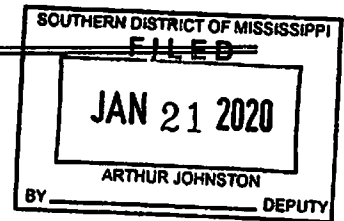


# APPENDIX 1-A

AO 245D (Rev. 02/18) Judgment in a Criminal Case for Revocations  
Sheet 1

## UNITED STATES DISTRICT COURT

Southern District of Mississippi



UNITED STATES OF AMERICA

v.

## Judgment in a Criminal Case

(For Revocation of Probation or Supervised Release)

RUSSELL MONTAGUE

Case No. 3:04cr26HTW-FKB-001

USM No. 28766-034

Abby Brumley

Defendant's Attorney

## THE DEFENDANT:

- ☒ admitted guilt to violation of condition(s) Standard Cond. 7 of the term of supervision.
- ☒ was found in violation of condition(s) count(s) Mandatory Conditions and Standard Cond. 2 after denial of guilt.

The defendant is adjudicated guilty of these violations:

<u>Violation Number</u>	<u>Nature of Violation</u>	<u>Violation Ended</u>
1. Mandatory Condition	On July 2, 2019, in the Chancery Court of Madison County Mississippi, an order of contempt and incarceration was entered on the defendant following his failure to report to the court as instructed, violations of a protective order against his wife and her children, and threats of harassment and extortion. He was sentenced to serve 180 days in the Madison County Jail.	07/02/2019

The defendant is sentenced as provided in pages 2 through 3 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has not violated condition(s) \_\_\_\_\_ and is discharged as to such violation(s) condition.

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.

Last Four Digits of Defendant's Soc. Sec. No.: 816401/16/2020

Date of Imposition of Judgment

Defendant's Year of Birth: 1971City and State of Defendant's Residence:  
Hattiesburg, MS 39401

A handwritten signature in cursive script, appearing to read "Henry T. Wingate".

Signature of Judge

The Honorable Henry T. Wingate

U.S. District Judge

Name and Title of Judge

21 January 2020  
 Date

DEFENDANT:  
CASE NUMBER: 3:04cr26HTW-FKB-001

**ADDITIONAL VIOLATIONS**

<b><u>Violation Number</u></b>	<b><u>Nature of Violation</u></b>	<b><u>Violation Concluded</u></b>
2. Mandatory Condition	On August 19, 2019, the defendant was arrested by the Biloxi Police Department and charged with Possession of a Controlled Substance and Possession of Marijuana.	08/19/2019
3. Standard Condition Number 7	On August 19, 2019, the defendant admitted to using methamphetamine and marijuana.	08/19/2019
4. Standard Condition Number 2	The defendant failed to report as instructed on July 11, 2019, July 15, 2019, and July 16, 2019. Additionally, the defendant was instructed by this officer to report to court in Madison County on June 28, 2019 to answer to the allegations of violating a protective order. The defendant failed to report for court.	07/16/2019

DEFENDANT:  
CASE NUMBER: 3:04cr26HTW-FKB-001

### IMPRISONMENT

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

24 months per count as to Counts 2, 4, 5 and 6 to run consecutively, and to run consecutively to the term of 18 months imposed in case number 3:19cr231 for a total of 114 months.

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

The Court recommends the defendant participate in the 500-hour drug treatment program and enroll in any gambling addiction program available while incarcerated.

☒ 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

# APPENDIX 1-B

## UNITED STATES DISTRICT COURT

Southern District of Mississippi

UNITED STATES OF AMERICA

v.

RUSSELL MONTAGUE

## Judgment in a Criminal Case

(For Revocation of Probation or Supervised Release)



Case No. 3:19cr231-HTW-FKB-001

USM No. 28766-034

Abby Brumley

Defendant's Attorney

## THE DEFENDANT:

- ☒ admitted guilt to violation of condition(s) Standard Cond. 7 of the term of supervision.
- ☒ was found in violation of condition(s) count(s) Mandatory Conditions and Standard Cond. 2 after denial of guilt.

The defendant is adjudicated guilty of these violations:

<u>Violation Number</u>	<u>Nature of Violation</u>	<u>Violation Ended</u>
1. Mandatory Condition	On July 2, 2019, in the Chancery Court of Madison County Mississippi, an order of contempt and incarceration was entered on the defendant following his failure to report to the court as instructed, violations of a protective order against his wife and her children, and threats of harassment and extortion. He was sentenced to serve 180 days in the Madison County Jail.	07/02/2019

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has not violated condition(s) \_\_\_\_\_ and is discharged as to such violation(s) condition.

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.

Last Four Digits of Defendant's Soc. Sec. No.: 816401/16/2020

Date of Imposition of Judgment

Defendant's Year of Birth: 1971City and State of Defendant's Residence:  
Hattiesburg, MS 39401

Signature of Judge

The Honorable Henry T. Wingate

U.S. District Judge

Name and Title of Judge

21 January 2020  
 Date

DEFENDANT: RUSSELL MONTAGUE  
CASE NUMBER: 3:19cr231-HTW-FKB-001

**ADDITIONAL VIOLATIONS**

<b><u>Violation Number</u></b>	<b><u>Nature of Violation</u></b>	<b><u>Violation Concluded</u></b>
2. Mandatory Condition	On August 19, 2019, the defendant was arrested by the Biloxi Police Department and charged with Possession of a Controlled Substance and Possession of Marijuana.	08/19/2019
3. Standard Condition Number 7	On August 19, 2019, the defendant admitted to using methamphetamine and marijuana.	08/19/2019
4. Standard Condition Number 2	The defendant failed to report as instructed on July 11, 2019, July 15, 2019, and July 16, 2019. Additionally, the defendant was instructed by this officer to report to court in Madison County on June 28, 2019 to answer to the allegations of violating a protective order. The defendant failed to report for court.	07/16/2019

DEFENDANT: RUSSELL MONTAGUE  
CASE NUMBER: 3:19cr231-HTW-FKB-001

### IMPRISONMENT

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

18 months to run consecutively to the term of imprisonment imposed in case number 3:04cr26 for a total of 114 months.

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

The Court recommends the defendant participate in the 500-hour drug treatment program and enroll in any gambling addiction program available while incarcerated.

☒ 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: RUSSELL MONTAGUE  
CASE NUMBER: 3:19cr231-HTW-FKB-001

**SUPERVISED RELEASE**

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

18 months

**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: RUSSELL MONTAGUE  
CASE NUMBER: 3:19cr231-HTW-FKB-001

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

Defendant's Signature

Date

DEFENDANT: RUSSELL MONTAGUE  
CASE NUMBER: 3:19cr231-HTW-FKB-001

**SPECIAL CONDITIONS OF SUPERVISION**

- 1) The defendant must participate in a program of testing and/or treatment for alcohol/drug abuse as directed by the probation officer. If enrolled in an alcohol/drug treatment program, the defendant shall abstain from consuming alcoholic beverages during treatment and shall continue abstaining for the remaining period of supervision. The defendant shall contribute to the cost of treatment in accordance with the probation office co-payment policy.
- 2) The defendant must not possess, ingest, or otherwise use, a synthetic cannabinoid, or other synthetic narcotic, unless prescribed by a licensed medical practitioner.
- 3) In the event that the defendant resides in or visits a jurisdiction where marijuana or marijuana products have been approved, legalized, or decriminalized, the defendant must not possess, ingest, or otherwise use marijuana or marijuana products, unless prescribed by a licensed medical practitioner for legitimate medical purposes.
- 4) The defendant must submit his person, property, house, residence, vehicle, papers, or office, to a search conducted by a United States probation officer. Failure to submit to a search may be grounds for revocation of release. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that the defendant has violated a condition of his supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.
- 5) The defendant must participate in and complete a treatment program for gambling addiction.

# APPENDIX 2-A

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

September 30, 2020

Lyle W. Cayce  
Clerk

---

No. 20-60058  
CONSOLIDATED WITH  
No. 20-60061  
Summary Calendar

---

UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

RUSSELL LAWAYNE MONTAGUE,

*Defendant—Appellant.*

---

Appeals from the United States District Court  
for the Southern District of Mississippi  
USDC No. 3:04-CR-26-1  
USDC No. 3:19-CR-231-1

---

Before JONES, BARKSDALE, and STEWART, *Circuit Judges*.

PER CURIAM:\*

In these two consolidated appeals, Russell Lawayne Montague challenges: the four consecutive, within-Sentencing Guidelines policy-

---

\* Pursuant to 5TH CIRCUIT RULE 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 CIRCUIT RULE 47.5.4.

No. 20-60058  
c/w No. 20-60061

statement sentences of 24-months' imprisonment (a total of 96 months) imposed upon revocation of his supervised release, which was part of his sentence in 2005 for stealing a firearm moved in interstate commerce, receiving an unregistered firearm, being a felon in possession of a firearm, and using a firearm during a drug crime, in violation of 18 U.S.C. § 924(1), 26 U.S.C. § 5861(d), 18 U.S.C. § 922(g)(1), and 18 U.S.C. § 924(c)(1); and the consecutive, within-Guidelines policy-statement sentence of 18-months' imprisonment imposed upon revocation of his supervised release, which was part of his sentence in 2011 for escape from custody, in violation of 18 U.S.C. § 751(a). He maintains: the district court erroneously found he violated the conditions of his supervised release (Violation 1 for violating an order of protection and Violation 2 for possessing a controlled substance; he does not contest two other violations); and his resultant 114-month sentence is substantively unreasonable. His claims fail.

The decision to revoke supervised release is reviewed for abuse of discretion. *United States v. McCormick*, 54 F.3d 214, 219 (5th Cir. 1995). A court may revoke supervised release if it “finds by a preponderance of the evidence that the defendant violated a condition of [the] supervised release”. 18 U.S.C. § 3583(e)(3). The evidence, including testimony by Montague and his probation officer, demonstrates by a preponderance of evidence Montague committed the crimes underlying Violations 1 and 2. Accordingly, the district court did not abuse its discretion in revoking his terms of supervised release on those grounds. *See McCormick*, 54 F.3d at 219.

Revocation sentences are reviewed under the plainly-unreasonable standard of review. *United States v. Miller*, 634 F.3d 841, 843 (5th Cir. 2011). The substantive reasonableness of a sentence imposed on revocation is subject to the same standards used to review whether an initial sentence is substantively reasonable. *See United States v. Warren*, 720 F.3d 321, 332 (5th Cir. 2013) (citing cases addressing an initial sentence in reviewing a

No. 20-60058  
c/w No. 20-60061

revocation sentence). “A sentence is substantively unreasonable if it (1) does not account for a factor that should have received significant weight, (2) gives significant weight to an irrelevant or improper factor, or (3) represents a clear error of judgment in balancing the sentencing factors.” *Id.* (internal quotation marks and citation omitted). A presumption of reasonableness applies to within-Guidelines policy-statement revocation sentences. *See United States v. Lopez-Velasquez*, 526 F.3d 804, 809 (5th Cir. 2008).

The revocation sentences are within the applicable Guidelines policy-statement ranges of imprisonment and are therefore presumptively reasonable. *Id.* at 809. The court considered Montague’s claims in favor of a sentence below the applicable Guidelines policy-statement ranges. The revocation sentences for both cases were based on the court’s consideration of the Guidelines policy-statement ranges, Montague’s prior criminal history, and the violation conduct. His challenge to the court’s weighing of the statutory sentencing factors does not overcome the presumption of reasonableness. *Id.*

AFFIRMED.

# APPENDIX 2-B



United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

September 30, 2020

---

No. 20-60061  
Summary Calendar

---

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

RUSSELL LAWAYNE MONTAGUE,

*Defendant—Appellant.*

---

Appeal from the United States District Court  
for the Southern District of Mississippi  
USDC No. 3:19-CR-231-1

---

Before JONES, BARKSDALE, and STEWART, *Circuit Judges.*

J U D G M E N T

This cause was considered on the record on appeal and the briefs on file.

IT IS ORDERED and ADJUDGED that the judgment of the District Court is AFFIRMED.