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which the district court base[d]" her offense level assessment, so she has failed to show that the district court committed clear or obvious error. *United States v. Garcia*, 797 F.3d 320, 323 (5th Cir. 2015) (internal quotation marks and citation omitted). Even if the court had plainly erred, Harmon cannot show a reasonable probability that, but for any error, she would have received a lower sentence. *See United States v. Davis*, 602 F.3d 643, 647 (5th Cir. 2010). She thus cannot show an impact on her substantial rights. *See id.*

AFFIRMED.

## UNITED STATES DISTRICT COURT

Northern District of Mississippi

UNITED STATES OF AMERICA ) JUDGMENT IN A CRIMINAL CASE  
 v. )  
 Judy Harmon ) Case Number: 0537 1:16CR00038-010  
 ) USM Number: 17940-042  
 )  
 ) Kristian Alicia McCray  
 ) Defendant's Attorney

## THE DEFENDANT:

pleaded guilty to count(s) \_\_\_\_\_

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

was found guilty on count(s) 1 of the Superseding Indictment after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21 U.S.C. §§ 841(a)(1), 841(b)(1)(C), and 846	Conspiracy to Possess with Intent to Distribute Methamphetamine	04/30/2016	1

The defendant is sentenced as provided in pages 2 through 7 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) \_\_\_\_\_

Count 1 of the Indictment is 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.

March 28, 2018  
 Date of Imposition of Judgment

Signature of Judge

Sharion Aycock  
 Name and Title of Judge

Date

April 2, 2018

DEFENDANT: Judy Harmon  
CASE NUMBER: 1:16CR00038-010

## IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: 205 months on Count 1 of the Superseding Indictment.

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

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: Judy Harmon  
CASE NUMBER: 1:16CR00038-010

### STANDARD CONDITIONS OF SUPERVISION

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](http://www.uscourts.gov).

Defendant's Signature \_\_\_\_\_

Date \_\_\_\_\_

DEFENDANT: Judy Harmon  
CASE NUMBER: 1:16CR00038-010

#### SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall participate in a program of mental health treatment, details of which will be outlined and supervised by the probation officer, until such time as the defendant successfully completes the program or is deemed by the treatment provider to no longer be in need of treatment.
2. The defendant shall submit her person, property, house, residence, vehicle, papers, computers (as defined in Title 18, United States Code, Section 1030e(1)), other electronic communications or data storage devices or media, or office, to a search conducted by the United States Probation Officer. Failure to submit to a search may be grounds for revocation of release. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that the defendant has violated a condition of his supervision. Any search must be conducted at a reasonable time and in a reasonable manner.

DEFENDANT: Judy Harmon  
CASE NUMBER: 1:16CR00038-010

## **SCHEDULE OF PAYMENTS**

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

\* Installment payments made during any period of supervision shall commence 60 days after commencement of the supervision period and shall be paid as determined by application of the criminal monetary payment schedule adopted by this Court to the defendant's verified disposable income.

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 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:  
\$5,980 in U.S. Currency

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

## **APPENDIX A**

IN THE UNITED STATE COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

18-60273

UNITED STATES OF AMERICA

PLAINTIFF-APPELLEE

v.

JUDY HARMON

DEFENDANT-APPELLANT

UNOPPOSED MOTION TO WITHDRAW AS COUNSEL

The undersigned attorney for Judy Harmon respectfully moves this Court to permit her to withdraw as counsel for appeal purposes in this matter and in support of said motion would show as follows:

I. PROCEDURAL HISTORY

1. The undersigned was appointed to represent Ms. Harmon in the district court and her appointment was continued on appeal.
2. Counsel undertook to perfect an appeal and to research and draft an appropriate brief of appellant.
3. On March 25, 2020 a panel of this court affirmed the judgment of the district court by a three page per curiam opinion.

II. DISCHARGE OF OBLIGATIONS

4. The undersigned promptly provided a copy of said opinion to her client, Appellant Judy Harmon, with advice of her right to petition for rehearing in the circuit court and for seeking *certiorari* in the Supreme Court of the United States.

5. More particularly counsel advised Ms. Harmon that, pursuant to Fed. R. App. P. 40(a)(1), a motion for rehearing must be filed within fourteen (14) days of entry of the court's judgment; and , that any petition for writ of *certiorari* must be received by the Supreme Court of the United States within 90 days of the judgment's entry. Supreme Court Rule 13(1).

6. The undersigned further affirms that in addition to having advised her client in writing of the time limits for seeking rehearing and *certiorari* as described infra that consistent with the certificate of services attached hereto, she is providing to her a copy of this *Unopposed Motion to Withdraw as Counsel*.

### III. GROUNDS FOR GRANTING MOTION

7. In light of the rigid standard of Fed. R. App. P. 35(a) counsel cannot, consistent with her duties to the Court, petition for rehearing of the panel's opinion and truthfully make the statement required of her by Fed. R. App. P. 35(b).

8. Likewise, the Supreme Court in *Austin v. United States*, 513 U.S. 5, 8 (1994), contended that counsel would not be obliged to file petitions for *certiorari* that would present frivolous claims in violation of Supreme Court rules.

9. For said reason, in light of the panel's opinion, counsel would be unable to petition for *certiorari*.

10. The undersigned represents she has conferred with Honorable Chad Doleac of the United States Attorney's Office for the Northern District who indicated the government does not oppose the relief sought herein.

#### IV. RELIEF SOUGHT

11. For the above-stated reasons the undersigned asks to be relieved of any further duty in this appeal and for leave to file her voucher for payment for services rendered.

RESPECTFULLY SUBMITTED, this the 27<sup>th</sup> day of March 2020.

/s/ Kristian A. McCray  
Kristian A. McCray  
Attorney for Appellant  
12700 Hillcrest Rd., Ste. 125  
Dallas, TX 75230  
(972) 455-8661

CERTIFICATE OF SERVICE

I, Kristian A. McCray, do hereby certify that I have caused this day to be electronically filed the above and foregoing Unopposed Motion to Withdraw as Counsel using the ECF system and accordingly electronic service will be provided to Honorable Chad Doleac and Honorable Michael Hallock.

I have also deposited in the U.S. postal service mail a paper copy to Ms. Judy Harmon # 17940-042, FCI Danbury, Federal Correctional Institution, Route 37, Danbury, CT 06811.

RESPECTFULLY SUBMITTED, this the 27th day of March, 2020.

/s/ Kristian A. McCray  
Kristian A. McCray  
Attorney for Appellant  
12700 Hillcrest Rd., Ste. 125  
Dallas, TX 75230  
(972) 455-8661

CERTIFICATE OF COMPLIANCE

1. This motion complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) as the motion contains 461 words.
2. This motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in proportionally spaced typeface using Word Version 16.35 in 14 point Times New Roman.

/s/ Kristian A. McCray

Kristian A. McCray  
Attorney for Appellant  
12700 Hillcrest Rd., Ste. 125  
Dallas, TX 75230  
(972) 455-8661

## **APPENDIX B**

## APPENDIX C CONTENTS

Exhibit 1 Motion for leave to withdraw

Exhibit 2 ORDER (Denying Relief of Counsel.

Demanding counsel to refile on Merits with Attached  
unopposed Motion to Withdraw Counsel)

Exhibit 3. E-MAIL.(Defendants concerns with counsels  
performance)

Exhibit 4 MOTION (pro-se, to relieve counsel  
"Conflict of Interest")

Exhibit 5 NOTICE of objection to Defense Attorney  
McCray letter dated October 10, 2018)

Exhibit 6 Response to Attorney McCray Anders Brief  
Motion to Withdraw as Counsel

Exhibit 7 ORDER (Denying Relief of Counsel (2nd)  
DEMAND to Refile Brief on the Merits)

Exhibit 8 Fifth Circuit addressing counsel's non-  
compliance with Fed R. App. P. 32(g)(1) and 27(d)(2)(A)

Exhibit 9 Fifth Circuit addressing counsel's  
insufficient Brief

Exhibit 10 Fifth Circuit non-compliance with 5th Cir  
R. 31.1j ECF Filing Standard E.1

Exhibit 11 Incorrectly filing brief under Civil  
Procedure

Exhibit 12 Criminal Minutes - General (Ex parte  
Motion Hearings [221] to withdraw as counsel

Exhibit 13 E-MAIL. - Defendants request to counseling  
inquiring ex parte proceeding minutes

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI

UNITED STATES OF AMERICA

PLAINTIFF

VS.

CAUSE NO.: 1:16CR38

JUDY HARMON

DEFENDANT

MOTION FOR LEAVE TO WITHDRAW

COMES NOW the undersigned attorney, and files with this Honorable Court this her Motion for Leave to Withdraw as counsel of the defendant. In support thereof, would show unto this Court as follows:

1. On November 14, 2016, the undersigned attorney was appointed to represent the defendant, Judy Harmon.
2. The undersigned counsel has met with Ms. Harmon on multiple occasions to advise client in preparation for trial.
3. The trial in this case is set for September 11, 2017, Doc #194.
4. The undersigned attorney has continued to meet with Ms. Harmon to advise and counsel the defendant in preparation for trial. The Defendant has expressed the desire to take certain action that counsel has determined she cannot ethically do as an officer of the court and in compliance with the rules. Counsel undersigned has addressed this matter with the defendant to no avail.
5. On July 31, 2017 the undersigned attorney spoke with Ms. Harmon again in attempt to resolve the matter in an effort to move forward to effectively and to ethically represent the Defendant. The Defendant stated her desire for undersigned counsel to continue with said action and expressed her disdain with counsel's ethical position. The Defendant further expressed that she believed that undersigned counsel was not representing her best interests.



6. After firm attempts to resolve the issues, the undersigned counsel takes the position that she cannot provide effective representation to the defendant and fulfill her ethical obligation as an officer of the court. In accordance with Rule 1.16 of the Mississippi Rules of Professional Conduct, the undersigned counsel files said motion.

7. The undersigned counsel respectfully request this Honorable Court to issue an Order allowing the undersigned counsel to withdraw as counsel for the defendant.

Respectfully submitted this the 1<sup>st</sup> day of August, 2017.

/s/ Kristian A. McCray

Kristian A. McCray  
Mississippi Bar Number 104280  
2084 Old Taylor Road, Suite 106  
Oxford, Mississippi 38655  
Telephone: (662) 507-4304  
Facsimile: (888) 869-8848  
Email: mskristianm@gmail.com

#### CERTIFICATE OF SERVICE

COMES NOW the undersigned attorney of record, Kristian A. McCray, and certifies that she has this day filed the above and foregoing Motion for Leave to Withdraw via the ECF system, thereby causing a copy to be sent via email to the appropriate parties.

This the 1<sup>st</sup> day of August, 2017.

/s/ Kristian A. McCray

Kristian A. McCray  
Attorney for the Defendant Harmon

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 18-60273

---

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JUDY HARMON,

Defendant-Appellant

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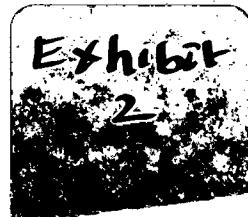
Appeal from the United States District Court  
for the Northern District of Mississippi

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ORDER:

The attorney appointed to represent Judy Harmon has filed a motion to withdraw and a brief that relies on *Anders v. California*, 386 U.S. 738 (1967). Harmon has filed responses and moves to relieve counsel.

The court has reviewed counsel's brief, Harmon's responses, and the record and, with one exception, concurs with counsel's assessment that the appeal presents no nonfrivolous issues. The special search condition of supervised release set forth in the written judgment includes items that were not pronounced by the district court at sentencing. Counsel should address whether there is a conflict between the pronouncement and judgment. See *United States v. Rivas-Estrada*, 906 F.3d 346, 350-51 (5th Cir. 2018); *United States v. Mireles*, 471 F.3d 551, 557-58 (5th Cir. 2006).



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Accordingly, counsel is ORDERED to file within 30 days a supplemental *Anders* brief addressing the above issue or, in the alternative, a brief on the merits addressing any nonfrivolous issues that counsel deems appropriate. The motion to withdraw is CARRIED with the case. Counsel should move to withdraw this motion if a merits brief is filed. Harmon's motion to relieve counsel is DENIED. *See United States v. Wagner, 158 F.3d 901, 902-03 (5th Cir. 1998).*

/s/ James E. Graves, Jr.

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JAMES E. GRAVES, JR.  
UNITED STATES CIRCUIT JUDGE

SUBJECT: Kristian McCray #1  
DATE: 09/26/2018 02:51:39 PM

\*\*\*\*\*

September 26, 2018

JUDY A. HARMON

v.

UNITED STATES OF AMERICA

Case No.: 18-60273

Dear Mrs. Kristian McCray,

I received your letter dated September 10, 2018. In this letter you stated that you could not find any Non-Frivolous issues that can be raised on my behalf. That is your opinion. I however do not agree with that opinion. I have made my concerns known to you and request sent to you. You have denied me my right to review any of my court documents and request.

I ask you in the letter dated July 11, 2018 to send me a copy of the brief to review before it was sent to the courts. My request was not honored. I also in that same letter ask you to send me documents from the docket. Can you please read that letter and forward these documents to me? \*\*Please note request made on page 3 of that same letter. As of today have not received any of those documents. I am finding it hard to be pro-active with no help from my attorney. I am attaching a list of request of documents from the Docket. Can you please get this information to me?

I ask my daughter to forward you an email in regards to the letter dated July 11. You stated that you sent a package to me dated August 6th and it was returned August 29. I have inquired about this package and have not received notification that a package was denied.

I have sent a EMERGENCY PRO SE MOTION - MOTION FOR EXTENSION FOR BRIEF OF APPELLANT/ AND OR PERMISSION TO FILE A SUPPLEMENT BRIEF. I have made known my concerns known to the appeals court. I understand that you want to be removed from this case. Until that relief is granted; I am asking you to maintain your duties as my council.

Your help is urgent in this matter.

Thank you,

Judy A. Harmon



UNITED STATES COURT OF APPEALS  
FOR THE 5TH DISTRICT

No: 18-60273

JUDY A. HARMON

VS.

UNITED STATES OF AMERICA

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EMERGENCY PRO SE MOTION TO RELIEF APPOINTED COUNSEL OF HER DUTIES: CONFLICT OF INTEREST

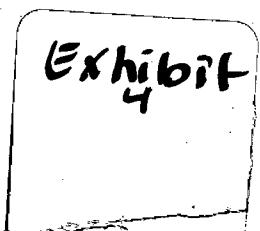
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TO THE HONORABLE JUDGES OF THE APPEALS COURT

COMES NOW Judy A. Harmon, the defendant, PRO SE, and respectfully moves this Honorable Court to relieve appointed counsel: Christian McCray, of her duties due to conflict of interest. The defendant will show this Court as follows.

STATEMENT OF EVIDENCE

1. The attorney; Kristian McCray never supplied to me any of the documentation that I have requested throughout my case. I have NEVER received any documentation from Mrs. McCray.
2. The attorney never informed me that anything in the PSR that is not disputed by her, becomes a stipulated fact and can be used for the support of the sentencing or lengthen
3. I never received a copy of the PSR. I viewed it on her laptop. I never received a hard copy to review in its entirety. I was never aware of the amount of 60 lbs of drugs until the day of sentencing.
4. The attorney never told me that she had the option to write the jury instructions for review/submit to explain the law to the jury in lamin terms.
5. The attorney never told me that there could be an option for a special verdict form. I never knew anything about the 60 lbs of meth listed in the PSR until the day of sentencing.
6. I was told that the brief was due on September 8, 2018. I got a copy of the brief on September 10, 2018 after it was ECF to Mr. Doleac, Prosecutor, on September 10th. I requested to see the brief BEFORE it was filed. I have been denied ALL my rights to my court documents.
7. The Defendant submits that, if counsel Kristian McCray disputes these facts then she represents conflicting interest, and if she agrees with these facts then she failed to perform her official duties therefore ineffective assistance of counsel.



SUBJECT: USCOA - LETTER RE; KRISTIAN McCRAY  
DATE: 10/15/2018 01:14:52 PM

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UNITED STATES COURT OF APPEALS  
FOR THE 5TH DISTRICT

No: 18-60273

JUDY A. HARMON

VS

UNITED STATES OF AMERICA

---

NOTICE OF OBJECTION TO DEFENSE ATTORNEY McCRAY LETTER DATED OCTOBER 10, 2018

---

TO: MR. LYLE CAYCE

COMES NOW Judy A. Harmon, the defendant, PRO SE, and respectfully object to the letter addressed to you, dated October 10, 2018.

OBJECTION OF STATEMENT(S)

1. REQUESTED DOCUMENT(S): The first request was made while I was incarcerated in Oxford, MS in December of 2016. I requested a copy of the indictment. I did not receive it. In a letter to Ms McCray dated July 11, 2018. (please see attachment); I requested the court transcript; any and all motions filed on my behalf.
  - \* Indictment - I did not receive a copy of the Indictment nor was I made aware of the Superseding Indictment. I requested a copy of the Search Warrant again was denied.
  - \* PSR - I was shown the Pre Sentence Report on her laptop. I did ask Ms McCray if she had a hard copy; I was told that she didn't have time to print it. I was shown pieces of the PSR. I requested a hard copy to review it in its entirety. I was denied my request.
  - \* Any and all motion filed on my behalf throughout the case.
  - \* Brief - In the letter that I sent Ms McCray dated July 11, 2018; I also requested to receive a copy of the brief for review BEFORE it was filed with the court. This request was denied. (Please see exert of the letter attached.)
2. MAIL (CORRESPONDENCE): Ms McCray was appointed to my case on November 14, 2016. I have only received 5 letters of correspondence from McCray. The first was dated June 28, 2018. I only received this after I brought it to the courts attention; her lack of participation. I did inquire about mail being returned to Ms McCray and was told there had been none returned. I have repeatedly told her the manner in which the envelope must be addressed in order for it to be treated as legal mail by the prison (Please see exert of letter attached). It must be recognized as legal mail, to assure that I receive it and that it is open in my presence.



SUBJECT: Appeal Court Motion on Anders Brief

DATE: 10/23/2018 06:07:55 PM

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UNITED STATES COURT OF APPEALS  
FOR THE 5TH DISTRICT

No: 18-60273

JUDY A. HARMON

VS

UNITED STATES OF AMERICA

RESPONSE TO ATTORNEY McCRAY'S ANDERS BRIEF/MOTION TO WITHDRAW AS COUNCIL

TO: MR. LYLE CAYCE

COMES NOW Judy A. Harmon, the defendant and respectfully agree that attorney Ms McCray should be permitted to withdraw as council in the above mentioned case. Ms McCray has not nor has she ever been fully engaged on the movants case.

Additionally movant hereby informs the court of the following:

1. Attorney McCray failed to fully inform movant of all the elements of the offense; all the types of sentencing available; applicable supreme court holdings; Rule 32 and PSR and the applicability to my case; failed to consult movant regarding strategy.
2. Ms McCray failed to identify reversible error in the direct appeal brief.
3. Ms McCray failed to preserve trial errors for the direct appeal.
4. I would appreciate an opportunity to present my issues Pro Se to the appeals court.

WHEREFORE based on the above, Judy Harmon, movant, urges the court to relieve counsel Kristian McCray of her duties.

Respectfully submitted on this 23rd day of October, 2018.

Judy A. Harmon 17940-042

Federal Correctional Institution - Aliceville, AL  
Satellite Prison Camp (SPC)  
P. O. Box 487  
Aliceville, AL 35442

Exhibit  
C

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 18-60273

---

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JUDY HARMON,

Defendant-Appellant

---

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

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ORDER:

The attorney appointed to represent Judy Harmon on appeal has filed a motion to withdraw and briefs that rely on *Anders v. California*, 386 U.S. 738 (1967). Harmon has filed responses.

A review of the record as well as counsel's briefs and Harmon's responses reveals a nonfrivolous issue for appeal regarding the drug quantity for which Harmon was held accountable. Specifically, it would not be frivolous to challenge this finding given the testimony of Gerardo and Abigail Lima regarding the drug ledgers they kept during the conspiracy, the information included in the ledgers, and, as Harmon contends in her most recent response, the district court's reliance at her sentencing hearing on testimony from the sentencing hearing of Thomas Scruggs. See *United States v. Hearns*, 845 F.3d



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641, 650 (5th Cir. 2017); *see also United States v. Garcia*, 797 F.3d 320, 323-26 (5th Cir. 2015); *United States v. Townsend*, 55 F.3d 168, 171 (5th Cir. 1995).

Accordingly, counsel's motion for leave to withdraw is DENIED. *See Anders*, 386 U.S. at 744. Counsel is ORDERED to file a brief on the merits addressing the issues identified above and any other additional arguments or issues counsel deems nonfrivolous. The clerk is DIRECTED to establish a briefing schedule.

/s/ James E. Graves, Jr.

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JAMES E. GRAVES, JR.  
UNITED STATES CIRCUIT JUDGE

***United States Court of Appeals***

FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

TEL. 504-310-7700  
600 S. MAESTRI PLACE  
NEW ORLEANS, LA 70130

September 12, 2018

Ms. Kristian Alicia McCray  
P.O. Box 1295  
Southaven, MS 38671

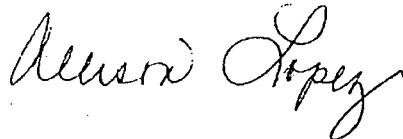
No. 18-60273 USA v. Judy Harmon  
USDC No. 1:16-CR-38-10

Dear Ms. McCray,

Your motion to withdraw as counsel does not contain a certificate of compliance, pursuant to Fed. R. App. P. 32(g)(1) and 27(d)(2)(A). You must email your sufficient motion to: Allison.Lopez@ca5.uscourts.gov for review within 5 days of this date. If the motion is in compliance, you will receive a notice of docket activity advising you that the sufficient motion has been filed.

Sincerely,

LYLE W. CAYCE, Clerk



By:  
Allison G. Lopez, Deputy Clerk  
504-310-7702

cc: Mr. Chad Malcom Doleac



# United States Court of Appeals

FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

TEL. 504-310-7700  
600 S. MAESTRI PLACE  
NEW ORLEANS, LA 70130

September 27, 2018

Ms. Kristian Alicia McCray  
P.O. Box 1295  
Southaven, MS 38671

No. 18-60273 USA v. Judy Harmon  
USDC No. 1:16-CR-38-10

Dear Ms. McCray,

The following pertains to your proposed sufficient brief electronically filed on September 25, 2018.

The brief has been deemed insufficient. You must make the following corrections within the next 14 days.

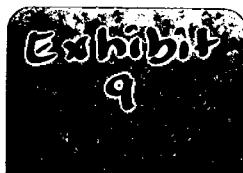
You need to correct or add:

Record References: One of the record citations on page 14 is still not in proper format. (Specifically, ROA.18-60273.944-945 and 947-950.) To cite to both non-sequential pages and consecutive pages in one cite, for example: ROA.123, 125, 131-140. To cite to both non-sequential pages and consecutive pages in one cite, the following format should be used: ROA.123, 125, 131-140. In your specific example, the word "and" should be replaced with a comma.

Additionally, portions of your brief have been redacted.

Redacted briefs may not be filed without leave of the Court. If your original brief should be sealed, you need to file motion to file it under seal.

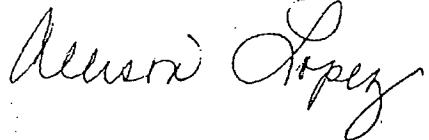
Note: Once you have prepared your sufficient brief, you must electronically file your 'Proposed Sufficient Brief' by selecting from the Briefs category the event, Proposed Sufficient Brief, via the electronic filing system. Please do not send paper copies of the brief until requested to do so by the clerk's office. The brief is not sufficient until final review by the clerk's office. If the brief is in compliance, paper copies will be requested and you will receive a notice of docket activity advising you that the sufficient brief filing has been accepted and no further



corrections are necessary. The certificate of service/proof of service on your proposed sufficient brief MUST be dated on the actual date that service is being made. Also, if your brief is sealed, this event automatically seals/restricts any attached documents, therefore you may still use this event to submit a sufficient brief.

Sincerely,

LYLE W. CAYCE, Clerk



By:

Allison G. Lopez, Deputy Clerk  
504-310-7702

cc: Mr. Chad Malcom Doleac  
Ms. Judy Harmon

# United States Court of Appeals

FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

TEL. 504-310-7700  
600 S. MAESTRI PLACE  
NEW ORLEANS, LA 70130

October 10, 2018

Ms. Kristian Alicia McCray  
P.O. Box 1295  
Southaven, MS 38671

No. 18-60273 USA v. Judy Harmon  
USDC No. 1:16-CR-38-10

Dear Ms. McCray,

We have reviewed your electronically filed Anders brief and it is now sufficient.

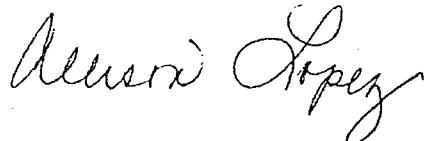
You must submit the 7 paper copies of your brief required by 5<sup>th</sup> Cir. R. 31.1 within 5 days of the date of this notice pursuant to 5th Cir. ECF Filing Standard E.1.

Failure to timely provide the appropriate number of copies may result in the dismissal of your appeal pursuant to 5<sup>th</sup> Cir. R. 42.3.

The paper copies of your brief must **not** contain a header noting "RESTRICTED". Therefore, please be sure that you print your paper copies **from this notice of docket activity** and not the proposed sufficient brief filed event so that it will contain the proper filing header. Alternatively, you may print the sufficient brief directly from your original file without any header.

Sincerely,

LYLE W. CAYCE, Clerk



By: \_\_\_\_\_  
Allison G. Lopez, Deputy Clerk  
504-310-7702

cc: Mr. Chad Malcom Doleac  
Ms. Judy Harmon



**United States Court of Appeals**

FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

TEL. 504-310-7700  
600 S. MAESTRI PLACE  
NEW ORLEANS, LA 70130

April 19, 2018

Ms. Kristian Alicia McCray  
Trout Law Firm, P.L.L.C.  
2084 Old Taylor Road  
Suite 106  
Oxford, MS 38655

No. 18-60273 USA v. Judy Harmon  
USDC No. 1:16-CR-38-10

Dear Ms. McCray,

We have docketed the appeal and ask you to use the case number above in future inquiries.

Filings in this court are governed strictly by the Federal Rules of **Appellate** Procedure. We cannot accept motions submitted under the Federal Rules of **Civil** Procedure. We can address only those documents the court directs you to file, or proper motions filed in support of the appeal. See FED. R. APP. P. and 5<sup>th</sup> CIR. R. 27 for guidance. Documents not authorized by these rules will not be acknowledged or acted upon.

You must complete a transcript order form, which can be obtained from the court's website [www.ca5.uscourts.gov](http://www.ca5.uscourts.gov). You are required to electronically file the form via the 5th Circuit's Electronic Document Filing System even if the form was filed with the district court, and make financial arrangements with the court reporter. When completed, this meets your obligation to order the necessary portions of the court reporter's transcript, see FED. R. APP. P. 10(b). (If you are pro se and unable to afford payment, you must file a motion with the district court requesting transcript at government expense, and notify this court.) We will coordinate the transcript deadlines with the court reporter. The court reporter should contact you directly if an extension of time to file the transcript is granted. Failure to complete the transcript order form and make financial arrangements with the court reporter within 15 days will result in dismissal of the appeal in accordance with the rules.

We will provide you information about the briefing schedule of this appeal at a later date. If a transcript is unnecessary, please complete the section on the transcript order form to indicate such and we will start the briefing schedule. 5<sup>th</sup> CIR. R.



31.4 and the Internal Operating Procedures following rules 27 and 31 state that except in the most extraordinary circumstances, the maximum extension for filing briefs is 30 days in criminal cases and 40 days in civil cases.

All counsel who desire to appear in this case must electronically file a "Form for Appearance of Counsel" naming all parties represented within 14 days from this date, see FED. R. APP. P. 12(b) and 5<sup>th</sup> CIR. R. 12. This form is available on our website [www.ca5.uscourts.gov](http://www.ca5.uscourts.gov). Failure to electronically file this form will result in removing your name from our docket. Pro se parties are not required to file appearance forms.

**ATTENTION ATTORNEYS:** Attorneys are required to be a member of the Fifth Circuit Bar and to register for Electronic Case Filing. The "Application and Oath for Admission" form can be printed or downloaded from the Fifth Circuit's website, [www.ca5.uscourts.gov](http://www.ca5.uscourts.gov). Information on Electronic Case Filing is available at [www.ca5.uscourts.gov/cmecf/](http://www.ca5.uscourts.gov/cmecf/).

**ATTENTION ATTORNEYS:** Direct access to the electronic record on appeal (EROA) for pending appeals will be enabled by the U S District Court on a per case basis. Counsel can expect to receive notice once access to the EROA is available. Counsel must be approved for electronic filing and must be listed in the case as attorney of record before access will be authorized. Instructions for accessing and downloading the EROA can be found on our website at [www.ca5.uscourts.gov/attorneys/attorney-forms/eroa\\_downloads](http://www.ca5.uscourts.gov/attorneys/attorney-forms/eroa_downloads). Additionally, a link to the instructions will be included in the notice you receive from the district court.

Sealed documents, except for the presentence investigation report in criminal appeals, will not be included in the EROA. Access to sealed documents will continue to be provided by the district court only upon the filing and granting of a motion to view same in this court.

We recommend that you visit the Fifth Circuit's website, [www.ca5.uscourts.gov](http://www.ca5.uscourts.gov) and review material that will assist you during the appeal process. We especially call to your attention the Practitioner's Guide and the 5th Circuit Appeal Flow Chart, located in the Forms, Fees, and Guides tab.

**Sealing Documents on Appeal:** Our court has a strong presumption of public access to our court's records, and the court scrutinizes any request by a party to seal pleadings, record excerpts, or other documents on our court docket. Counsel moving to seal matters must explain in particularity the necessity for sealing in our court. Counsel do not satisfy this burden by simply stating that the originating court sealed the matter, as the circumstances that justified sealing in the originating court may have changed or may not apply in an appellate proceeding. It is the obligation of counsel to justify a request to file under seal, just as it is their obligation to notify the court whenever sealing is no longer necessary. An unopposed motion to seal does not obviate a counsel's obligation to justify the motion to seal.

Sincerely,

LYLE W. CAYCE, Clerk



By:

Majella A. Sutton, Deputy Clerk  
504-310-7680

CC:

Mr. David Crews  
Mr. Chad Malcom Doleac

Provided below is the court's official caption. Please review the parties listed and advise the court immediately of any discrepancies. If you are required to file an appearance form, a complete list of the parties should be listed on the form exactly as they are listed on the caption.

---

Case No. 18-60273

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

JUDY HARMON,

Defendant - Appellant

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI

UNITED STATES OF AMERICA

PLAINTIFF

VS.

CAUSE NO. 1:16-cr-00038-SA-DAS

JUDY HARMON

DEFENDANT

---

NOTICE OF APPEAL

---

Notice is hereby given that Judy Harmon, defendant in the above named case, hereby appeals to the United States Court of Appeals for the Fifth Circuit the judgment of conviction and sentence entered in this action on the 4<sup>th</sup> day of April, 2018.

Respectfully submitted, this the 9<sup>th</sup> day of April, 2018.

/s/ Kristian A. McCray

Kristian A. McCray  
Mississippi Bar Number 104280  
mskristianm@gmail.com

COUNSEL:

LAW OFFICES OF KRISTIAN A. STEWART, PLLC  
Post Office Box 1295  
Southaven, Mississippi 38671  
Telephone: (901) 305-2536

CERTIFICATE OF SERVICE

COMES NOW the undersigned attorney, Kristian A. McCray, and certifies that she has this day filed the above and foregoing Notice of Appeal via the ECF system, thereby causing a copy to be sent via email to the appropriate parties.

This the 9<sup>th</sup> day of April, 2018.

/s/ Kristian A. McCray

Kristian A. McCray

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF MISSISSIPPI

CRIMINAL MINUTES - GENERAL

Case No. 1:16cr038

Place Held: Aberdeen, Mississippi

Style: USA V. JUDY HARMON

Date & Time Began: 8/15/2017, 10:14 A.M.

Date & Time Ended: 8/15/2017, 10:24 A.M.

Total Time: 10 mins

---

PRESENT:

HONORABLE SHARON AYCOCK, JUDGE

Melinda Tucker  
Courtroom Deputy

Phyllis McLarty  
Court Reporter

Attorney for Government:  
Chad Malcom Doleac

Attorney(s) for Defendant:  
Kristian Alicia McCray

---

PROCEEDINGS: Motion Hearing [221] to Withdraw as Counsel.

---

DOCKET ENTRY: Hearing held. Motion denied.

---

DAVID CREWS, CLERK

By: /s/ Melinda R. Tucker  
Courtroom Deputy

Exhibit  
12

TRULINCS 17940042 - HARMON, JUDY - Unit: ALI-D-D

---

FROM: 17940042  
TO: Mccray, Kristien  
SUBJECT: Motion to Withdraw  
DATE: 10/25/2019 03:30:36 PM

Ms McCray,

I received the "CRIMINAL MINUTES-GENERAL". I would like to see the ACTUAL MINUTES, what was discussed or your plea to be released. I would like to see the notes of when you talked to the witness's.

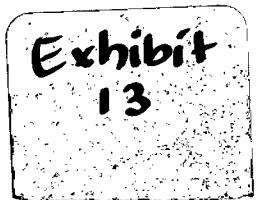
I am putting together a "MOTION" to the courts to define "ASSISTANCE OF COUNSEL" and request the scope of your representation is to me as the role of attorney.

As I had stated before; I did not receive any documentation from Mr. Cluck and I did not received any documentation from you. I would appreciate it if you would send me all the documentation that I have requested. I would like to see the information and or notes when you spoke to the witness's.

If you are not obligated to supply this can you please tell me who to contact. I am being deprived of the information that I need to continue to the next phase of my case.

Thank you,

Judy



## **APPENDIX C**

MEMORANDUM FOR ALL FEDERAL PROSECUTORS

FROM: James M. Cole, Deputy Attorney General

SUBJECT: Department Policy on Waivers of Claims of Ineffective Assistance of Counsel..

As we all recognize, the right to effective assistance of counsel is a core value of our Constitution. The Department of Justice has a strong interest in ensuring that individuals facing criminal charges receive effective assistance of counsel so that our adversarial system can function fairly, efficiently, and responsibly. Accordingly, in recent years, the Department has made support of indigent defense a priority. We have worked to ensure that all jurisdictions - federal, state, and local - fulfill their obligations under the Constitution to provide effective assistance of counsel, especially to those who cannot afford an attorney.

When negotiating a plea agreement, the majority of United States Attorney's offices do not seek a waiver of claims of ineffective assistance of counsel. This is true even though the federal courts have uniformly held a defendant may generally waive ineffective assistance claims pertaining to matters other than entry of the plea itself such as claims related to sentencing.

While the Department is confident that a waiver of a claim of ineffective assistance of counsel is both legal and ethical, in order to bring consistency to this practice, and in support of the underlying Sixth Amendment right, we now set forth uniform Department of Justice policies relating to waivers of claims of ineffective assistance of counsel.

Federal prosecutors should no longer seek in plea agreements to have a defendant waive claims of ineffective assistance of counsel whether those claims are made on collateral attack or, when permitted by circuit law, made on direct appeal. For cases in which a defendant's ineffective assistance claim would be barred by a previously executed waiver, prosecutors should decline to enforce the waiver when defense counsel rendered ineffective assistance resulting in prejudice or when the defendant's ineffective assistance claim raises a serious debatable issue that a court should resolve.

As long as prosecutors exempt ineffective-assistance claims from their waiver provisions, they are free to request waivers of appeal and of post-conviction remedies to the full extent permitted by law as a component of plea discussions and agreements.

\*\*\*\*\*