

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

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IN THE  
SUPREME COURT OF THE UNITED STATES

\_\_\_\_\_  
BARRY LYNN BAILEY,

*Petitioner*

v.

UNITED STATES OF AMERICA

*Respondent*

\_\_\_\_\_  
APPENDIX  
\_\_\_\_\_

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Appendix A Judgment and Opinion of Fifth Circuit

Appendix B Amended Judgment of the United States District Court for the  
Northern District of Texas

Appendix C Judgment and Revocation of Sentence from of the United States  
District Court for the Northern District of Texas

## APPENDIX A

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

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No. 19-10763  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

May 14, 2020

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

BARRY LYNN BAILEY,

Defendant-Appellant

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 1:15-CR-54-3

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Before CLEMENT, ELROD, and OLDHAM, Circuit Judges.

PER CURIAM:\*

Barry Lynn Bailey appeals the revocation of his supervised release and the 24-month sentence imposed upon revocation. Bailey's supervised release was revoked pursuant to 18 U.S.C. § 3583(g), which requires the mandatory revocation of supervised release and imposition of a term of imprisonment for defendants found to have committed certain supervised release violations, including possessing controlled substances.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

For the first time, Bailey argues that § 3583(g) is unconstitutional in light of the Supreme Court's decision in *United States v. Haymond*, 139 S. Ct. 2369 (2019), because it does not require a jury determination under a beyond-a-reasonable-doubt standard. As he concedes, review of this issue is for plain error. To prevail on plain error review, Bailey must show a forfeited error that is clear or obvious and that affects his substantial rights. *See Puckett v. United States*, 556 U.S. 129, 135 (2009). If he makes such a showing, this court has the discretion to correct the error but only if it “seriously affect[s] the fairness, integrity or public reputation of judicial proceedings.” *Id.*

The decision in *Haymond* addressed the constitutionality of § 3583(k), and the plurality opinion specifically stated that it was not expressing any view on the constitutionality of other subsections of § 3583, the statute governing supervised release, including § 3583(g). *See Haymond*, 139 S. Ct. at 2382 n.7. Because there currently is no caselaw from either the Supreme Court or this court extending *Haymond* to § 3583(g) revocations, we conclude that there is no error that is clear or obvious. *See United States v. Escalante-Reyes*, 689 F.3d 415, 418 (5th Cir. 2012) (en banc); *United States v. Gonzalez*, 792 F.3d 534, 538 (5th Cir. 2015).

Accordingly, the judgment of the district court is AFFIRMED.

## APPENDIX B

**UNITED STATES DISTRICT COURT**

NORTHERN DISTRICT OF TEXAS

Abilene Division

UNITED STATES OF AMERICA

**AMENDED JUDGMENT IN A CRIMINAL CASE**

v.

BARRY LYNN BAILEY

Case Number: 1:15-CR-00054-O-BL(03)

U.S. Marshal's No.: 50142-177

Myria Wynn Boehm, Assistant U.S. Attorney

Charles Davis Scarborough, Attorney for the  
Defendant

On February 25, 2016 the defendant, BARRY LYNN BAILEY, entered a plea of guilty as to Count 2 of the Indictment filed on August 12, 2015. Accordingly, the defendant is adjudged guilty of such Count, which involves the following offense:

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18:472 and 2 Possession Of Counterfeit United States Currency and Aiding and Abetting	18:472 and 2 Possession Of Counterfeit United States Currency and Aiding and Abetting	June 9, 2015	Two

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

The defendant shall pay immediately a special assessment of \$100.00 as to Count 2 of the Indictment filed on August 12, 2015.

The defendant shall notify the United States Attorney for this district within thirty days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Sentence imposed May 6, 2016.



REED O'CONNOR  
U.S. DISTRICT JUDGE

Signed May 22, 2016.

Judgment in a Criminal Case

Page 2 of 4

Defendant: BARRY LYNN BAILEY

Case Number: 1:15-CR-00054-O-BL(3)

### IMPRISONMENT

The defendant, BARRY LYNN BAILEY, is hereby committed to the custody of the Federal Bureau of Prisons (BOP) to be imprisoned for a term of **Thirteen (13) months as to Count Two** of the Indictment filed on August 12, 2015.

The defendant is to self-surrender at his own expense, at a facility designated by the U.S. Bureau of Prisons before 2:00 p.m. on June 7, 2016.

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of Two (2) years as to Count 2 of the Indictment filed on August 12, 2015.

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

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



Judgment in a Criminal Case

Page 3 of 4

Defendant: BARRY LYNN BAILEY

Case Number: 1:15-CR-00054-O-BL(3)

In addition the defendant shall:

not commit another federal, state, or local crime;

not possess illegal controlled substances;

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

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

shall refrain from any unlawful use of a controlled substance, submitted to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer pursuant to the mandatory drug testing provision of the 1994 crime bill; (Macro MDT1FW)

shall participate in a program approved by the probation officer for treatment of narcotic or drug or alcohol dependency that will include testing for the detection of substance use, abstaining from the use of alcohol and all other intoxicants during and after completion of treatment, contributing to the costs of services rendered (copayment) at a rate of at least \$10 per month; (Macro 23AFW)

shall participate in mental health treatment services as directed by the probation officer until successfully discharged, which services may include prescribed medications by a licensed physician, with the defendant contributing to the costs of services rendered (copayment) at a rate of at least \$10 per month. (Macro24AFW)

### **FINE/RESTITUTION**

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

Restitution is not ordered because there is no victim other than society at large.

### **FORFEITURE**

Pursuant to 18 U.S.C. §982(a)(1) and 28 U.S.C. § 2461(c), it is hereby ordered that the defendant's interest in the following property is condemned and forfeited to the United States: 1) a HP Envy 4500 copier/printer, Serial No. 52R2404M; 2) a Boston paper cutter; 3) all items seized by the Abilene Police Department (APD), Abilene, Texas, on June 9, 2015, from Room 245 of the Frontier Inn, Abilene, Texas; 4) all items seized by the APD on June 9, 2015, from 302 Peach Street, Abilene, Texas; and 5) all items seized by the APD on June 9, 2015, from 1518 Marshall Street, Abilene, Texas.

Judgment in a Criminal Case

Page 4 of 4

Defendant: BARRY LYNN BAILEY

Case Number: 1:15-CR-00054-O-BL(3)

**RETURN**

I have executed this judgment as follows:

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

\_\_\_\_\_  
United States Marshal

BY \_\_\_\_\_  
Deputy Marshal

## APPENDIX C

**United States District Court**Northern District of Texas  
Abilene Division

UNITED STATES OF AMERICA

v.

Case Number 1:15-CR-054-03-C  
USM No. 50142-177BARRY LYNN BAILEY,  
Defendant.**JUDGMENT IN A CRIMINAL CASE**(For **Revocation** of Supervised Release)  
(For Offenses Committed On or After November 1, 1987)

The defendant, BARRY LYNN BAILEY, was represented by David Sloan.

**THE DEFENDANT:**

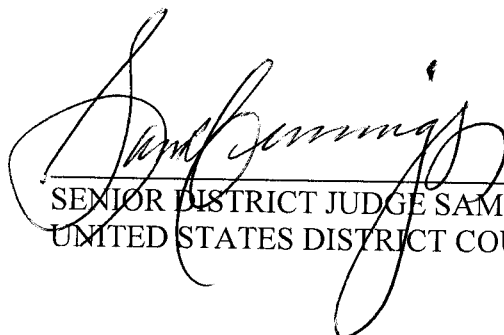
The Defendant admitted true as to the allegations contained in said motion with the exception of the allegation of a violation on May 31, 2019, to which the Defendant denies.

<u>Violation Number</u>	<u>Nature of Violation</u>	<u>Date of Violation</u>
See Attached copy of Petition for Offender Under Supervision		

Certified copy of the Judgment imposed on 5/6/2016, in the Northern District of Texas, Abilene Division, is attached.

As pronounced on 6/28/2019, the Motion to Revoke is granted and the defendant is sentenced as provided in pages 1 through 4 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

IT IS FURTHER ORDERED that the defendant shall 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.

Signed this the 28th day of June, 2019.  
\_\_\_\_\_  
SENIOR DISTRICT JUDGE SAM R. CUMMINGS  
UNITED STATES DISTRICT COURT

Defendant: BARRY LYNN BAILEY

Judgment--Page 2 of 4

Case Number: 1:15-CR-054-03-C

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 24 months.

The defendant shall remain in the custody of the U.S. Marshal Service.

The Court recommends incarceration at FCI Big Spring, Texas.

### 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 Marshal

Defendant: BARRY LYNN BAILEY

Judgment--Page 3 of 4

Case Number: 1:15-CR-054-03-C

**SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of 12 months.

The defendant shall report to the Probation Officer in a manner and frequency directed by the Court or Probation Officer.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not illegally possess a controlled substance.

*For offenses committed on or after September 13, 1994:*

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.

- ☐ The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse.
- ☒ The defendant shall not possess a firearm, destructive device or any other dangerous weapon.
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer.
- ☐ The defendant shall 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 which he or she resides, works, is a student, or was convicted of a qualifying offense.
- ☐ the defendant shall participate in an approved program for domestic violence.

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Fine and Restitution sheet of the judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the additional conditions on the attached page.

**STANDARD CONDITIONS OF SUPERVISION**

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer at least ten days prior to any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

Defendant: BARRY LYNN BAILEY

Judgment--Page 4 of 4

Case Number: 1:15-CR-054-03-C

### **SPECIAL CONDITIONS OF SUPERVISION**

While the defendant is on supervised release pursuant to this Judgment the defendant shall comply with the standard conditions recommended by the U.S. Sentencing Commission and shall comply with the following additional conditions:

1. The defendant shall participate in a program (inpatient and/or outpatient) approved by the U.S. Probation Office for treatment of narcotic or drug or alcohol dependency, which will include testing for the detection of substance use or abuse. The defendant shall contribute to the costs of services rendered (copayment) at the rate of at least \$25.00 per month.
2. The defendant shall abstain from the use of alcohol and all other intoxicants during the term of supervision

**UNITED STATES DISTRICT COURT**  
for  
**NORTHERN DISTRICT OF TEXAS**

**Petition for Offender Under Supervision**

Name of Offender: Barry Lynn Bailey Case No.: 1:15-CR-054-C(03)  
Name of Sentencing Judge: U.S. District Judge Reed O'Connor (Case reassigned to Senior U.S. District Judge Sam R. Cummings on November 1, 2017.)  
Date of Original Sentence: May 6, 2016  
Original Offense: Possession of Counterfeit United States Currency and Aiding and Abetting, 18 U.S.C. §§ 472 & 2  
Original Sentence: 13 months custody, 2-year term of supervised release  
Detainers: None  
U.S. Marshals No.: 50142-177  
Type of Supervision: Supervised Release Date Supervision Commenced: October 3, 2018  
Assistant U.S. Attorney: Myria Wynn Boehm Defense Attorney: Charles Davis Scarborough  
(Court appointed)

**Petitioning the Court for Action for Cause as Follows:**

To issue a violator's warrant.

The probation officer believes that the offender violated the following conditions:

**I.**

**Violation of Standard Condition No. 7**

The defendant shall refrain from excessive use of alcohol and not purchase, possess, use, distribute, or administer and narcotic, or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.

**Violation of Additional Condition**

The defendant shall not possess illegal controlled substances.

**Violation of Additional Condition**

The defendant shall refrain from any unlawful use of a controlled substance, submitted to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer pursuant to the mandatory drug testing provision of the 1994 crime bill.



Barry Lynn Bailey  
Petition for Offender Under Supervision

### **Violation of Additional Condition**

The defendant shall participate in a program approved by the probation officer for treatment of narcotic or drug or alcohol dependency that will include testing for the detection of substance use, abstaining from the use of alcohol and all other intoxicants during and after completion of treatment, contributing to the costs of services rendered (copayment) at a rate of at least \$10 per month.

### **Nature of Noncompliance**

Barry Bailey violated these conditions of supervised release by using methamphetamine, an illegal controlled substance, in or about March, 2019. On March 22, 2019, Mr. Bailey submitted a urine specimen to the U.S. Probation Office, Abilene, Texas, that tested positive for methamphetamine. Furthermore, on April 10, 2019, the national drug testing laboratory confirmed the specimen positive for methamphetamine.

Additionally, on April 2, 2019, Mr. Bailey submitted a urine specimen to the U.S. Probation Office, Abilene, Texas, that tested positive for methamphetamine. Furthermore, on April 21, 2019, the national drug testing laboratory confirmed the specimen positive for methamphetamine.

Furthermore, on November 10, 2018, Mr. Bailey violated these conditions of supervised release when he failed to report for random drug testing at Kinkade Family Services, Abilene, Texas, a federally contracted drug aftercare treatment provider.

### **Personal History**

On October 3, 2018, Mr. Bailey began his term of supervised release in the Northern District of Texas, Abilene Division. On October 10, 2018, Mr. Bailey was placed into a substance abuse treatment program which required individual and group counseling, along with random drug testing.

Since his release, Mr. Bailey has maintained a residence in Abilene, Texas. Mr. Bailey obtained employment as a concrete worker immediately after his release.

### **Statutory Provisions — Protect Act Supervised Release**

<b>Statutory Maximum Custody:</b>	2 years. 18 U.S.C. § 3583(e)(3)
<b>Mandatory Revocation Statutes:</b>	Mandatory revocation for possession of a controlled substance and refusal to comply with drug testing. Sentence to a term of imprisonment. 18 U.S.C. § 3583(g)(1) & (3).
<b>Fine:</b>	None
<b>Statutory Maximum for Reimposition of Supervised Release:</b>	3 years, minus revocation sentence. 18 U.S.C. § 3583(h).

According to U.S. v. Jackson, 559 F.3d 368 (5<sup>th</sup> Cir. 2009), "when an initial term of supervised release is revoked, the district court may impose a new term of supervised release as part of a revocation sentence...The maximum length of this new term is calculated as follows: 'The length of such a term of

Barry Lynn Bailey  
Petition for Offender Under Supervision

supervised release shall not exceed the term of supervised release authorized by statute for the offense that resulted in the original term of supervised release, less any term of imprisonment that was imposed upon revocation of supervised release." Jackson also notes that a district court may impose any term of supervised release that is equal to or greater than the mandatory minimum, less any term of imprisonment that was imposed upon revocation of supervised release.

#### Chapter 7 Violation Computations


<b>Violation Grade:</b>	C	USSG § 7B1.1(a)(3) & 7B1.3(a)(2) & (c)(2), p.s.
<b>Criminal History Category:</b>	IV	USSG §7B1.4(a), p.s.
<b>Imprisonment Range:</b>	6-12 months	USSG §7B1.4(a), p.s.
<b>Fine:</b>	None	USSG §7B1.3(d), p.s.

Pursuant to U.S. v. Miller, 634 F.3d 841 (5th Cir. 2011), the Court may not consider the factors listed in 18 U.S.C. § 3553(a)(2)(A), which include "the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense," when modifying or revoking a term of supervised release.

In U.S. v. Tapia, 131 S. Ct. 2382 (2011), the Supreme Court held that Section 3582(a) does not permit a sentencing court to impose or lengthen a prison term in order to foster a defendant's rehabilitation.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 24, 2019  
Respectfully submitted,



Martin Hernandez, Jr.  
U.S. Probation Officer  
Abilene  
Phone: 325-690-3985  
Fax: 325-676-1936

Approved,



Don W. Kretschmer  
Supervising U.S. Probation Officer  
Phone: 325-486-4071

Case 1:15-cr-00054-C-BP Document 121 Filed 04/25/19 Page 4 of 4 PageID 346

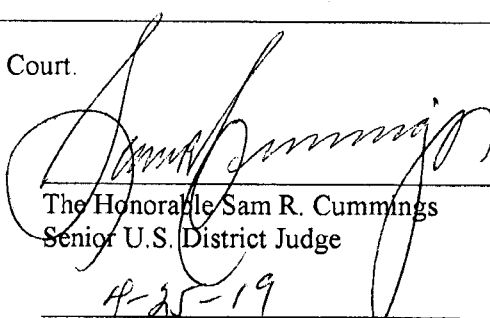
Barry Lynn Bailey  
Petition for Offender Under Supervision

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**Order of the Court:**

- ☐ No action.
- ☒ The Issuance of a Warrant. Petition and warrant sealed and not to be distributed to counsel of record until arrest effectuated.
- ☐ The Issuance of a Summons
- ☐ Other or Additional:

- 
- ☐ File under seal until further order of the Court.

  
The Honorable Sam R. Cummings  
Senior U.S. District Judge

4-25-19  
Date

**UNITED STATES DISTRICT COURT**  
NORTHERN DISTRICT OF TEXAS  
Abilene Division

UNITED STATES OF AMERICA

**JUDGMENT IN A CRIMINAL CASE**

v.

BARRY LYNN BAILEY

Case Number: 1:15-CR-00054-O-BL(03)

U.S. Marshal's No.: 20142-177

Myria Wynn Boehm, Assistant U.S. Attorney

Charles Davis Scarborough, Attorney for the  
Defendant

On February 25, 2016 the defendant, BARRY LYNN BAILEY, entered a plea of guilty as to Count 2 of the Indictment filed on August 12, 2015. Accordingly, the defendant is adjudged guilty of such Count, which involves the following offense:

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18:472 and 2 Possession Of Counterfeit United States Currency and Aiding and Abetting	18:472 and 2 Possession Of Counterfeit United States Currency and Aiding and Abetting	June 9, 2015	Two

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


The defendant shall pay immediately a special assessment of \$100.00 as to Count 2 of the Indictment filed on August 12, 2015.

The defendant shall notify the United States Attorney for this district within thirty days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Sentence imposed May 6, 2016.

CERTIFIED A TRUE COPY  
KAREN MITCHELL, CLERK

By s/ **CRISS FLOCK**  
DEPUTY CLERK  
U.S. DISTRICT COURT, NORTHERN  
DISTRICT OF TEXAS  
June 28, 2019

  
REED O'CONNOR  
U.S. DISTRICT JUDGE

Signed May 6, 2016.

Judgment in a Criminal Case  
Defendant: BARRY LYNN BAILEY  
Case Number: 1:15-CR-00054-O-BL(3)

Page 2 of 4

### IMPRISONMENT

The defendant, BARRY LYNN BAILEY, is hereby committed to the custody of the Federal Bureau of Prisons (BOP) to be imprisoned for a term of **Thirteen (13) months as to Count Two** of the Indictment filed on August 12, 2015.

The defendant is to self-surrender at his own expense, at a facility designated by the U.S. Bureau of Prisons before 2:00 p.m. on June 7, 2016.

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of Two (2) years as to Count 2 of the Indictment filed on August 12, 2015.

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

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

Judgment in a Criminal Case  
Defendant: BARRY LYNN BAILEY  
Case Number: 1:15-CR-00054-O-BL(3)

Page 3 of 4

In addition the defendant shall:

not commit another federal, state, or local crime;

not possess illegal controlled substances;

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

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

shall refrain from any unlawful use of a controlled substance, submitted to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer pursuant to the mandatory drug testing provision of the 1994 crime bill; (Macro MDT1FW)

shall participate in a program approved by the probation officer for treatment of narcotic or drug or alcohol dependency that will include testing for the detection of substance use, abstaining from the use of alcohol and all other intoxicants during and after completion of treatment, contributing to the costs of services rendered (copayment) at a rate of at least \$10 per month; (Macro 23AFW)

shall participate in mental health treatment services as directed by the probation officer until successfully discharged, which services may include prescribed medications by a licensed physician, with the defendant contributing to the costs of services rendered (copayment) at a rate of at least \$10 per month. (Macro24AFW)

#### **FINE/RESTITUTION**

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

Restitution is not ordered because there is no victim other than society at large.

#### **FORFEITURE**

Pursuant to 18 U.S.C. §982(a)(1) and 28 U.S.C. § 2461(c), it is hereby ordered that the defendant's interest in the following property is condemned and forfeited to the United States: 1) a HP Envy 4500 copier/printer, Serial No. 52R2404M; 2) a Boston paper cutter; 3) all items seized by the Abilene Police Department (APD), Abilene, Texas, on June 9, 2015, from Room 245 of the Frontier Inn, Abilene, Texas; 4) all items seized by the APD on June 9, 2015, from 302 Peach Street, Abilene, Texas; and 5) all items seized by the APD on June 9, 2015, from 1518 Marshall Street, Abilene, Texas.

#### **RETURN**

Judgment in a Criminal Case  
Defendant: BARRY LYNN BAILEY  
Case Number: 1:15-CR-00054-O-BL(3)

Page 4 of 4

I have executed this judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_  
United States Marshal

BY \_\_\_\_\_  
Deputy Marshal