

NUMBER _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2020

RANDALL ALLEN EPLION, JR., Petitioner,

v.

UNITED STATES OF AMERICA, Respondent.

APPENDIX A

TO PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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Counsel for Petitioner

WESLEY P. PAGE
FEDERAL PUBLIC DEFENDER

FILED: June 16, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-4060
(3:19-cr-00117-1)

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RANDALL ALLEN EPLION, JR.,

Defendant - Appellant.

O R D E R

Randall Eplion, Jr., seeks to appeal his sentence. The Government has moved to dismiss the appeal as barred by Eplion's waiver of the right to appeal included in the plea agreement. Upon review of the plea agreement and the transcript of the Fed. R. Crim. P. 11 hearing, we conclude that Eplion knowingly and voluntarily waived his right to appeal and that the issue he seeks to raise on appeal falls squarely within the scope of his waiver of appellate rights. Accordingly, we grant the Government's motion to dismiss.

Entered at the direction of the panel: Judge Motz, Judge King, and Senior Judge Shedd.

For the Court

/s/ Patricia S. Connor, Clerk

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APPENDIX B

TO PETITION FOR WRIT OF CERTIORARI
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FOR THE FOURTH CIRCUIT

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Counsel for Petitioner

WESLEY P. PAGE
FEDERAL PUBLIC DEFENDER

1 maybe -- you know what I'm saying?

2 I know when I got hit in the head, and when I been
3 locked up, so I know I can get out and get like an SSI check
4 or a disability check or something. And I know I can, like,
5 change my life. I know I can do something better. It's just
6 I gotta get away from the streets and, I mean, I want to.

7 THE COURT: Well, first, it is undisputed that you
8 suffered a very serious, traumatic brain injury a number of
9 years ago, and I have sympathy for what you must have gone
10 through. I don't see any way that that in any way provides
11 any justification for possessing the number and types of
12 firearms and other gun paraphernalia that you had here.

13 Further, despite having served a very significant
14 prison sentence and being on parole, and just being off parole
15 for a few years, you started this collection of guns. Whether
16 it's an obsession that was sort of beyond your control because
17 of your brain injury or not, I don't really know. We probably
18 will never know the answer to that. I do know that you knew
19 that you were not allowed to possess any type of firearm
20 because of your prior conviction, and here you possessed a lot
21 more guns and ammunition than necessary to defend yourself.

22 I note that in fact most of these guns, I guess to
23 your credit, were locked away, not stationed somewhere around
24 the house where some paranoid person might be able to quickly
25 get to a gun to protect themselves. So honestly I don't believe

1 that you were collecting guns just to protect yourself.

2 Further, you had plenty. You didn't need to add to it
3 with this gun, and the way you obtained it is also a very
4 serious crime. You traded methamphetamine. So what you were
5 doing was mixing two of the most dangerous types of conduct
6 that we can have in this community. You had a huge number of
7 guns, and you also had drugs that you were willing to
8 distribute, a very dangerous drug, methamphetamine. So I do
9 not believe that a variance below the guideline range is
10 warranted at all.

11 I agree with Mr. Page that all of these various
12 offense characteristics under the guidelines add up to a high
13 offense level and take into account many, many aggravating
14 facts. But the guideline range it produces I think is
15 consistent with your actual conduct here and, for that reason,
16 a fair measurement of the appropriate punishment, so I'm not
17 going to vary downward.

18 I think a sentence towards the middle or higher part
19 of the guideline is appropriate given all of these
20 circumstances. So it will be the judgment of the Court that
21 you be committed to the custody of the Bureau of Prisons for a
22 term of 114 months.

23 I will recommend that you be housed as close to
24 Huntington, West Virginia as possible. I'll recommend that
25 you be allowed to participate in the comprehensive drug abuse

1 treatment program wherever you are incarcerated. I'll also
2 recommend that the Bureau of Prisons conduct a mental health
3 evaluation of you and institute appropriate treatment for
4 whatever mental health problems, particularly any associated
5 with the effects of your traumatic brain injury, while you're
6 incarcerated.

7 Upon release from prison, you'll be on supervised
8 release for three years. Within 72 hours of your release from
9 custody, you must report in person to the United States
10 Probation Office in the district to which you are released.

11 When you go on supervised release, you must not commit
12 another federal, state or local crime; you must not possess a
13 firearm or other dangerous device; and you must not unlawfully
14 possess a controlled substance.

15 You will be required to comply with the standard terms
16 and conditions of supervised release as recommended by the
17 Sentencing Commission, and as adopted by this Court, including
18 the special condition that you participate in testing,
19 counseling and treatment for drug and alcohol abuse as
20 directed by the probation office. Accordingly, I order that
21 you submit to one drug test within 15 days of release and at
22 least two periodic drug tests thereafter as a condition of
23 supervised release.

24 Because you don't have the resources to pay a fine, no
25 fine is imposed. There is no identifiable victim, so no

1 restitution is ordered. I do order you to pay the \$100
2 special assessment; it's due immediately. My note indicates
3 you agreed to pay it through the inmate financial
4 responsibility program.

5 This sentence, with the exception of the fine, is
6 within the guideline range. It reflects the nature and
7 circumstances of the offense, the history and characteristics
8 of the defendant, and the needs for deterrence.

9 Are there any reasons other than those already
10 discussed why the sentence should not be imposed as stated?

11 MR. ADAMS: No, Your Honor.

12 MR. PAGE: No, Your Honor.

13 THE COURT: If not, I order the sentence imposed as
14 stated.

15 Mr. Eplion, you have a right to appeal. If you want
16 to appeal, you have to file a written notice within 14 days.
17 Otherwise your right to appeal will expire.

18 Do you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: If you file that notice, and the Court
21 finds you don't have the money to hire a lawyer or to get
22 documents for an appeal, those costs will be borne by the
23 government.

24 Do you understand that?

25 THE DEFENDANT: Yes, sir.

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Counsel for Petitioner

WESLEY P. PAGE
FEDERAL PUBLIC DEFENDER

UNITED STATES DISTRICT COURT

Southern District of West Virginia

UNITED STATES OF AMERICA

v.

RANDALL ALLEN EPLION, JR.

JUDGMENT IN A CRIMINAL CASE

Case Number: 3:19-00117

USM Number: 15309-088

Wesley Page, FPD

Defendant's Attorney

THE DEFENDANT:☒ pleaded guilty to count(s) one of the indictment☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. §§ 922(g)(1) and 924(a)(2)	Felon in Possession of Firearms	4/5/2019	1

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.☐ The defendant has been found not guilty on count(s) _____☒ Count(s) two, three, and four ☐ is ☒ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

1/6/2020

Date of Imposition of Judgment


 ROBERT C. CHAMBERS
 UNITED STATES DISTRICT JUDGE

1/7/2020

Date

DEFENDANT: RANDALL ALLEN EPLION, JR.

CASE NUMBER: 3:19-00117

IMPRISONMENT

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

114 months.

- ☒ The court makes the following recommendations to the Bureau of Prisons:
that the defendant be housed as close to Huntington, WV, as possible;
that the defendant be allowed to participate in a Comprehensive Drug Abuse Treatment Program;
that a mental health evaluation be conducted and the defendant receive appropriate treatment.

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

- ☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____ .

☐ as notified by the United States Marshal.

- ☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

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

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: RANDALL ALLEN EPLION, JR.

CASE NUMBER: 3:19-00117

SUPERVISED RELEASE

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

3 years.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☐ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (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.

DEFENDANT: RANDALL ALLEN EPLION, JR.

CASE NUMBER: 3:19-00117

STANDARD CONDITIONS OF SUPERVISION

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

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

U.S. Probation Office Use Only

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

Defendant's Signature _____

Date _____

DEFENDANT: RANDALL ALLEN EPLION, JR.
CASE NUMBER: 3:19-00117

SPECIAL CONDITIONS OF SUPERVISION

The defendant will participate in a program of testing, counseling and treatment for drug and alcohol abuse as directed by the probation officer.

The defendant shall comply with the Standard Conditions of Supervision adopted by the Southern District of West Virginia in Local Rule of Criminal Procedure 32.3, as follows:

- 1) If the offender is unemployed, the probation officer may direct the offender to register and remain active with Workforce West Virginia.
- 2) Offenders shall submit to random urinalysis or any drug screening method whenever the same is deemed appropriate by the probation officer and shall participate in a substance abuse program as directed by the probation officer. Offenders shall not use any method or device to evade a drug screen.
- 3) As directed by the probation officer, the defendant will make copayments for drug testing and drug treatment services at rates determined by the probation officer in accordance with a court-approved schedule based on ability to pay and availability of third-party payments.
- 4) A term of community service is imposed on every offender on supervised release or probation. Fifty hours of community service is imposed on every offender for each year the offender is on supervised release or probation. The obligation for community service is waived if the offender remains fully employed or actively seeks such employment throughout the year.
- 5) The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

DEFENDANT: RANDALL ALLEN EPLION, JR.
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CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$ 100.00	\$	\$	\$	\$

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

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

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

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

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** 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: RANDALL ALLEN EPLION, JR.

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ADDITIONAL TERMS FOR CRIMINAL MONETARY PENALTIES

The special assessment will be paid through participation in the Inmate Financial Responsibility Program.