

APPENDIX

APPENDIX

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A-1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 06-60350-CR-COHN

UNITED STATES OF AMERICA,

v.

MICKEY PUBIEN,

Defendant.

/

**ORDER GRANTING IN PART MOTION FOR RELIEF PURSUANT TO FIRST STEP
ACT**

THIS CAUSE came before the Court on Defendant Mickey Pubien's *pro se* Motion for Relief Pursuant to Section 404 of the First Step Act ("Motion") [DE 862]. The Court has considered the Motion, the Government's Response [DE 871], Defendant's *pro se* Reply [DE 877], Defendant's counsel's Memorandum in Support of Defendant's *pro se* Motion [DE 878], and the record in this case, and is otherwise advised in the premises.

In August 2007, Defendant was convicted of six drug offenses: conspiracy with intent to distribute at least 5 kilograms of cocaine (Count I), conspiracy with intent to distribute at least 50 grams of cocaine base (Count III), and four counts of distributing and possessing with intent to distribute 500 grams or more of cocaine (Counts V, XIX, XXII, and XXV). DE 399. Three prior felony drug convictions were used pursuant to 21 U.S.C. § 851 to enhance Defendant's statutory minimum sentences as to Counts I & III such that his statutory sentencing range for those counts was a mandatory term of life imprisonment. The statutory range for the other four counts was a minimum term of ten years imprisonment and a maximum term of life. Based on a total offense level of 38

and a criminal history category of III, Defendant's guideline imprisonment range was 292 to 365 months. However, pursuant to U.S.S.G. § 5G1.1(b), Defendant's guideline range was increased to life because the statutory minimum sentence exceeded the guideline range. On October 30, 2007, the Court sentenced Defendant to concurrent terms of life imprisonment on all counts. DE 502. Defendant now moves for a reduction of his sentence pursuant to the First Step Act of 2018. DE 862.

Section 404 of the First Step Act retroactively applies portions of the Fair Sentencing Act that lowered the threshold quantities triggering different statutory penalties for certain offenses involving cocaine base (crack cocaine). Specifically, the First Step Act provides that “[a] court that imposed a sentence for a covered offense may, on motion of the defendant . . . impose a reduced sentence as if sections 2 and 3 of the Fair Sentencing Act of 2010 . . . were in effect at the time the covered offense was committed.” Pub. L. 115-391. A “covered offense” is defined as “a violation of a Federal criminal statute, the statutory penalties for which were modified by section 2 or 3 of the Fair Sentencing Act of 2010 . . . that was committed before August 3, 2010.” Id.

Here, only Defendant's cocaine base offense (Count III) is a “covered offense” under the First Step Act. The Government concedes that “[i]f the defendant were sentenced today . . . as to Count Three only, he would no longer be facing a mandatory minimum term of life imprisonment.” DE 871 at 8. But the Government argues that the Court has no authority to modify the sentences imposed for the remaining counts, and therefore, the Court should deny Defendant's Motion because “the overall mandatory sentence of life imprisonment is not [a]ffected.” Id. at 1. Defendant argues that the Court should conduct a full resentencing as to all counts, taking into account all

developments in the law since his sentencing. In Defendant's *pro se* filings, he argues that in fact, the sentencing package doctrine requires the Court to conduct a full resentencing. DE 862 at 5.

The scope of a district court's authority to modify a sentence under the First Step Act was recently addressed in United States v. Potts, 2019 WL 1059837 (S.D. Fla. Mar. 6, 2019). There, as here, the defendant argued that he was not only eligible for a reduced sentence under the Fair Sentencing and First Step Acts on his cocaine base conviction, but also that he was entitled to a full or plenary resentencing. Id. at *2. Specifically, the defendant in Potts sought to revisit his designation as a career offender. Id. Judge Rosenberg held, consistent with other district courts that have addressed motions under the First Step Act, that 18 U.S.C. § 3582(c) "provides the procedural vehicle" for modifications of sentences under the First Step Act. Id. Section 3582(c)(1)(B) provides for a sentence modification "only as 'expressly permitted by statute.'" Id. Thus, Judge Rosenberg reasoned that because "[n]either the Fair Sentencing Act nor the First Step Act 'expressly' provide for a full or plenary resentencing or for a reconsideration of original sentencing determinations," the defendant was not entitled to a full resentencing. Id. at *3.

The Court agrees with Judge Rosenberg's reasoning in Potts and adopts its holding. Defendant is not entitled to a full resentencing. As to Count III only, the Fair Sentencing and First Step Acts do operate to reduce Defendant's statutory sentencing range from a mandatory term of life imprisonment to a minimum term of ten years

imprisonment and a maximum term of life. All other determinations made at the time of Defendant's sentencing, however, must remain unchanged.¹

Accordingly, it is thereupon **ORDERED AND ADJUDGED** as follows:

1. Defendant Mickey Pubien's *pro se* Motion for Relief Pursuant to Section 404 of the First Step Act [DE 862] is **GRANTED in part and DENIED** in part as set forth below:
 - a. Defendant's term of incarceration on Count III only is reduced to a term of 10 years to run concurrently with all other counts.
 - b. The Motion is **DENIED** in all other respects. All other provisions of the Court's prior sentence shall remain in full force and effect.
2. An amended judgment will be entered.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 9th day of April, 2019.



JAMES I. COHN
United States District Judge

¹ The sentencing package doctrine does not alter this conclusion. As the Eleventh Circuit has explained:

The sentencing package doctrine is a judicial practice that permits a district court to resentence a defendant on all counts of conviction where: (1) the defendant was sentenced on multiple counts, such that the overall sentence is a package of interrelated sanctions for all of the offenses; (2) one of the defendant's convictions subsequently is vacated; and (3) the district court needs to "reconstruct the sentence package" so that that the overall sentence comports with the Guidelines, the 18 U.S.C. § 3553(a) factors, and the court's opinion of a proper sentence for the remaining convictions.

United States v. Rozier, 685 Fed. Appx. 847, 851 n.1 (11th Cir. 2017) (citing United States v. Fowler, 749 F.3d 1010, 1015-16 (11th Cir. 2014)). Here, because none of Defendant's convictions have been vacated, this doctrine is inapplicable. And in any event, it is unnecessary to "reconstruct the sentence package" because, as the Government correctly notes, the overall mandatory sentence of life imprisonment is not affected by the reduction of Defendant's term of incarceration on Count III.

Copies provided to counsel of record via CM/ECF, pro se parties via U.S. mail to address on file, U.S. Marshals, and Bureau of Prisons

A-2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 06-60350-CR-COHN

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICKEY PUBIEN,

Defendant.

/

ORDER DENYING DEFENDANT'S SECOND MOTION FOR RECONSIDERATION

THIS CAUSE is before the Court on Defendant Mickey Pubien's Motion for Reconsideration of the Court's Order Partially Denying Motion for Reduction of Sentence Pursuant to the First Step Act of 2018 ("Motion") [DE 884.] The Court has considered the Motion and is otherwise advised in the premises.

Defendant again seeks reconsideration of the undersigned's Order Granting in Part Motion for Relief Pursuant to First Step Act ("Order") [DE 879.] In the Order, the Court reduced Defendant's term of incarceration on his cocaine base offense (Count III) but held that Defendant was not entitled to a full resentencing and did not modify the sentences imposed for the remaining counts. "Though the Federal Rules of Criminal Procedure do not specifically authorize motions for reconsideration, federal district courts have substantial discretion in ruling on such motions in the criminal context."

United States v. Sabooni, 09-20298-CR, 2014 WL 4385446, at *1 (S.D. Fla. Sept. 4, 2014) (citation omitted). In the criminal context, motions for reconsideration "are well-taken when they present one or more of the following: (1) an intervening change in controlling law; (2) the availability of new evidence; or (3) the need to correct clear error

or manifest injustice.” [Id.] (citation omitted). Such motions “should not simply rehash previously litigated issues,” and “must set forth facts or law of a strongly convincing nature to induce the court to reverse its prior decision.” United States v. Russo, 11-6337-RSR, 2011 WL 3044844, at *1 (S.D. Fla. July 25, 2011) (citations omitted).

In the instant Motion, Defendant does not argue that there has been an intervening change in controlling law, present previously unavailable evidence, or show that reconsideration is necessary to correct a clear error or manifest injustice. Thus, the Court concludes that Defendant has failed to meet the standard for reconsideration. Defendant continues to disagree with the Court’s determination that the First Step Act impacts only his cocaine base offense. But as other courts have noted, if the Court engaged in the full resentencing requested by Defendant, “applying other laws and Guidelines that have been changed since [defendant’s] original sentencing, it would work an injustice to offenders sentenced in the past who did not have a crack cocaine conviction qualifying for sentence reduction pursuant to the Fair Sentencing Act of 2010.” United States v. Russo, 2019 WL 1277507, at *1 (D. Neb. Mar. 20, 2019).

Accordingly, it is

ORDERED AND ADJUDGED that Defendant Mickey Pubien's Motion for Reconsideration of the Court's Order Partially Denying Motion for Reduction of Sentence Pursuant to the First Step Act of 2018 [DE 884] is hereby **DENIED**.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 23rd day of May, 2019.



JAMES I. COHN
United States District Judge

Copies provided to counsel of record via CM/ECF and pro se parties via U.S. mail to address on file

A-3

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 19-12078
Non-Argument Calendar

D.C. Docket No. 0:06-cr-60350-JJC-3

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MICKEY PUBIEN,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida

(February 25, 2020)

Before NEWSOM, LAGOA and HULL, Circuit Judges.

PER CURIAM:

Mickey Pubien, a federal prisoner now proceeding with counsel, appeals the district court's order granting in part and denying in part his *pro se* motion for

relief under the First Step Act of 2018, Pub. L. 115-391, 132 Stat. 5194. On appeal, Pubien argues that he was entitled to a plenary resentencing under First Step Act §§ 401 and 404. He also argues that the district court should have reduced his total sentence under the “sentencing package” doctrine. We are not persuaded by Pubien’s arguments, and we therefore affirm.

I

In 2006, a federal grand jury indicted Mickey Pubien for his involvement in an illegal drug distribution scheme. Pubien was charged with conspiracy to possess with intent to distribute five kilograms or more of cocaine in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(A) and § 846 (Count 1); conspiracy to possess with intent to distribute 50 grams or more of crack cocaine in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(A) and § 846 (Count 3); and four counts of possession with intent to distribute 500 grams or more of cocaine in violation of §§ 841(a)(1) and (b)(1)(B) (Counts 5, 9, 22, and 25).

After a jury trial, Pubien was convicted on all counts. Pubien’s Presentence Investigation Report, to which he did not object, set his total offense level at 38 and his criminal history category at III—which typically would have resulted in an Sentencing Guideline imprisonment range of 292 to 365 months’ imprisonment. Because Pubien had previously been convicted of three drug felonies, however, the government filed notice that—under 21 U.S.C. § 841(b)(1)(A)—Pubien faced

mandatory statutory penalties of life imprisonment without release as to Counts 1 and 3. Pubien’s Guideline imprisonment range was therefore increased to life imprisonment, pursuant to U.S.S.G. § 5G1.1(b). The district court sentenced Pubien to concurrent terms of life imprisonment on all counts, a decision we affirmed on direct appeal. *United States v. Pubien*, 349 Fed. App’x 473, 478 (11th Cir. 2009).

In February 2019, Pubien filed a motion for relief under the First Step Act, seeking a reduction of his sentence. The district court granted Pubien’s motion in part and denied it in part. The district court held that only one of the convictions underlying Pubien’s sentence—conspiracy to possess with intent to distribute 50 grams or more of crack cocaine (Count 3)—qualified as a “covered offense” under the First Step Act. Accordingly, the district court exercised its discretion under the Act to reduce Pubien’s Count 3 sentence to 10 years, but it left Pubien’s remaining life sentences unchanged. Pubien filed a motion for reconsideration, which the district court denied.

II

Pubien makes three arguments on appeal. First, Pubien argues that the district court erred in holding that First Step Act § 404 does not allow for resentencing of his powder-cocaine offenses (Counts 1, 5, 9, 22, and 25). Second, he argues that the district court “ignored” a different provision of the First Step

Act—§ 401—which, he alleges, also permits resentencing for his powder-cocaine offenses. Finally, he argues that his sentences are “interdependent” and that, because he successfully challenged his crack-cocaine sentence (Count 3), he is entitled to full resentencing on all of his underlying counts under the “sentencing package” doctrine. We address each argument in turn.

A

First, we consider Pubien’s argument that First Step Act § 404 gives the district court authority to reduce the life-imprisonment sentences imposed for his powder-cocaine offenses (Counts 1, 5, 9, 22, and 25).¹ Generally, a court “may not modify a term of imprisonment once it has been imposed.” 18 U.S.C. § 3582(c). Under one of the limited exceptions to this rule, however, a court “may modify an imposed term of imprisonment to the extent otherwise expressly permitted by statute or by Rule 35 of the Federal Rules of Criminal Procedure.” *Id.* § 3582(c)(1)(B); *see also United States v. Phillips*, 597 F.3d 1190, 1196–97 (11th Cir. 2010) (“[A]bsent other statutory authority, . . . a district court lacks jurisdiction to modify a defendant’s original imprisonment sentence except within seven days as provided by Rule 35(a).”). The question here is whether First Step

¹ We review the district court’s interpretation of a statute de novo. *United States v. Zuniga-Arteaga*, 681 F.3d 1220, 1223 (11th Cir. 2012).

Act § 404 provides the district court with the statutory authority necessary to modify Pubien’s powder-cocaine sentences. We hold that it does not.

To understand the scope of First Step Act § 404, we must first start with two provisions in a different statute—§§ 2 and 3 of the Fair Sentencing Act of 2010, Pub. L. No. 111-220, §§ 2–3, 124 Stat. 2372. Sections 2 and 3 of the Fair Sentencing Act reduced statutory penalties for certain offenses involving crack cocaine. Specifically, § 2 of the Fair Sentencing Act reduced the disparity between the quantities of crack cocaine and powder cocaine required to trigger the statutory penalties prescribed by 21 U.S.C. §§ 841(b)(1) and 960(b). *Dorsey v. United States*, 567 U.S. 260, 264 (2012) (stating that the Fair Sentencing Act “reduc[ed] the crack-to-powder cocaine disparity from 100-to-1 to 18-to-1”). Section 3 eliminated the mandatory minimum sentence for simple possession of crack cocaine in 21 U.S.C. § 844(a). *Dorsey*, 567 U.S. at 269. Under the Fair Sentencing Act, itself, however, §§ 2 and 3 apply only to offenders sentenced after August 3, 2010—the date the statute took effect. *See Dorsey*, 567 U.S. at 264.

First Step Act § 404 made §§ 2 and 3 of the Fair Sentencing Act retroactively applicable. In particular, First Step Act § 404 provides that a district court is authorized to “impose a reduced sentence as if sections 2 and 3 of the Fair Sentencing Act of 2010 were in effect at the time the covered offense was committed.” § 404(b) (citation omitted). And it defines the term “covered

offense” as “a violation of a Federal criminal statute, the statutory penalties for which were modified by section 2 or 3 of the Fair Sentencing Act of 2010, that was committed before August 3, 2010.” § 404(a) (citation omitted).

As the district court held, Pubien’s crack cocaine conviction (Count 3) qualifies as a “covered offense” under § 404 of the First Step Act. Section 2 of the Fair Sentencing Act modified the statutory penalties for Pubien’s crack cocaine offense, and Pubien committed the offense before August 3, 2010. The district court therefore had the discretion, under First Step Act § 404, to reduce Pubien’s sentence for *that* count. The district court was not authorized, however, to reduce the sentences imposed for any of Pubien’s remaining convictions (Counts 1, 5, 9, 22, and 25), because the sentences imposed for those convictions—all of which related to powder cocaine—were not modified by section 2 or 3 of the Fair Sentencing Act. None of those convictions, in other words, are “covered offenses” under First Step Act § 404. We also note that, even if we somehow read § 404 to encompass Pubien’s remaining convictions, it would do him little good: § 404 only permits resentencing “as if sections 2 and 3 of the Fair Sentencing Act of 2010 were in effect at the time the covered offense was committed.” (citation omitted). And, as we’ve stated, sections 2 and 3 of the Fair Sentencing Act do nothing to alter the penalties for Pubien’s powder cocaine convictions.

B

Pubien next argues that First Step Act § 401 entitles him to a reduced sentence for his powder-cocaine convictions. First Step Act § 401 amended 21 U.S.C. § 841(b)(1)(A) by changing the mandatory penalties it imposed for repeat offenders, as well as altering the types of offenses that trigger those penalties. Specifically, while § 841(b)(1)(A) previously stated that a prior conviction for a “felony drug offense” would trigger mandatory penalties, First Step Act § 401(a) changed the prior-conviction requirement to a “serious drug felony or serious violent felony.” First Step Act § 401(a) also changed the mandatory minimum sentence for defendants who have had two or more such prior convictions, from life imprisonment to 25 years. Pubien argues that, because of these changes, he is entitled to a decreased sentence for his powder-cocaine convictions.

We disagree. The First Step Act did not make § 401’s amendments retroactively applicable to defendants sentenced prior to its enactment. In fact, contrary to Pubien’s argument, it explicitly makes the amendments *not* retroactively applicable to such defendants: it states that the provisions of §401 “shall apply to any offense that was committed before the date of enactment of this Act, *if a sentence for the offense has not been imposed as of such date of enactment.*” § 401(c). Pubien, who was sentenced on October 26, 2007, is therefore not entitled to a sentence reduction under First Step Act § 401.

C

Finally, Pubien argues that he is entitled to resentencing for his powder cocaine convictions under the “sentencing package” doctrine. The sentencing package doctrine is a judicial practice born of the reality that, “especially in the guidelines era,” sentencing a defendant on multiple counts is often an “inherently interrelated, interconnected, and holistic process.” *United States v. Fowler*, 749 F.3d 1010, 1015 (11th Cir. 2014). Accordingly, under the sentencing package doctrine, district courts are “free to reconstruct [a defendant’s] sentencing package” when “one of more of the component counts is vacated”—thereby allowing the court to “ensure that the overall sentence remains consistent with the guidelines.” *Id.*

The sentencing-package doctrine has no place here, however, where the original sentence imposed was not a package of interconnected sanctions. When Pubien was originally sentenced, his Count-1 and Count-3 convictions each independently required the imposition of a life sentence. Although it’s true that the district court later reduced Pubien’s Count-3-based life sentence under the First Step Act, that sentence had (and has) no effect on his Count-1-based mandatory sentence. There is no risk, in other words, that the “district court’s original sentencing intent may [have] be[en] undermined” by the subsequent Count-3 sentence reduction. *Pepper v. United States*, 562 U.S. 476, 507 (2011) (quotation

omitted). Accordingly, no wholesale reconfiguration of Pubien’s sentence is necessary. *See id.*

III

Because the First Step Act does not give the district court the authority to reduce Pubien’s powder-cocaine sentences, and because there is no need to repackage Pubien’s overall sentence, we affirm the district court’s decision to grant in part and deny in part Pubien’s motion to modify his sentence.

AFFIRMED.

A-4

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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February 25, 2020

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 19-12078-EE
Case Style: USA v. Mickey Pubien
District Court Docket No: 0:06-cr-60350-JJC-3

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Enclosed is a copy of the court's decision filed today in this appeal. Judgment has this day been entered pursuant to FRAP 36. The court's mandate will issue at a later date in accordance with FRAP 41(b).

The time for filing a petition for rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing or for rehearing en banc is timely only if received in the clerk's office within the time specified in the rules. Costs are governed by FRAP 39 and 11th Cir.R. 39-1. The timing, format, and content of a motion for attorney's fees and an objection thereto is governed by 11th Cir. R. 39-2 and 39-3.

Please note that a petition for rehearing en banc must include in the Certificate of Interested Persons a complete list of all persons and entities listed on all certificates previously filed by any party in the appeal. See 11th Cir. R. 26.1-1. In addition, a copy of the opinion sought to be reheard must be included in any petition for rehearing or petition for rehearing en banc. See 11th Cir. R. 35-5(k) and 40-1 .

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation for time spent on the appeal no later than 60 days after either issuance of mandate or filing with the U.S. Supreme Court of a petition for writ of certiorari (whichever is later) via the eVoucher system. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

For questions concerning the issuance of the decision of this court, please call the number referenced in the signature block below. For all other questions, please call Elora Jackson, EE at (404) 335-6173.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Djuanna H. Clark
Phone #: 404-335-6151

OPIN-1 Ntc of Issuance of Opinion

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

June 11, 2020

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 19-12078-EE
Case Style: USA v. Mickey Pubien
District Court Docket No: 0:06-cr-60350-JJC-3

The enclosed order has been entered on petition(s) for rehearing.

See Rule 41, Federal Rules of Appellate Procedure, and Eleventh Circuit Rule 41-1 for information regarding issuance and stay of mandate.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Elora Jackson, EE/lt
Phone #: (404) 335-6173

REHG-1 Ltr Order Petition Rehearing

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 19-12078-EE

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

MICKEY PUBIEN,

Defendant - Appellant.

Appeal from the United States District Court
for the Southern District of Florida

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: NEWSOM, LAGOA and HULL, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 35) The Petition for Panel Rehearing is also denied. (FRAP 40)

ORD-46

A-5

United States District Court
Southern District of Florida
FT. LAUDERDALE DIVISION

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

Case Number: 0:06CR60350-COHN

MICKEY PUBIEN

USM Number: 77183-004

Counsel For Defendant: HOWARD SCHUMACHER
Counsel For The United States: JULIA VAGLIENTI
Court Reporter: Anita Larocca

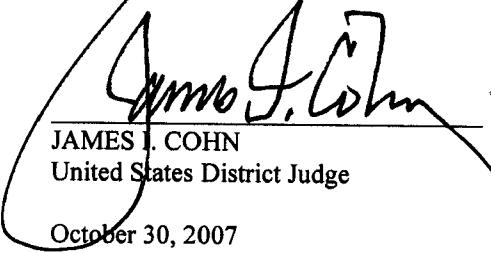
The defendant is founded guilty as to Counts 1,3,5,19,22,25 of the Indictment.
The defendant is adjudicated guilty of the following offense(s):

<u>TITLE/SECTION NUMBER</u>	<u>NATURE OF OFFENSE</u>	<u>OFFENSE ENDED</u>	<u>COUNT</u>
21 U.S.C. 846 and 851	Conspiracy to possess with intent to distribute at least five kilograms of cocaine	12/7/2006	1
21 U.S.C. 846 and 851	Conspiracy to possess with intent to distribute at least 50 grams of cocaine base	12/7/2006	3
21 U.S.C. 841(a)(1)and851	Distribution and possession with intent to distribute at least 500 grams of cocaine	8/2/2006	5
21 U.S.C. 841(a)(1)and851	Distribution and possession with intent to distribute at least 500 grams of cocaine	9/27/2006	19
21 U.S.C. 841(a)(1)and851	Distribution and possession with intent to distribute at least 500 grams of cocaine	10/20/2006	22
21 U.S.C. 841(a)(1)and851	Distribution and possession with intent to distribute at least 500 grams of cocaine	11/1/2006	25

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

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 any material changes in economic circumstances.

Date of Imposition of Sentence:
10/26/2007


JAMES I. COHN
United States District Judge

October 30, 2007

DEFENDANT: MICKEY PUBIEN
CASE NUMBER: 0:06CR60350-COHN

IMPRISONMENT

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

LIFE IMPRISONMENT AS TO COUNT'S 1,3,5,19,22, and 25 TO ALL RUN CONCURRENTLY WITH EACH OTHER.

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

THE DEFENDANT BE DESIGNATED TO A FACILITY IN THE SOUTHERN DISTRICT OF FLORIDA.

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

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 U.S. Marshal

DEFENDANT: MICKEY PUBIEN
CASE NUMBER: 0:06CR60350-COHN

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of
10 YEARS AS TO COUNTS 1 and 3
8 YEARS AS TO COUNTS 5,19,22, and 25 TO ALL RUN CONCURRENTLY WITH EACH OTHER.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from custody of the Bureau of Prisons.

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

The defendant shall not unlawfully possess a controlled substance. 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 determined by the court.

The defendant shall not possess a firearm, destructive device, or any other dangerous weapon.

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

The defendant must comply with the standard conditions that have been adopted by this court as well as any 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 as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
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 (10) days prior to any change in residence or employment;
7. the defendant shall refrain from the 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 (72) 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: MICKEY PUBIEN
CASE NUMBER: 0:06CR60350-COHN

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall also comply with the following additional conditions of supervised release:

The defendant shall provide complete access to financial information, including disclosure of all business and personal finances, to the U.S. Probation Officer.

At the completion of the defendant's term of imprisonment, the defendant shall be surrendered to the custody of the U.S. Immigration and Customs Enforcement for removal proceedings consistent with the Immigration and Nationality Act.

If removed, the defendant shall not reenter the United States without the prior written permission of the Undersecretary for Border and Transportation Security. The term of supervised release shall be non-reporting while the defendant is residing outside the United States. If the defendant reenters the United States within the term of supervised release, the defendant is to report to the nearest U.S. Probation Office within 72 hours of the defendant's arrival.

The defendant shall maintain full-time, legitimate employment and not be unemployed for a term of more than 30 days unless excused for schooling, training or other acceptable reasons. Further, the defendant shall provide documentation including, but not limited to pay stubs, contractual agreements, W-2 Wage and Earnings Statements, and other documentation requested by the U.S. Probation Officer.

Self-Employment Restriction: The defendant shall obtain prior written approval from the Court before entering into any self-employment.

Permissible Search: The defendant shall submit to a search of his/her person or property conducted in a reasonable manner and at a reasonable time by the U.S. Probation Officer.

DEFENDANT: MICKEY PUBIEN
CASE NUMBER: 0:06CR60350-COHN

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments.

<u>Total Assessment</u>	<u>Total Fine</u>	<u>Total Restitution</u>
\$600.00	\$	\$

*Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18, United States Code, for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: MICKEY PUBIEN
CASE NUMBER: 0:06CR60350-COHN

SCHEDULE OF PAYMENTS

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

- A. Lump sum payment of **\$600.00** due immediately.

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.

The assessment/fine/restitution is payable to the CLERK, UNITED STATES COURTS and is to be addressed to:

**U.S. CLERK'S OFFICE
ATTN: FINANCIAL SECTION
301 N. MIAMI AVENUE, ROOM 150
MIAMI, FLORIDA 33128**

The assessment/fine/restitution is payable immediately. The U.S. Bureau of Prisons, U.S. Probation Office and the U.S. Attorney's Office are responsible for the enforcement of this order.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest (7) penalties, and (8) costs, including cost of prosecution and court costs.