

NO. \_\_\_\_\_

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IN THE  
SUPREME COURT OF THE UNITED STATES

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ERIC TROY SNELL,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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APPENDIX

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Michael F. Smith  
THE SMITH APPELLATE LAW FIRM  
7566 Main Street, Suite 307  
Sykesville, MD 21784  
(202) 454-2860  
[smith@smithpllc.com](mailto:smith@smithpllc.com)

Counsel for Petitioner

**UNPUBLISHED****UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

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**No. 19-4351**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ERIC TROY SNELL,

Defendant - Appellant.

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Appeal from the United States District Court for the District of Maryland, at Baltimore.  
Catherine C. Blake, District Judge. (1:17-cr-00602-CCB-1)

Submitted: July 23, 2020

Decided: July 27, 2020

Before WILKINSON, MOTZ, and RICHARDSON, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Michael F. Smith, SMITH APPELLATE LAW FIRM, Sykesville, Maryland, for Appellant. Robert K. Hur, United States Attorney, Derek E. Hines, Assistant United States Attorney, Leo J. Wise, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Baltimore, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

## PER CURIAM:

Eric Troy Snell appeals the 108-month sentence imposed following his guilty plea to conspiracy to distribute and possess with intent to distribute heroin and cocaine, in violation of 21 U.S.C. §§ 841(a)(1), 846 (2018). Snell, a Philadelphia police officer, conspired with members of the Baltimore Police Department to sell illegal narcotics that Snell’s coconspirators seized in their official law enforcement capacity. On appeal, Snell contends that the district court erred in applying a two-level sentencing enhancement for obstruction of justice, pursuant to U.S. Sentencing Guidelines Manual § 3C1.1 (2018), and an additional two-level enhancement for possession of dangerous weapons, pursuant to USSG § 2D1.1(b)(1). Snell further contends that the district court erred by not applying a downward adjustment, pursuant to USSG § 3E1.1, for acceptance of responsibility. Finding no reversible error, we affirm.

We “review[] a sentence for reasonableness, . . . appl[ying] a deferential abuse-of-discretion standard.” *United States v. Ketter*, 908 F.3d 61, 67 (4th Cir. 2018) (internal quotation marks omitted). We first “must ensure that the district court committed no significant procedural error,” such as improperly calculating the Sentencing Guidelines range, failing to consider the 18 U.S.C. § 3553(a) (2018) sentencing factors, or inadequately explaining the sentence imposed. *Gall v. United States*, 552 U.S. 38, 51 (2007). If the sentence is free from significant procedural error, we review it for substantive reasonableness, “tak[ing] into account the totality of the circumstances.” *Id.*

“[I]t is unnecessary to vacate a sentence based on an asserted [G]uidelines calculation error if we can determine from the record that the asserted error is harmless.”

*United States v. McDonald*, 850 F.3d 640, 643 (4th Cir. 2017). We therefore “proceed directly to an ‘assumed error harmlessness inquiry.’” *United States v. Gomez-Jimenez*, 750 F.3d 370, 382 (4th Cir. 2014) (internal quotation marks omitted).

A Guidelines error is considered harmless if we determine that (1) the district court would have reached the same result even if it had decided the [G]uidelines issue the other way, and (2) the sentence would be reasonable even if the [G]uidelines issue had been decided in the defendant’s favor.

*Id.* (internal quotation marks omitted).

Our review of the record reveals that any error by the district court in calculating the Guidelines range is harmless. The court expressly stated that even if it had incorrectly calculated the Guidelines range, it would have imposed the same 108-month sentence. This alternative variant sentence readily satisfies the first prong of the assumed error harmlessness inquiry.

Turning to the second prong, we conclude that Snell’s 108-month sentence is substantively reasonable. The district court provided a thorough explanation for the sentence it imposed, grounded in the relevant § 3553(a) factors. The court acknowledged Snell’s mitigating arguments, including his remorse, his lack of criminal history, his family’s support, and his role as a provider for his family. However, the court declined Snell’s invitation to vary downward based on the conditions of his detention facility and instead—granting a request from the Government—varied upward and imposed the chosen 108-month sentence, relying largely on the seriousness of the offense and the violation of the public trust that occurs when police officers engage in an illegal drug conspiracy. Because we conclude that these compelling considerations support the sentence Snell

received, notwithstanding his arguments in mitigation, we conclude that any error in the Guidelines calculation is harmless.

Accordingly, we affirm the district court's judgment. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

*AFFIRMED*

## Conference at the bench.

(It is the policy of this court that every guilty plea and sentencing proceeding include a bench conference concerning whether the defendant is or is not cooperating.)

**THE COURT:** Well, thank you, everyone. I appreciate the thoughtful advocacy on both sides, the presentence report, the information that's been provided. Sentencing is extremely difficult for everyone, often frequently for a defendant's family in particular.

Let me be clear, first of all, to the family and the friends that are here that no one -- I would certainly never say that someone is a monster, that someone is all bad. Nothing like that at all.

Human beings are complicated, and obviously Mr. Snell has done a lot of good in his life, in particular for his family, and that's evident from everyone that's here for him, and I'm sure that he appreciates that.

Sometimes the family does not always know the full extent of even a close member of the family, a loved one's behavior, doesn't always have a full picture of that.

I will also say, though, to the family -- and I think particularly Ms. Robey -- regarding the conversation, I am not taking into account the conversation that -- it was at least ambiguous as to whether it was a threat. I am not taking that into account in connection with the sentence that I'm about to

1 give Mr. Snell.

2 I will also just get out of the way first, also I did,  
3 of course, read the supplemental request from Mr. Snell for a  
4 downward variance for conditions at CDF.

5 I will say, as I generally do, I take that into  
6 account, to the extent that -- I mean, the Court is aware that  
7 there are difficult conditions at Chesapeake Detention  
8 Facility. It varies from time to time how much or how severely  
9 it might impact someone.

10 We do our best to address those issues, most recently  
11 with issues of air conditioning and heating and so forth. I  
12 think that is the appropriate way to deal with it is to do what  
13 this court can to improve the conditions at Chesapeake  
14 Detention Facility, but I don't see it as a basis for a  
15 downward variance in this case. And to the extent that  
16 Mr. Snell is asking for that, I am not taking that into account  
17 either and I don't think it's justified.

18 Mr. Snell has admitted, and was in the process of  
19 being proven guilty, of a very serious offense.

20 Based on what was proved at the trial and what  
21 Mr. Snell has admitted, he was assisting/attempting to assist  
22 in the distribution of illegal drugs, both cocaine and heroin,  
23 which are very significant dangers to other people's families.  
24 Kill people.

25 There, unfortunately, perhaps, were other parts of

1 Mr. Snell's family who are not here today -- perhaps an uncle,  
2 perhaps a brother -- that it would appear have been involved in  
3 the drug business and that Mr. Snell took that opportunity as  
4 well.

5 I did find, based on the quantity of drugs and what I  
6 believe to have been obstruction of justice as lying to the FBI  
7 and his possession of the guns, including the unregistered,  
8 illegal assault rifles, that the guideline range, just based on  
9 that, was from 78 to 97 months.

10 I agree with the Government that that particular  
11 guideline range does not take into account what is clearly an  
12 abuse of a position of trust. I don't believe that it fits the  
13 technical criteria for the guideline, but it is absolutely true  
14 that Mr. Snell, who was so fortunate with a lot of applications  
15 to become a police officer, took an oath to uphold the law, and  
16 that's a very important, very important public trust, which,  
17 unfortunately, he betrayed by engaging both in the illegal drug  
18 distribution and the possession of the weapons that he was not  
19 allowed to have.

20 In terms of Mr. Snell's history and characteristics,  
21 again, I certainly -- I believe and understand that he tried to  
22 help his family. Of course, he does not have any other  
23 conviction.

24 His employment record here I don't think maybe  
25 necessarily cuts particularly one way or the other. He was

1 trying to be involved in law enforcement. There appear to have  
2 been some issues with some of his employment that's really not  
3 part of this offense, but I also can't say that he has an  
4 exemplary employment record.

5 Mr. Snell, I believe that he is remorseful, and  
6 certainly in the sense of being sorry that he's let down his  
7 family with the position that he's in.

8 He told me today that he's fully accepting  
9 responsibility. I'll have to say that was not entirely clear  
10 from his sentencing letter, which referred to this essentially  
11 as a three-week mistake and giving into a friend, which I just  
12 don't think is consistent with what was proved at the trial and  
13 what he admitted to in the statement of facts.

14 So we then have to consider relative culpability and  
15 where he is in regard to other defendants in this case.

16 Again, the conduct is very serious for the reasons  
17 that I've explained. I don't find that it rises to the really  
18 extensive and repeated level of the personal abuses of power  
19 committed by most of the other GTTF officers that I have had to  
20 sentence.

21 While on the one hand, some were not involved in drugs  
22 and he was, he was not taking them personally from anyone else.  
23 And the evidence in front of me, there is a limited amount of  
24 such drugs compared to much more extensive involvement that I  
25 heard about in the GTTF matter.

1           There is not evidence of Mr. Snell stealing or  
2 extorting money from citizens that he arrested, invading homes,  
3 making false reports in connection with his job, committing  
4 overtime fraud. It is simply, while very serious, I think the  
5 complete comparison to the other GTTF officers is just not  
6 appropriate.

7           Now, being where we are in terms of the offense level  
8 and the seriousness and the guidelines, as I say, I don't think  
9 the guidelines completely take into account Mr. Snell's abuse  
10 of a position of trust as a police officer.

11           So I will say the sentence that I am about to  
12 announce, even if I'm wrong on the guidelines, this is the  
13 sentence that I think is appropriate under 3553(a) and is  
14 sufficient without being greater than necessary, which is a  
15 sentence of nine years, Mr. Snell. That's 108 months, nine  
16 years in the custody of the Bureau of Prisons. It's obviously  
17 with credit for time served.

18           I think that sufficiently recognizes what Mr. Snell  
19 has done, is sufficient in regard to the other GTTF officers,  
20 but I simply don't see that this rises to the level of the 12  
21 and a half years that the Government had requested.

22           Following the period of imprisonment, Mr. Snell,  
23 there's going to be three years of supervised release.

24           Special conditions of supervised release are going to  
25 be participating in any mental health treatment that the

1 probation officer recommends and any alcohol abuse testing or  
2 treatment the probation officer recommends, and I'll say any  
3 vocational programs that the probation officer recommends  
4 because being a police officer is not something that will be  
5 possible in the future.

6 I don't think your financial circumstances permit a  
7 fine. There's not going to be a fine.

8 There is a required \$100 special assessment that I  
9 will impose.

10 I'm certainly happy to recommend to the Bureau of  
11 Prisons that you be designated to Schuylkill or Lewisburg or  
12 I'll say some other facility consistent with your security  
13 level that would enable you to be close to your family.

14 Frankly, the Bureau of Prisons has many things that  
15 they will have to take into consideration in designating  
16 Mr. Snell, as a former police officer, and that ultimately will  
17 be up to them.

18 I'll recommend that Mr. Snell participate in any  
19 substance abuse program that he's eligible for within the  
20 Bureau of Prisons, which may include the RDAP program.

21 As Mr. Solomon recognizes, I don't know that he'll be  
22 eligible for that in light of the weapons that are involved.  
23 But certainly that does appear to be an issue for Mr. Snell,  
24 particularly the alcohol.

25 Have I left anything out? Anything I have not

# United States District Court

## District of Maryland

UNITED STATES OF AMERICA

v.

ERIC TROY SNELL

**JUDGMENT IN A CRIMINAL CASE**

(For Offenses Committed on or After November 1, 1987)

Case Number: CCB-1-17-CR-00602-001

Defendant's Attorney: David R Solomon, Esq.

Assistant U.S. Attorney: Derek E Hines

**THE DEFENDANT:**

pleaded guilty to count One (1)

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

was found guilty on count(s)        after a plea of not guilty.

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number</u>
21:841; 18:2	Conspiracy To Distribute and Possess With Intent To Distribute Heroin and Cocaine; Aiding and Abetting	6/26/2017	1

The defendant is adjudged guilty of the offenses listed above and sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984 as modified by U.S. v. Booker, 543 U.S. 220 (2005).

The defendant has been found not guilty on count(s)       

Counts        is/are dismissed on the motion of the United States.

**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.

April 26, 2019

Date of Imposition of Judgment



Catherine C. Blake  
United States District Judge

Date

5/1/19

Name of Court Reporter: Douglas Zweizig

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**DEFENDANT:** Eric Troy Snell

CASE NUMBER: CCB-1-17-CR-00602-001

## IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 108 months.

The court makes the following recommendations to the Bureau of Prisons: (1) that the defendant participate in any substance abuse program for which he may be eligible including the Residential Drug Abuse Program; and (2) that the defendant be designated to either the FCI at Schuylkill or Lewisburg for service of his sentence, or some other facility consistent with his security level that is as close as possible to his family.

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, at his/her own expense, to the institution designated by the Bureau of Prisons at the date and time specified in a written notice to be sent to the defendant by the United States Marshal. If the defendant does not receive such a written notice, defendant shall surrender to the United States Marshal:

before 2pm on \_\_\_\_\_.

**A defendant who fails to report either to the designated institution or to the United States Marshal as directed shall be subject to the penalties of Title 18 U.S.C. §3146. If convicted of an offense while on release, the defendant shall be subject to the penalties set forth in 18 U.S.C. §3147. For violation of a condition of release, the defendant shall be subject to the sanctions set forth in Title 18 U.S.C. §3148. Any bond or property posted may be forfeited and judgment entered against the defendant and the surety in the full amount of the bond.**

## RETURN

I have executed this judgment as follows:

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

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UNITED STATES MARSHAL

By: \_\_\_\_\_  
DEPUTY U.S. MARSHAL

DEFENDANT: Eric Troy Snell

CASE NUMBER: CCB-1-17-CR-00602-001

## SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years.

**The defendant shall comply with all of the following conditions:**

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

### A. MANDATORY CONDITIONS

- 1) You must not commit another federal, state or local crime.
- 2) You must not unlawfully possess a controlled substance.
- 3) You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 

The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. (check if applicable)
- 4)  You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. (check if applicable)
- 5) You must cooperate in the collection of DNA as directed by the probation officer.
- 6)  You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. (check if applicable)
- 7)  You must participate in an approved program for domestic violence. (check if applicable)

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

### B. STANDARD CONDITIONS OF SUPERVISION

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

- 1) You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
- 2) After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
- 3) You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
- 4) You must answer truthfully the questions asked by your probation officer.
- 5) You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
- 6) You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
- 7) You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
- 8) You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.

**DEFENDANT: Eric Troy Snell****CASE NUMBER: CCB-1-17-CR-00602-001**

- 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.

### **C. SUPERVISED RELEASE ADDITIONAL CONDITIONS**

You must participate in a substance abuse treatment program and follow the rules and regulations of that program. The probation officer will supervise your participation in the program (provider, location, modality, duration, identity, etc.).

You must participate in a mental health treatment program and follow the rules and regulations of that program. The probation officer will supervise your participation in the program (provider, location, modality, duration, identity, etc.).

You must submit to substance abuse testing to determine if you have used a prohibited substance.

You must participate in a vocational services program and follow the rules and regulations of that program. Such a program may include job readiness training and skills development training.

#### **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: Eric Troy Snell**

CASE NUMBER: CCB-1-17-CR-00602-001

## CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 5B.

	<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
<b>TOTALS</b>	\$100.00	\$	waived	\$. <sup>00</sup>

CVB Processing Fee \$30.00

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

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

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

<b>Name of Payee</b>	<b>Total Loss*</b>	<b>Restitution Ordered</b>	<b>Priority or Percentage</b>
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**TOTALS**      \$ \_\_\_\_\_      \$ \_\_\_\_\_

Restitution amount ordered pursuant to plea agreement

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

the interest requirement is waived for the  fine  restitution

the interest requirement for the  fine  restitution is modified as follows:

\* Justice for Victims of Trafficking Act of 2015, pub. L. No. 114-22

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

DEFENDANT: Eric Troy Snell

CASE NUMBER: CCB-1-17-CR-00602-001

## SCHEDULE OF PAYMENTS

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.

Payment of the total fine and other criminal monetary penalties shall be due as follows:

- A  In full immediately; or
- B  \$ \_\_\_\_\_ immediately, balance due (in accordance with C, D, or E); or
- C  Not later than \_\_\_\_\_; or
- D  Installments to commence \_\_\_\_\_ day(s) after the date of this judgment.
- E  In \_\_\_\_\_ (e.g. *equal weekly, monthly, quarterly*) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ year(s) to commence when the defendant is placed on supervised release.

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

Unless the court expressly orders otherwise, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Bureau of Prisons Inmate Financial Responsibility Program, are to be made to the Clerk of the Court.

**NO RESTITUTION OR OTHER FINANCIAL PENALTY SHALL BE COLLECTED THROUGH THE INMATE FINANCIAL RESPONSIBILITY PROGRAM.**

If the entire amount of criminal monetary penalties is not paid prior to the commencement of supervision, the balance shall be paid:

- in equal monthly installments during the term of supervision; or
- on a nominal payment schedule of \$ \_\_\_\_\_ per month during the term of supervision.

The U.S. probation officer may recommend a modification of the payment schedule depending on the defendant's financial circumstances.

Special instructions regarding the payment of criminal monetary penalties:

- 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:

## 18 U.S.C. § 3553 – Imposition of a sentence

**(a) Factors to be considered in imposing a sentence.**--The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider—

- (1)** the nature and circumstances of the offense and the history and characteristics of the defendant;
- (2)** the need for the sentence imposed--
  - (A)** to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
  - (B)** to afford adequate deterrence to criminal conduct;
  - (C)** to protect the public from further crimes of the defendant; and
  - (D)** to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
- (3)** the kinds of sentences available;
- (4)** the kinds of sentence and the sentencing range established for--
  - (A)** the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines--
    - (i)** issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and
    - (ii)** that, except as provided in section 3742(g), are in effect on the date the defendant is sentenced; or
  - (B)** in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to section 994(a)(3) of title 28, United States Code, taking into account any

amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28);

(5) any pertinent policy statement--

(A) issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28, United States Code, subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(B) that, except as provided in section 3742(g), is in effect on the date the defendant is sentenced.<sup>1</sup>

(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

(7) the need to provide restitution to any victims of the offense.

(b) **Application of guidelines in imposing a sentence.--**

(1) **In general.**--Except as provided in paragraph (2), the court shall impose a sentence of the kind, and within the range, referred to in subsection (a)(4) unless the court finds that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described. In determining whether a circumstance was adequately taken into consideration, the court shall consider only the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission. In the absence of an applicable sentencing guideline, the court shall impose an appropriate sentence, having due regard for the purposes set forth in subsection (a)(2). In the absence of an applicable sentencing guideline in the case of an offense other than a petty offense, the court shall also have due regard for the relationship of

the sentence imposed to sentences prescribed by guidelines applicable to similar offenses and offenders, and to the applicable policy statements of the Sentencing Commission....

\* \* \*