

# Appendix

## APPENDIX

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**A-1**

829 Fed.Appx. 909

This case was not selected for publication in West's Federal Reporter. See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S. Ct. of App. 11th Cir. Rule 36-2. United States Court of Appeals, Eleventh Circuit.

UNITED STATES of America, Plaintiff-Appellee,  
v.  
Jefferson LEVINE, Defendant-Appellant.

No. 19-12385

Non-Argument Calendar

(October 7, 2020)

**Synopsis**

**Background:** Inmate, who had been convicted of possession with intent to distribute crack cocaine in excess of 50 grams, moved to reduce sentence, pursuant to First Step Act. The United States District Court for the Southern District of Florida, No. 0:00-cr-06353-WPD-1, [William P. Dimitrouleas, J.](#), denied motion. Inmate appealed.

**Holdings:** The Court of Appeals held that:

[1] District Court adequately considered statutory sentencing factors in determining whether to further reduce commuted sentence of inmate, and

[2] District Court was not required to explain why sentence at bottom of Sentencing Guidelines range would not have been sufficient to satisfy goals of sentencing.

Affirmed.

**Procedural Posture(s):** Appellate Review.

West Headnotes (2)

[1] **Sentencing and Punishment** 🔑 Change in facts

District Court adequately considered statutory sentencing factors in determining whether to further reduce commuted sentence of inmate, who had been convicted of possession with intent to distribute crack cocaine in excess of 50 grams; court recognized that inmate had previously been sentenced at high end of Sentencing Guidelines range, and previous sentence was based in part on inmate's criminal history and career offender status, which had not changed in years since inmate had been sentenced, and court also considered post-sentence rehabilitation evidence inmate presented, along with proffered disparate sentences imposed by other judges. 18 U.S.C.A. § 3553(a); Comprehensive Drug Abuse Prevention and Control Act of 1970 § 401, 21 U.S.C.A. § 841(a)(1).

[2] **Sentencing and Punishment** 🔑 Necessity and purpose

District Court, in refusing to further reduce commuted sentence of inmate, who had been convicted of possession with intent to distribute crack cocaine in excess of 50 grams, was not required to explain why sentence at bottom of Sentencing Guidelines range would not have been sufficient to satisfy goals of sentencing, even though inmate had served 18 years in prison without disciplinary incident. Comprehensive Drug Abuse Prevention and Control Act of 1970 § 401, 21 U.S.C.A. § 841(a)(1).

**Attorneys and Law Firms**

\*910 Hillary Irvin, U.S. Attorney's Office, Miami, FL, [Lisa Tobin Rubio](#), Emily M. Smachetti, U.S. Attorney Service - Southern District of Florida, U.S. Attorney Service - SFL, Miami, FL, for Plaintiff-Appellee

[Brenda Greenberg Bryn](#), [Michael Caruso](#), Federal Public Defender, Federal Public Defender's Office, Fort Lauderdale, FL, for Defendant-Appellant

Appeal from the United States District Court for the Southern District of Florida, D.C. Docket No. 0:00-cr-06353-WPD-1



Before [MARTIN](#), [LAGOA](#), and [ANDERSON](#), Circuit Judges.

## Opinion

PER CURIAM:

Jefferson Levine appeals the district court's denial of his motion to reduce his sentence under Section 404 of the First Step Act.<sup>1</sup> On appeal, he argues that the district court abused its discretion by denying his motion because it failed to properly consider the [18 U.S.C. § 3553\(a\)](#) factors and his post-sentencing conduct or to explain how his current sentence was sufficient but not greater than necessary to comply with the purposes of sentencing.

<sup>1</sup> In 2018, Congress enacted the First Step Act, which granted district courts the discretion to retroactively reduce statutory penalties for “covered offenses” enacted under the Fair Sentencing Act of 2010. See First Step Act of 2018, [Pub. L. No. 115-391, § 404, 132 Stat. 5194, 5222 \(2018\)](#); [United States v. Jones](#), 962 F.3d 1290, 1297–98 (11th Cir. 2020). The Fair Sentencing Act amended [21 U.S.C. § 841\(b\)\(1\)](#) to reduce the sentencing disparity between crack and powder cocaine, changing the quantity of crack cocaine necessary to trigger the 5-year and 10-year mandatory minimum sentences. See [Dorsey v. United States](#), 567 U.S. 260, 268–70, 132 S. Ct. 2321, 2328–29, 183 L.Ed.2d 250 (2012).

### I.

In 2000, a federal grand jury charged Levine with possession with intent to distribute crack cocaine “in excess of five (5) grams” (Count 1), and possession with intent to distribute crack cocaine “in excess of fifty (50) grams” (Count 2), both in violation of [21 U.S.C. § 841\(a\)\(1\)](#). Levine pled not guilty and proceeded to trial. A jury found Levine not guilty as to Count 1 but guilty as to Count 2. The jury did not \*911 make a specific finding as to the drug amount for Count 2.

Applying the United States Sentencing Guidelines, the probation office attributed “a total of 109 grams” of crack cocaine to Levine. Based on that amount, the presentence investigation report (“PSI”) calculated Levine's base offense level to be 32 under [USSG § 2D1.1\(c\)\(4\)](#). The probation office then applied enhancements to raise Levine's offense

level to 37 under [USSG § 4B1.1\(a\)](#), because he qualified as a career offender. Next, the probation office placed Levine in criminal history category VI based on 22 criminal history points and his status as a career offender. Finally, the probation office determined that, based on a total offense level of 37 and a criminal history category of VI, his guideline range was 360 months’ imprisonment to life imprisonment.

Levine objected to the PSI on various grounds, including that the PSI attributed 109 grams of crack cocaine to him. At sentencing, the district court attributed 97.2 grams of crack cocaine to Levine, setting aside the remaining approximately 11.8 grams. The district court overruled Levine's remaining objections and adopted the guideline range in the PSI. The district court summarized Levine's criminal history and denied his motion for a downward departure, sentencing him to life imprisonment followed by a five-year term of supervised release. In imposing the sentence, the district court found that Levine's criminal history did not overrepresent the seriousness of his criminal offenses. Levine did not object to the sentence the district court imposed, but he did preserve the objections he previously raised.

Following the entry of judgment, Levine appealed, but this Court affirmed his conviction and sentence. [United States v. Levin](#), 49 F. App'x 287 (11th Cir. 2002) (Table) (unpublished).

In 2016, President Obama commuted Levine's sentence to a term of 327 months, “leaving intact and in effect the five-year term of supervised release.” Subsequently, the district court entered an amended judgment reflecting Levine's new sentence of 327 months’ imprisonment.

In June 2019, Levine filed a motion to reduce his sentence under the First Step Act. He argued that he was eligible for relief, and requested that the district court impose a sentence of 262 months’ imprisonment, followed by four years of supervised release.<sup>2</sup> Levine clarified he was not asking for a downward variance but to have his sentence reduced to the bottom of his newly-applicable guidelines range.

<sup>2</sup> Levine argued he had demonstrated an “intense desire to turn his life around, educate himself, rehabilitate himself, become a better parent, and become a productive member of society.” He listed the coursework he had completed while incarcerated, and pointed to the fact that he had “not

had even one disciplinary infraction for the past 18 years.”

The district court denied Levine's motion to reduce his sentence without requesting a response from the government. The district court recognized that Levine's guideline range would be 262 to 327 months' imprisonment because of his status as a career offender. It also noted that the statutory maximum would be 40 years' imprisonment. The district court then found that “[n]o relief is due since Levine is serving a high end of the guidelines sentence of 327 months,” and noted it “previously sentenced [Levine] at the high end of the guidelines.” Levine timely appealed.

## II.

We review *de novo* whether a district court had the authority to modify a term of \*912 imprisonment. [United States v. Jones](#), 962 F.3d 1290, 1296 (11th Cir. 2020). We review the district court's denial of an eligible movant's request for a reduced sentence under the First Step Act for an abuse of discretion. *Id.* A district court abuses its discretion if it “applies an incorrect legal standard, applies the law in an unreasonable or incorrect manner, follows improper procedures in making a determination, or makes findings of fact that are clearly erroneous.” [Diveroli v. United States](#), 803 F.3d 1258, 1262 (11th Cir. 2015) (quotation marks omitted).

## III.

First, it should be noted that the parties agree—correctly—that Levine was eligible for a sentence reduction under the First Step Act.<sup>3</sup> Thus, Levine was eligible for a reduction under the First Step Act, and the district court understood it had the discretion to reduce his sentence under the First Step Act. *See* R. Doc. 103 at 3.

<sup>3</sup> Levine has a “covered offense” because he was sentenced under § 841(b)(1)(A) for distributing 50 or more grams of crack cocaine and the Fair Sentencing Act modified the statutory penalties for that offense. [Jones](#), 962 F.3d at 1302–03.

Rather than his eligibility, Levine's appeal centers around whether the district court abused its discretion under the First Step Act by failing to consider the § 3553(a) factors or explain how Levine's sentence was sufficient but not granter than necessary to comply with the purposes of sentencing.

Specifically, he says that the record must “affirmatively show the district court actually considered the factors listed by Congress, and adequately explained its chosen sentence.” And in failing to meet this requirement, Levine argues the district court “did not even recite in rote fashion” that it considered any—much less all—§ 3553(a) factors in denying relief. And, because Levine says the district court gave no explanation for choosing a life sentence at his initial sentencing, it “reflexively adopt[ed]” the same sentence in deciding his First Step Act motion. Finally, Levine claims the district court abused its discretion by failing to explain why, “after [he] had served 18 straight years in prison without a single disciplinary incident, ... a sentence at the bottom of the guideline range ... would not have been sufficient to satisfy the goals of sentencing.”

Although district courts are required to consider the § 3553(a) factors at the initial sentencing, *see Chavez-Meza v. United States*, 585 U.S. —, 138 S. Ct. 1959, 1963, 201 L.Ed.2d 359 (2018), this Court has not required them to consider those factors when determining whether to reduce a sentence under the First Step Act. *See Jones*, 962 F.3d at 1304 (“In exercising their discretion, [district courts] may consider all the relevant factors, including the statutory sentencing factors, 18 U.S.C. § 3553(a).” (emphasis added)). And, even where consideration of the § 3553(a) factors is mandatory, like at the initial sentencing stage, it is not necessary for the district court to state on the record that it has explicitly considered each of the § 3553(a) factors or to discuss each of the § 3553(a) factors. [United States v. Kuhlman](#), 711 F.3d 1321, 1326 (11th Cir. 2013).

[1] In determining whether to further reduce Levine's commuted sentence, it is evident from the record that the district court considered the § 3553(a) factors. *See United States v. Dorman*, 488 F.3d 936, 944 (11th Cir. 2007) (affirming appellant's sentence because even though the district court did not discuss each of the sentencing factors, the record showed that it considered several of them). The district court recognized that Levine was previously sentenced \*913 at the high end of the guideline range. The previous sentence was based in part upon Levine's criminal history and career offender status, which had not changed in the years since Levine was sentenced. The district court also considered the “post-sentence rehabilitation evidence” Levine presented, “along with the proffered disparate sentences imposed by other judges.” But the district court, like at the initial sentencing, “again exercise[d] discretion” not to reduce Levine's sentence. Rather, it found that a 327-month sentence

was warranted, even if it was on the “high end” of the guideline range. Under this Court's precedent, the district court did not abuse its discretion when it implicitly considered the § 3553(a) factors without “affirmatively show[ing]” that it considered all of them.

[2] Neither did the district court abuse its discretion by failing to give an adequate explanation of the reasons it chose to deny a reduction in Levine's sentence. In [Rita v. United States](#), 551 U.S. 338, 127 S. Ct. 2456, 168 L.Ed.2d 203 (2007), the Supreme Court “upheld the adequacy of a ‘sentencing judge's statement of reasons [which] was brief but legally sufficient.’ ” [United States v. Irej](#), 612 F.3d 1160, 1194–95 (11th Cir. 2010) (en banc) (quoting [Rita](#), 551 U.S. at 358, 127 S. Ct. at 2469). This Court has also recognized that “[n]o member of this Court has ever before indicated that a sentencing judge is required to articulate his findings and

reasoning with great detail or in any detail for that matter.” [Id.](#) at 1195; see also [United States v. Rosales-Bruno](#), 789 F.3d 1249, 1265 (11th Cir. 2015) (holding that explicit comparison of details “far exceeds the level of explanation we require of district courts exercising their sentencing discretion”). Thus our precedent imposes no requirement on the district court to explain why, “after [Levine] had served 18 straight years in prison without a single disciplinary incident, ... a sentence at the bottom of the guideline range ... would not have been sufficient to satisfy the goals of sentencing.”

**AFFIRMED.**

#### All Citations

829 Fed.Appx. 909

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**A-2**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA,

CASE NO. 00-6353-CR-DIMITROULEAS

Plaintiff,

vs.

JEFFERSON LEVINE,

Defendant.

---

**ORDER DENYING REDUCTION**

THIS CAUSE having been heard upon Defendant's (Levine) June 18, 2019 Motion to Reduce Sentence [DE-102], and the Court having presided over the trial of this cause and having reviewed the court file, transcripts, and Pre-Sentence Investigation (PSI), finds as follows:

1. On December 14, 2000 Levine was indicted and charged with two counts of Possession with Intent to Distribute over 5 and 50 grams of crack cocaine, respectively. [DE-3]. The crimes occurred on or about September 14 and 21, 2000, respectively. In a detention order, Magistrate Judge Seltzer found that Levine sold 97.2 grams of crack cocaine on September 21, 2000. [DE-16]. Levine was found guilty of Count Two, which alleged 50 grams or more of crack cocaine, on September 21, 2000. [DE-34].

2. On June 25, 2001, Levine filed objections to the (PSI). He objected to being classified as a career offender. [DE-44]. On July 16, 2001, Levine was sentenced to life in prison, followed by five years of supervised release. [DE-51]. His guidelines were scored as an Offense level 37, Criminal History Category Six for a range of 360 months to life. (para 55 of PSIR).

3. On September 9, 2002, the Eleventh Circuit Court of Appeals affirmed the conviction for possession with intent to distribute, in excess of 50 grams of crack cocaine. [DE-75]. In part, the appellate court found that this court did not err in finding Levine to be a career offender. *U.S. v. Levine*, 49 Fed. Appx. 287 (11th Cir. 2002). Mandate issued on October 9, 2002. [DE-75].

4. In a September 3, 2003 Motion to Vacate, Levine made the following complaints:

- A. Trial counsel was ineffective in not objecting to a career offender classification.
- B. Trial counsel was ineffective in not objecting to the constructive amendment of the Indictment.
- C. Trial counsel was ineffective in not filing a Motion to Suppress.
- D. Trial counsel was ineffective in not objecting to the scoring of related convictions.
- E. Trial counsel was ineffective in not objecting to the *Allen*<sup>1</sup> charge.
- F. Trial counsel was ineffective in allowing the video tape to be played in the jury room during deliberations.
- G. Appellate counsel was ineffective in failing to raise these issues on appeal.

The Court denied relief on September 26, 2003 [DE-82]. On January 22, 2004, the Eleventh Circuit denied a certificate of appealability [DE-13 in 03-61711-CIV].

5. On December 7, 2006, the Court denied a Motion for Relief from Judgment [DE-87]. No appeal was taken.

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<sup>1</sup> *Allen v. U.S.*, 17 S. Ct. 154 (1896).

6. On July 23, 2007, the Court denied a Motion for Belated Appeal. [DE-91]. No appeal was taken.


7. On October 6, 2016, President Obama commuted Levine's sentence to 327 months in prison. [DE-97].

8. On March 19, 2019, this Court denied a request for the appointment of counsel [DE-101]. In doing so, the Court did not hold that his prior commutation of sentence disqualified him from relief under the First Step Act. Indeed, the Court has previously rejected the Government's position that commutation disqualifies a defendant from receiving First Step Act relief *See*, [DE-210] in *U.S v. Straughter*, 94-14098 (S.D. Fl. March 20, 2019).

9. In this latest request, Levine seeks relief pursuant to Section 404 of the First Step Act. Count Two now would be punishable by up to forty (40) years in prison. As a Career Offender, the guidelines now would have been Offense Level 34, Criminal History Category VI for a range of 262-327 months in prison. The Court previously sentenced at the high end of the guidelines. No relief is due since Levine is serving a high end of the guidelines sentence of 327 months. On March 20, 2019, the Court understood that it had the discretion to further reduce Levine's 327 month sentence and his ensuing five years of supervised release. The Court has considered the additional post-sentence rehabilitation evidence presented in this latest motion, along with the proffered disparate sentences imposed by other judges, and again exercises discretion to deny relief. As usual, Ms. Bryn should be commended for her excellent advocacy. In spite of that, relief is denied.

Wherefore, Levine's Motion to Reduce Sentence [DE-102] is Denied.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 19th day of June, 2019.

  
WILLIAM P. DIMITROULEAS  
United States District Judge

Copies furnished to:

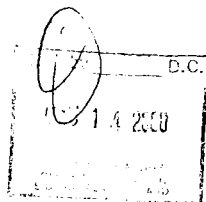
Jefferson Levine, #55586-004  
c/o FCI Jesup Medium  
2680 Highway 301 South  
Jesup, Ga. 31599

Larry Bardfeld, AUSA

Brenda Bryn, AFD



**A-3**



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

No. **00-6353**  
21 U.S.C. § 841(a)(1)

**CR-DIMITROULEAS**

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
JEFFERSON LEVINE, )  
 )  
Defendant. )  
\_\_\_\_\_ )

**MAGISTRATE JUDGE  
SNOW**

INDICTMENT

The Grand Jury charges that:

COUNT 1

On or about September 14, 2000, at Broward County, in the  
Southern District of Florida, the defendant,

JEFFERSON LEVINE,

did knowingly and intentionally possess with intent to distribute  
in excess of five (5) grams of a Schedule II controlled substance,  
that is, a mixture and substance containing a detectable amount of  
cocaine base, commonly known as crack cocaine, in violation of  
Title 21, United States Code, Section 841(a)(1).

*Handwritten signature/initials*

COUNT 2

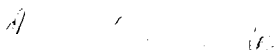
On or about September 21, 2000, at Broward County, in the Southern District of Florida, the defendant,

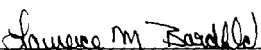
JEFFERSON LEVINE,

did knowingly and intentionally possess with intent to distribute in excess of fifty (50) grams of a Schedule II controlled substance, that is, a mixture and substance containing a detectable amount of cocaine base, commonly known as crack cocaine, in violation of Title 21, United States Code, Section 841(a)(1).

A TRUE BILL

  
\_\_\_\_\_  
FOREPERSON

  
\_\_\_\_\_  
GUY A. LEWIS  
UNITED STATES ATTORNEY

  
\_\_\_\_\_  
LAURENCE M. BARDFELD  
ASSISTANT UNITED STATES ATTORNEY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA

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

v.

JEFFERSON LEVINE

## CERTIFICATE OF TRIAL ATTORNEY\*

Court Division: (Select One)

\_\_\_\_\_ Miami \_\_\_\_\_ Key West  
☒ FTL \_\_\_\_\_ WPB \_\_\_\_\_ FTP

## Superseding Case Information:

New Defendant(s) Yes \_\_\_\_\_ No \_\_\_\_\_  
 Number of New Defendants \_\_\_\_\_  
 Total number of counts \_\_\_\_\_

I do hereby certify that:

1. I have carefully considered the allegations of the indictment, the number of defendants, the number of probable witnesses and the legal complexities of the Indictment/Information attached hereto.

2. I am aware that the information supplied on this statement will be relied upon by the Judges of this Court in setting their calendars and scheduling criminal trials under the mandate of the Speedy Trial Act, Title 28 U.S.C. Section 3161.

3. Interpreter: (Yes or No) No  
 List language and/or dialect \_\_\_\_\_

4. This case will take 3 days for the parties to try.

5. Please check appropriate category and type of offense listed below:  
 (Check only one) (Check only one)

I	0 to 5 days	<u>X</u>	Petty	_____
II	6 to 10 days	_____	Minor	_____
III	11 to 20 days	_____	Misdem.	_____
IV	21 to 60 days	_____	Felony	<u>X</u>
V	61 days and over	_____		

6. Has this case been previously filed in this District Court? (Yes or No) No

If yes:

Judge: \_\_\_\_\_ Case No. \_\_\_\_\_  
 (Attach copy of dispositive order)

Has a complaint been filed in this matter? (Yes or No) No

If yes:

Magistrate Case No. \_\_\_\_\_  
 Related Miscellaneous numbers: \_\_\_\_\_  
 Defendant(s) in federal custody as of \_\_\_\_\_  
 Defendant(s) in state custody as of \_\_\_\_\_  
 Rule 20 from the \_\_\_\_\_ District of \_\_\_\_\_

Is this a potential death penalty case? (Yes or No) No

7. Does this case originate from a matter pending in the U. S. Attorney's Office prior to April 1, 1999? Yes X No If yes, was it pending in the Central Region? \_\_\_\_\_  
 Yes \_\_\_\_\_ No \_\_\_\_\_

8. Did this case originate in the Narcotics Section, Miami? Yes X No \_\_\_\_\_

Laurence M. Bardfield  
 LAURENCE M. BARDFIELD  
 ASSISTANT UNITED STATES ATTORNEY  
 Florida Bar No. 712450

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
PENALTY SHEET**

Defendant's Name: JEFFERSON LEVINE No.: \_\_\_\_\_

Counts # 1:

Possession with Intent to Distribute Cocaine Base; 21 USC 841(a)(1)

\_\_\_\_\_  
\*Max Penalty: Forty (40) years' imprisonment; Mandatory Minimum of Five (5) years;  
\$2,000,000 fine;

Counts # 2:

Possession With Intent to Distribute Cocaine Base; 21 U.S.C. 841(a)(1)

\_\_\_\_\_  
\*Max Penalty: Life imprisonment; Mandatory Minimum of Ten (10) years;  
\$4,000,000 fine

Count #:

\_\_\_\_\_  
\*Max Penalty: \_\_\_\_\_

Count #:

\_\_\_\_\_  
\*Max Penalty: \_\_\_\_\_

Count # :

\_\_\_\_\_  
\*Max Penalty: \_\_\_\_\_

**\*Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms or forfeitures that may be applicable.**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
Case No. \_\_\_\_\_

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOCKET ENTRY # \_\_\_\_\_

IN RE: GRAND JURY 00-01 (FTL)

(to be completed by Clerk of Court)

SEALED FILING COVER SHEET

Party Filing Matter Under Seal:

Name: Laurence M. Bardfeld  
Address: 500 E. Broward Blvd.  
Telephone: (954) 356-7255 ext. 3510  
Facsimile: (954) 356-7336  
E-mail: Laurence.Bardfeld@USDOJ.GOV

Counsel for Party Filing Matter Under Seal:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
E-mail: \_\_\_\_\_

Date of Filing: December 14, 2000

Party has filed a separate Motion to Seal, requesting that the matter remain sealed:

___	Until Conclusion of Trial	___	Until Conclusion of Direct Appeal
___	Until Case Closing	<u>X</u>	Until the arrest of the first defendant
___	Until further order of the Court	___	Permanently
___	Other _____		

If permanent sealing is required, specify the authorizing law, court order or court rule:

The moving party requests that when the sealing period expires, the filed matter should be (select one):

X unsealed and placed in the public portion of the court file  
\_\_\_ destroyed  
\_\_\_ returned to the party or counsel for the party, as identified above

COURT RULING

(to be completed by Clerk based on Court's order)

Ruling on Motion to Seal: \_\_\_ Granted \_\_\_ Denied \_\_\_ Other

Date: \_\_\_\_\_

Matter May Be Unsealed After:

___	Conclusion of Trial	___	Conclusion of Direct Appeal
___	Until the arrest of the first defendant	___	Until further order of the Court
___	Case Closing	___	Other _____

N:\udd\asparks\Bardfeld\Bardfeld\Sealed.wpd

No. 04431

**UNITED STATES DISTRICT COURT**

**Southern District of Florida**

Central Criminal Division

**THE UNITED STATES OF AMERICA**

vs.

JEFFREY LEVINE

**INDICTMENT**

21 U.S.C. § 841(a)(1)

*A true bill.*

*For person*

*Filed in open court this \_\_\_\_\_ day,*

*of \_\_\_\_\_ A.D. 19 \_\_\_\_\_*

*Clerk*

*Bail, \$ \_\_\_\_\_*

**A-4**



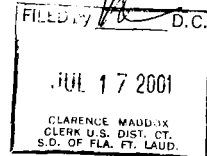
**United States District Court**  
**Southern District of Florida**  
**FORT LAUDERDALE DIVISION**

**UNITED STATES OF AMERICA**  
**v.**  
**JEFFERSON LEVINE**

**JUDGMENT IN A CRIMINAL CASE**  
 (For Offenses Committed On or After November 1, 1987)  
**Case Number: 00-6353-CV-WPD**  
 Counsel For Defendant: **Robert Barrar, Jr., Esq.**  
 Counsel For The United States: **Laurence Bardfeld, AUSA**  
 Court Reporter: **Robert Ryckoff**

**THE DEFENDANT:**

- ☐ pleaded guilty to count(s)
- ☐ pleaded nolo contendere to count(s)  
 which was accepted by the court.
- ☒ **Was found guilty on count(s) TWO**  
**after a plea of not guilty**



<b>Title &amp; Section Number(s)</b>	<b>Nature of Offense</b>	<b>Date Offense Concluded</b>	<b>Count</b>
<b>21 USC § 841 (a)(1)</b>	<b>Possession with Intent to Distribute 50 Grams or More of Cocaine Base</b>	<b>9/21/2000</b>	<b>TWO</b>

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) ONE**

☐ Count(s) (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. If ordered to pay restitution, the defendant shall notify the court and United States attorney of any material change in the defendant's economic circumstances.

Defendant's Soc. Sec. No.: **581-95-5974**  
 Defendant's Date of Birth: **8/25/1970**  
 Defendant's USM Number: **55586-004**

Defendant's Residence Address:  
 Federal Detention Center  
 33 NE 4th Street  
 Miami, FL 33132

Defendant's Mailing Address:  
 Federal Detention Center  
 33 NE 4th Street  
 Miami, FL 33132

**July 16, 2001**

Date of Imposition of Judgment

*William P. Dimitrouleas*  
 Signature of Judicial Officer

**William P. Dimitrouleas**  
**United States District Judge**

Date: *July 17, 2001*

51  
 78

DEFENDANT: **LEVINE, JEFFERSON**CASE NUMBER: **00-6353-CV-WPD****IMPRISONMENT**

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

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

☒ **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 2:00 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 U.S. Marshal

DEFENDANT: **LEVINE, JEFFERSON**CASE NUMBER: **00-6353-CV-WPD****SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of **Five (5) years**.

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

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

The defendant shall not illegally possess a controlled substance.

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

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

☐ The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse.

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

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

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

☒ **The defendant shall also comply with the additional conditions on the attached page.**

**STANDARD CONDITIONS OF SUPERVISION**

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer 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 days prior to any change in residence or employment;
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer and controlled Substance or any paraphernalia related to any controlled substance, 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 anytime at home or elsewhere and shall permit confiscation of any Contraband observed in plain view of the probation officer;
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the Permission of the court;
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal Record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the Defendant's compliance with such notification requirement.

DEFENDANT: **LEVINE, JEFFERSON**CASE NUMBER: **00-6353-CV-WPD****CRIMINAL MONETARY PENALTIES**

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 5, Part B.

	<b>Assessment</b>	<b>Fine</b>	<b>Restitution</b>
<b>Totals:</b>	<b>\$100.00</b>	<b>\$0.</b>	<b>\$</b>

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

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

If the defendant makes a partial payment, each payee shall receive an approximately proportional 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 in full prior to the United States receiving payment.

<b>Name of Payee</b>	<b>** Total Amount of Loss</b>	<b>Amount of Restitution Ordered</b>	<b>Priority Order Or Percentage of Payment</b>
----------------------	------------------------------------	--	--

**Totals:**                      \$                      \$

If applicable, restitution amount ordered pursuant to plea agreement. . . . . \$

The defendant shall pay interest on any fine or restitution of more than \$2,500, unless the fine or restitution is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. 3612(f). All of the payment options on Sheet 5, Part 8 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 and/or restitution.

☐ The interest requirement for the fine and/or restitution is modified as follows:

\* 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: **LEVINE, JEFFERSON**  
CASE NUMBER: **00-6353-CV-WPD**

### SCHEDULE OF PAYMENTS

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

A ☒ **Lump sum payment of \$ 100.00 Due immediately.**

Not later than \_\_\_\_\_, or

In accordance with C, D, or E below; or

B ☐ Payment to begin immediately (may be combined with C, D, or E); or

C ☐ Payment in \_\_\_\_\_ (E.g., equal, weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ Over a period of \_\_\_\_\_  
(E.g., months or years), to commence \_\_\_\_\_ (E.g., 30 to 60 days) after the date of this judgment; or

D ☐ Payment in \_\_\_\_\_ (E.g., equal, weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ Over a period of \_\_\_\_\_  
(E.g., months or years), to commence \_\_\_\_\_ (E.g., 30 to 60 days) after release from imprisonment to a term  
Of supervision; or

E ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise in the special instructions above, 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 Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the Clerk of the Court, unless otherwise directed by the court, the probation officer, or the United States attorney.

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

**The fine/restitution is payable to the U.S. COURTS and is to be addressed to:**

**U.S. CLERK'S OFFICE  
ATTN: FINANCIAL SECTION  
301 N. MIAMI AVENUE, ROOM 150  
MIAMI, FLORIDA 33132**

**The 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.**

☐ Joint and Several  
Defendant Name, Case Number, and Joint and Several Amount:

☐ 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:

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.

DEFENDANT: **LEVINE, JEFFERSON**  
CASE NUMBER: **00-6353-CV-WPD**

### STATEMENT OF REASONS

☒ The Court adopts the factual findings and guideline application in the presentence report.

**OR**

☐ The Court adopts the factual findings and guideline application in the presentence report except (see attachment, if necessary):

**Guideline Range Determined by the Court:**

Total Offense Level: 37

Criminal History Category: VI

Imprisonment Range: 360 months to Life

Supervised Release Range: 5 years

Fine Range: \$20,000 to \$4,000,000

☒ Fine waived or below the guideline range because of inability to pay.

Total amount of Restitution: \$

☐ Discretionary restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweighs the need to provide restitution to any victims, pursuant to 18 U.S.C. 3663(a)(B)(ii) (or in offenses committed before April 23, 1996, pursuant to 18 U.S.C. § 3663(d)).

☐ Restitution pursuant to the mandatory victim restitution provisions is not ordered in this title 18 property offense because the number of identifiable victims is so large as to make restitution impracticable, pursuant to 18 U.S.C. § 3663A(c)(3)(A).

☐ Restitution pursuant to the mandatory victim restitution provisions is not ordered in this title 18 property offense because determining complex issues of fact and related to the cause of amount of the victim's losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim is outweighed by the burden on the Sentencing process, pursuant to 18 U.S.C. § 3663A(c)(3)(B).

☐ For offenses committed on or after September 13, 1994 but before April 23, 1996 that require the total amount of loss to be stated, pursuant to Chapters 109A, 110, 110A, and 113A of Title 18, restitution is not ordered because the economic circumstances of the defendant do not allow for the payment of any amount of a restitution order, and do not allow for the Payment of any or some portion of a restitution order in the foreseeable future under any reasonable schedule of payments.

☐ Partial restitution is ordered, pursuant to 18 U.S.C. § 3553(c), for the following reason(s):

DEFENDANT: **LEVINE, JEFFERSON**

CASE NUMBER: **00-6353-CV-WPD**

**STATEMENT OF REASONS**

☐ The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by the application of the guidelines.

**OR**

☒ The sentence is within the guideline range, that range exceeds 24 months, and the sentence is imposed for the following reason(s):

The Court determines that the defendant's criminal history does not over represent the seriousness of his criminal offenses.

**OR**

☐ The sentence departs from the guideline range:

upon motion of the government, as a result of defendant's substantial assistance.

☐ For the following specific reason(s):

**A-5**



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
FORT LAUDERDALE DIVISION

UNITED STATES OF AMERICA,	)	CASE NO. 00-6353-CR-WPD
	)	
Plaintiff,	)	
	)	
-v-	)	
	)	
JEFFERSON LEVINE,	)	
	)	Fort Lauderdale, Florida
Defendant.	)	June 29, 2001
	)	3:00 p.m.

TRANSCRIPT OF SENTENCE

BEFORE THE HONORABLE WILLIAM P. DIMITROULEAS

U.S. DISTRICT JUDGE

APPEARANCES:

For the Plaintiff	LAURENCE M. BARDFELD, ESQ. Assistant U.S. Attorney 500 E. Broward Boulevard Suite 700 Fort Lauderdale, Florida 33394
-------------------	--

For the Defendant	ROBERT I. BARRAR, ESQ. 4141 Northeast 2nd Avenue Suite 203A Miami, Florida 33137
-------------------	---

Reporter	ROBERT A. RYCKOFF Official Court Reporter 299 East Broward Boulevard Fort Lauderdale, Florida 33301 954-769-5657
----------	--

1 (Call to order of the Court.)

2 THE COURT: Please be seated.

3 United States versus Jefferson Levine.

4 If counsel would announce their appearances for the  
5 record.

6 MR. BARDFELD: Good afternoon, Your Honor.

7 Larry Bardfeld for the United States.

8 With me at counsel table is Special Agent John Corbin  
9 from the FBI.

10 MR. BARRAR: Robert Barrar present, Your Honor, on  
11 behalf of Jeff Levine, who is present before the Court.

12 Your Honor, the marshal just advised me he would like  
13 to talk to me for a minute before we begin, if we may.

14 THE COURT: Sure. Go ahead.

15 MR. BARRAR: Thank you.

16 (Pause.)

17 MR. BARRAR: Your Honor --

18 THE COURT: Yes.

19 MR. BARRAR: Mr. Levine just gave me, I guess, a pro  
20 se motion. I gave a copy of it to the prosecutor. He is  
21 asking me to file it, so I am going to go ahead and do that at  
22 this time.

23 THE COURT: Where are you going to do that at,  
24 downstairs?

25 MR. BARRAR: I guess so. I am going to provide a

1 copy to the Court.

2 THE COURT: Okay.

3 MR. BARRAR: (Handing to the Court.)

4 (Pause.)

5 THE COURT: This looks like an Apprendi motion.

6 Didn't the jury find greater than 50 grams of crack  
7 cocaine?

8 MR. BARDFELD: Yes, Your Honor. As to count two.

9 MR. BARRAR: Judge they did. They did.

10 As a matter of fact, the Indictment -- I believe in  
11 count two of the Indictment -- as an officer of the Court, I  
12 have to inform the Court that count two of the Indictment  
13 specifically alleges in excess of 50 grams.

14 THE COURT: All right. So the motion is denied.

15 MR. BARRAR: I understand.

16 And I submitted it at my client's request.

17 THE COURT: Okay.

18 Again we are on the record. Both counsel are  
19 present. Mr. Levine is present.

20 The jury having found him guilty of possession with  
21 the intent to distribute 50 grams or more of crack cocaine, I  
22 adjudicated him guilty, deferred sentencing, ordered a  
23 Presentence Investigation Report that I have received and  
24 reviewed.

25 Have counsel had an opportunity to review the

1 Presentence Investigation Report?

2 Mr. Bardfeld?

3 MR. BARDFELD: Yes, Your Honor.

4 THE COURT: Mr. Barrar?

5 MR. BARRAR: Yes, I reviewed it, Judge; submitted  
6 objections and also motion for downward departure. I also had  
7 an opportunity to go over it with my client.

8 THE COURT: Mr. Levine, have you read the Presentence  
9 Investigation Report and discussed it with your lawyer?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Any objections to the Presentence  
12 Investigation Report from the Government?

13 MR. BARDFELD: No, Your Honor.

14 THE COURT: Mr. Barrar?

15 MR. BARRAR: Judge, my objections are set forth in  
16 the pleading that I filed.

17 I presume Your Honor has a copy of it.

18 THE COURT: I have read it.

19 MR. BARRAR: I don't have any objections, other than  
20 what's stated herein.

21 And what my -- and also, Judge, for the record I  
22 haven't had a chance to review what my client asked me to file  
23 pro se, so in an abundance of caution, I would adopt it --

24 THE COURT: Okay.

25 MR. BARRAR: -- since I have not had a chance to

1 review it, just so that nothing is waived for purposes of  
2 appeal.

3 THE COURT: The first objection has to do with  
4 Mr. Levine being a career offender. The two factual predicates  
5 for his being a career offender are two convictions. They  
6 occurred after his 18th birthday. They were controlled  
7 substances that were -- controlled substance offenses, namely,  
8 he got arrested January 3rd of '91 for sale of a counterfeit  
9 controlled substance. And on May 23rd of '91 he got 20 months  
10 in prison. On January 25th of '91 he got arrested for delivery  
11 of cocaine. And on February 21st of '91 he got 20 months in  
12 prison.

13 It doesn't look to me like -- it looks to me like  
14 they are two separate crimes. They occurred on different  
15 dates. They even have different sentencing dates.

16 The fact that the second one was run concurrent  
17 wouldn't seem to me that if there were a scoring issue, that  
18 you would not score the additional three points.

19 Mr. Barrar, any further comments about that?

20 Sale of counterfeit controlled substance, it would  
21 seem to me is a controlled substance offense, as would delivery  
22 of cocaine be. And if you look at 4B1.2, definition (b) says:  
23 The term "controlled substantive offense" means an offense  
24 under federal or state law punishable by imprisonment for a  
25 term exceeding one year -- obviously both of those are because

1 Mr. Levine got over one year sentences -- that prohibits the  
2 manufacture, import, export, distribution or dispensing of a  
3 controlled substance.

4 Delivery of cocaine would be distribution of a  
5 controlled substance or a counterfeit substance.

6 And sale of a counterfeit substance would be  
7 distribution of a counterfeit substance.

8 It would seem to me that both of those are controlled  
9 substantive offenses that would satisfy the career offender  
10 criteria.

11 Do you have any other objections or arguments?

12 MR. BARRAR: Judge, I don't have any other objections  
13 or arguments, other than what's stated in my notice of  
14 objections, Presentence Investigation Report, except for the  
15 fact, Judge, that I just want to call to your attention, as I  
16 noted, as part of those objections, the offense referred to in  
17 paragraph 28 of the Presentence Investigation Report, which is  
18 one of the predicate offenses that the Probation -- Department  
19 of Probation is using to enhance him as a career offender.  
20 It's, as I said, paragraph 28, which is case 91-141CF10A. In  
21 reviewing this with my client, Judge, as I stated, he doesn't  
22 recall this one.

23 THE COURT: He can testify that it wasn't him, and if  
24 he says that it wasn't him, then it would seem to me that the  
25 burden would shift to the Government to prove that the sale of

1 a counterfeit controlled substance was Mr. Levine.

2 MR. BARRAR: Judge, Judge not only that, as I  
3 mentioned during the course of discovery, I was provided  
4 numerous prior convictions of Mr. Levine. This was not one of  
5 them. I am not claiming it's a discovery violation, but that's  
6 just -- you know, causes me to inquire a little further.

7 Judge, I can proffer that I have gone over this with  
8 him and he doesn't recall this offense.

9 THE COURT: Not recalling it and saying that it isn't  
10 him are two different things.

11 (Pause.)

12 MR. BARRAR: Judge, he doesn't think that's him.

13 THE COURT: Swear in Mr. Levine.

14 JEFFERSON LEVINE, DEFENDANT, SWORN.

15 THE COURT: Mr. Barrar, you may proceed.

16 MR. BARRAR: Okay.

17 DIRECT EXAMINATION

18 BY MR. BARRAR:

19 Q. Mr. Levine, showing you in paragraph 28 that somebody in  
20 the name of Jefferey Green in Case Number 91141CF10A was  
21 sentenced to 20 months in the state penitentiary, do you know  
22 if that's you?

23 A. No, sir.

24 Q. Pardon?

25 A. No.

1 Q. You are not sure?

2 A. No.

3 Q. Do you think it's you?

4 A. No.

5 Q. Okay.

6 And do you recall this offense at all?

7 A. No.

8 MR. BARRAR: Judge, I don't have anything further.

9 THE COURT: Cross examination?

10 CROSS EXAMINATION

11 BY MR. BARDFELD:

12 Q. Mr. Levine, have you ever used the name Jefferey Green?

13 A. No, sir.

14 Q. Have you ever lived at the address 2235 Forrest Street in  
15 Hollywood, Florida?

16 A. Yes, sir.

17 Q. Yes, sir?

18 A. Yes, sir.

19 Q. So that is your address. Okay.

20 What's your date of birth?

21 A. 8/25/70.

22 Q. I am sorry?

23 A. 8/25/70.

24 Q. Okay. How about your Social Security number?

25 A. I don't know that by heart.



1 Q. You don't know your Social Security number.

2 Okay.

3 MR. BARDFELD: Your Honor, I would simply rely on the  
4 documents as they have been filed by the Probation Office and  
5 let the Court determine if they believe that Jefferey Green --

6 THE COURT: There aren't any documents filed by the  
7 Probation Office. I have a PSI. I don't have any background  
8 or underlying documents.

9 MR. BARDFELD: May I approach, Your Honor? May I  
10 introduce --

11 THE COURT: Show them to Mr. Barrar and see what he  
12 says.

13 (Pause.)

14 MR. BARRAR: Judge, in reviewing the documentation,  
15 it certainly says something about a Jefferey Green, but at this  
16 point I don't see what the relevance is because of the fact  
17 that -- the way to prove --

18 THE COURT: It's relevant because it's included in  
19 the PSI and your client is saying he doesn't remember that  
20 being him.

21 MR. BARRAR: Judge, I would object on the fact that  
22 the way to prove up -- the proper way to prove up a prior  
23 conviction is through -- excuse me -- taking a fingerprint  
24 standard and comparing it to this.

25 THE COURT: We can reset the sentencing.

1           Mr. Bardfeld, are you asking me to reset the  
2 sentencing so you can do a fingerprint comparison?

3           MR. BARDFELD: Yes, Your Honor, I would.

4           THE COURT: How much time do you need to accomplish  
5 that?

6           MR. BARDFELD: I would say next week, but can we have  
7 two weeks just because next week is a holiday? And I don't  
8 know if I am going to be able to find anyone over at the state  
9 who can do it, so if you can give me a couple of weeks, I  
10 should be able to do it.

11           And if it turns out that it's not the same person, I  
12 will immediately inform the Court and inform defense counsel,  
13 and we can do this sooner, rather than later.

14           MR. BARRAR: Judge, the other thing I would point  
15 out -- and curiously enough, the PSI has my client's Social  
16 Security number as 581-95-5974. That was one of our  
17 objections. And, in fact, in Probation's response to our  
18 objection, they did acknowledge that they had the incorrect  
19 Social Security number. So maybe -- you know, I don't know for  
20 sure what's happened here, but based upon all the information I  
21 have, Judge, and from what my client has indicated, this very  
22 well may not be him.

23           THE COURT: The January 25th delivery of cocaine is  
24 under what name?

25           MR. BARRAR: Which case are we talking about, Judge?

1 THE COURT: 911642.

2 MR. BARDFELD: I think that would be --

3 MR. BARRAR: The 1642 case, Judge?

4 THE COURT: Right.

5 MR. BARDFELD: I think that would be this one, Your  
6 Honor, Jefferey Green.

7 THE COURT: I thought Jefferey Green was 141.

8 MR. BARRAR: That's what I believe.

9 MR. BARDFELD: You are right, Your Honor. I am  
10 mistaken.

11 THE COURT: Do you have a certified copy of 1642?

12 MR. BARRAR: I might, Judge -- well, it would be a  
13 copy of a certified copy. I will have to look in my file. I  
14 might.

15 If the Court will bear with me for a minute.

16 THE COURT: Probation has a copy of it?

17 Pass it up, if you would.

18 (Pause.)

19 MR. BARRAR: I have it, Judge.

20 And the name on 911642 is Jefferey Michael Levine.

21 So at least, according to the copy I was provided in  
22 discovery, I assume that's what you were just presented.

23 THE COURT: And could I see 91141?

24 (Pause.)

25 THE COURT: The 91141 just says concurrent to a

1 sentence now being served. It doesn't say concurrent to  
2 911642. That's what I was looking to see if when -- or if when  
3 Jefferey Green got 20 months in prison in front of Judge Franza  
4 and Judge Franza ran the 20 months concurrent, if he ran it  
5 concurrent to the 1642, which would pretty much indicate to me  
6 that Jefferey Green and Jeffrey Levine are the same  
7 individuals. But it just says it ran concurrent to any  
8 sentence being served, so that in and of itself isn't going to  
9 answer the question.

10 And obviously I don't remember Mr. Levine, but  
11 apparently I was the Judge on the delivery of cocaine case that  
12 he received 20 months in prison on February 21st of '91, but  
13 that's not the one that's being questioned. The one that's  
14 being questioned is the one in front of Judge Franza.

15 So let me go ahead and give these documents back to  
16 the probation officer, and -- I guess both of them are the  
17 probation officer's.

18 (Pause.)

19 THE COURT: We will reset Mr. Levine's sentencing for  
20 July 13th.

21 MR. BARRAR: Your Honor, I am sorry for interrupting,  
22 but July 13th I planned to take the day off because my daughter  
23 is coming back from summer camp after being gone a month, and I  
24 would hope I would still be able to do that.

25 THE COURT: Okay.

1 THE COURT: Okay. We will make it July 12th at 2:00  
2 o'clock, and we will see everybody back on that date.

3 MR. BARDFELD: Thank you, Your Honor.

4 MR. BARRAR: Thank you, Judge.

5 (Proceedings concluded at 3:23 p.m.)  
6  
7

8 REPORTER'S CERTIFICATION  
9

10 I hereby certify that the foregoing is a true and accurate  
11 transcript of the proceedings recorded by me and reduced to  
12 typewriting at my direction.  
13  
14

15 Court Reporter

16 Robert Ryckoff  
17  
18  
19

20 Date:  
21  
22  
23  
24  
25

**A-6**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
FORT LAUDERDALE DIVISION

UNITED STATES OF AMERICA,	)	CASE NO. 00-6353-CR-WPD
	)	
Plaintiff,	)	
	)	
-v-	)	
	)	
JEFFERSON LEVINE,	)	
	)	Fort Lauderdale, Florida
Defendant.	)	July 16, 2001
	)	1:00 p.m.

TRANSCRIPT OF SENTENCE

BEFORE THE HONORABLE WILLIAM P. DIMITROULEAS

U.S. DISTRICT JUDGE

APPEARANCES:

For the Plaintiff	LAURENCE M. BARDFELD, ESQ. Assistant U.S. Attorney 500 E. Broward Boulevard Suite 700 Fort Lauderdale, Florida 33394
-------------------	--

For the Defendant	ROBERT I. BARRAR, ESQ. 4141 Northeast 2nd Avenue Suite 203A Miami, Florida 33137
-------------------	---

Reporter	ROBERT A. RYCKOFF Official Court Reporter 299 East Broward Boulevard Fort Lauderdale, Florida 33301 954-769-5657
----------	--

1 (Call to order of the Court.)

2 THE COURT: Please be seated.

3 United States versus Jefferson Levine.

4 If counsel would announce their appearances for the  
5 record.

6 MR. BARDFELD: Good afternoon, Your Honor..

7 Larry Bardfeld for the United States.

8 With me at counsel table is John Corbin from the FBI.

9 MR. BARRAR: Your Honor, Robert Barrar on behalf of  
10 Jeff Levine, who is present before the Court.

11 THE COURT: Mr. Levine is before the Court having  
12 been found guilty by a jury of possession with the intent to  
13 distribute 50 grams or more of cocaine base. I adjudicated him  
14 guilty, deferred sentencing, ordered a Presentence  
15 Investigation Report that I have received and reviewed.

16 We started the sentencing hearing, I think, back on  
17 June 29th, and I think we got to the point of determining  
18 whether Mr. Levine was a career offender. There was an issue  
19 as to whether or not a prior conviction under a different name  
20 was Mr. Levine. I think it was under the name Green, if I  
21 remember.

22 MR. BARDFELD: Yes, it was, Your Honor.

23 THE COURT: What's the Government's position on that  
24 prior conviction?

25 MR. BARDFELD: Your Honor, they are one and the same



1 person. I have a person from the Broward Sheriff's Office who  
2 has analyzed the fingerprints and determined that the Jefferey  
3 Green who was convicted in 1991 is the same person as Jeffrey  
4 Levine.

5 THE COURT: All right. If you want to go ahead and  
6 call your witness.

7 MR. BARDFELD: Rolanda Johnson.

8 ROLONDA JOHNSON, PLAINTIFF'S WITNESS, SWORN.

9 THE CLERK: You may be seated.

10 Please state your name and spell your last name for  
11 the record.

12 THE WITNESS: Rolanda Johnson, J-o-h-n-s-o-n.

13 DIRECT EXAMINATION

14 BY MR. BARDFELD:

15 Q. How are you employed?

16 A. Broward Sheriff's Office fingerprint analyst.

17 Q. And how long have you been a fingerprint analyst for the  
18 Broward Sheriff's Office?

19 A. 12 years.

20 Q. What are your duties and responsibilities as a fingerprint  
21 analyst for the Broward Sheriff's Office?

22 A. I class and search, process prints, incoming arrests for  
23 Broward Sheriff's Office.

24 Q. Have you had the opportunity to compare fingerprints in  
25 this particular case?

1 A. Yes.

2 Q. Okay. And what were you provided when you compared those  
3 fingerprints?

4 A. I have a copy of the U.S. Marshal's Office Fort Lauderdale  
5 prints.

6 Q. And on what date was that?

7 A. 12/14/2000.

8 Q. Okay. And whose prints are those that you have, the U.S.  
9 Marshal's prints?

10 A. Okay. The name on the prints is Jeffrey Levine.

11 Q. And go ahead. What did you compare those known  
12 fingerprints of Jeffrey Levine to?

13 A. To a Hollywood 910065 arrest. ( Fill).

14 Q. Okay. And do you have the court number on that -- what's  
15 the name of the person on that particular arrest?

16 A. That particular arrest is Green -- last name Green, first  
17 name Jefferey.

18 Q. Okay. Do you have a case number on there besides the  
19 arrest number?

20 A. Case number?

21 Not on the actual print. Not the case number.

22 Q. And what did you do? What was the date of that arrest?

23 A. The date of this arrest was January 4, '91.

24 Q. Okay. And you don't have a docket number on there?

25 A. Not docket. Not on this print card.

1 Q. Okay. And what did you do with those numbers?

2 By the way, I am sorry. What was the name on the '91  
3 case?

4 A. The name that he used at the time of arrest --

5 Q. Yes.

6 A. -- that we go by, it was Green, Jefferey -- last name  
7 Green, first name Jefferey.

8 Q. Okay.

9 A. But we have a C (phonetic) name which we use as the first  
10 time this person was ever arrested before --

11 Q. Okay.

12 A. -- that that identified to a 1988 print, which at the time  
13 he used Lent, Joe. Last name Lent, first name Joe.

14 Q. Okay. So there is no name Jeffrey Levine on that '91  
15 arrest, is that right?

16 A. He used Jeffrey Levine. He used -- no, no. It's Jefferey  
17 Green.

18 MR. BARRAR: I am going to object to the phrase "he  
19 used." I think the proper response should be "somebody used."

20 THE COURT: Okay.

21 Q. Did you ever have an opportunity to compare the prints  
22 from the '91 case to the known prints of Jeffrey Levine that  
23 you received from the Marshal's Service?

24 A. Yes.

25 Q. And what was the results of your --

1 A. They are one and the same.

2 MR. BARRAR: Your Honor, I am going to object. I  
3 don't believe the sufficient predicate or foundation has been  
4 laid for this individual to offer expert testimony.

5 THE COURT: Sustained.

6 Q. Have you compared fingerprints in the past?

7 A. Yes, I have.

8 Q. How many times?

9 A. Thousands of times.

10 Q. Have you been qualified --

11 A. Eight hours a day for twelve years.

12 Q. How many times have you testified? I mean, you don't  
13 testify eight hours a day?

14 A. No.

15 I have been in court -- let's say -- I can say three  
16 years ago every Friday, career criminal unit. I testified in  
17 that every Friday, about a year, every Friday.

18 Q. Okay. So somewhere over at least over 50 times you have  
19 testified?

20 A. Yes.

21 Q. And were you qualified as an expert in fingerprint  
22 analysis?

23 A. Yes.

24 Q. Okay. Have you ever been qualified as an expert in  
25 federal court?

1 A. In federal court, no. Not federal court.

2 Q. Okay. Each time you testified in state court were you  
3 qualified as an expert in order to render an analysis?

4 A. 12 times. I kept count.

5 Q. 12 times you have?

6 A. Yes, I have.

7 MR. BARDFELD: I move to admit her as an expert so  
8 that she can give an opinion.

9 MR. BARRAR: The same objection. Insufficient  
10 predicate, lack of foundation.

11 THE COURT: Overruled. I will accept the witness as  
12 an expert in the field of fingerprint identification.

13 You may continue.

14 Q. Have you had the opportunity to compare fingerprints that  
15 you know of Jeffrey Levine from the Marshal's Service with  
16 fingerprints from the 1991, arrest?

17 A. That's correct. Yes, I have.

18 Q. And how did you do that comparison? What do you do?

19 A. Well, I --

20 MR. BARRAR: Your Honor, if I may?

21 At this point I am going to object on grounds of  
22 relevance. The case we are talking about is Case Number  
23 91141CF10A, and this lady has indicated that she has no docket  
24 number from which to correlate that case to the case that's  
25 raised in the PSI.

1           Additionally, Judge, the arrest date that's  
2           referenced in the PSI for that particular case number is 1391,  
3           which, unless I heard incorrectly, Judge, I don't think she has  
4           correlated the arrest date to what she is looking at the arrest  
5           date in the PSI.

6           THE COURT: Sustained.

7           MR. BARDFELD: May I approach, Your Honor?

8           THE COURT: Okay.

9           MR. BARDFELD: Your Honor, may I put on one of the  
10          case agents who got the fingerprint just to sort of try to move  
11          this so that we can understand it together?

12          THE COURT: Why don't you go ahead and finish her  
13          testimony and then you can recall her if you want.

14          MR. BARDFELD: Okay. You said -- I mean, I need to  
15          tie it all up to show it's the same person. And the way I am  
16          going to do it, it's the same conviction, is through Special  
17          Agent -- I mean, through Detective Cunneen.

18          THE COURT: All right. So you can say, "No more  
19          questions." I will allow Mr. Barrar to cross. And then if you  
20          want to recall, you can recall her.

21          MR. BARRAR: Your Honor, at this point if one of the  
22          agents is going to testify, other than the case agent, who is  
23          sitting at the desk, I would ask that the witness sequestration  
24          rule be invoked.

25          THE COURT: The rule is invoked. Counsel are

1 instructed to inform their respective witnesses of the  
2 invocation of the rule and the ramifications of a violation  
3 thereof.

4 MR. BARDFELD: Okay. At this point I would rest so  
5 that I can introduce this so that we have something that the  
6 witness can testify about.

7 You overruled -- I mean, you sustained the last  
8 objection, did you not?

9 THE COURT: Right.

10 MR. BARDFELD: Okay.

11 THE COURT: Cross examination?

12 MR. BARRAR: I don't have any questions of her at  
13 this point, Judge.

14 THE COURT: Thank you, ma'am. You may step down.  
15 (Witness complies.)

16 THE COURT: Mr. Bardfeld, you may call your next  
17 witness.

18 MR. BARDFELD: Bill Cunneen.

19 WILLIAM CUNNEEN, PLAINTIFF'S WITNESS, SWORN.

20 THE CLERK: You may be seated.

21 Please state your name and spell your last name for  
22 the record.

23 THE WITNESS: William Cunneen, C-u-n-n-e-e-n.

24 DIRECT EXAMINATION

25 BY MR. BARDFELD:

1 Q. Are you one of the case agents involved in the arrest and  
2 conviction of Jefferson Levine?

3 A. Yes.

4 Q. Okay. And as case agent did you have certain duties and  
5 responsibilities?

6 A. Yes.

7 Q. Did one of those responsibilities have to do with  
8 fingerprint comparison?

9 A. Yes.

10 Q. What, if anything, did you do in obtaining documents so  
11 comparison could be made?

12 A. I went to our BSO records division, got a copy of the  
13 original print card from the actual day of the arrest.

14 Q. Which arrest are we talking about?

15 A. The January 3, 1991, arrest. It was a Hollywood case. I  
16 got a photocopy of that, along with -- I went to the United  
17 States Marshal's Office here in the building, and got a  
18 photocopy of the prints on file for Mr. Levine when he was  
19 arrested on January 14th of 2000.

20 Q. And how did you know -- how were you able to obtain the  
21 1991 Jefferey Green case? How did you get those documents?

22 A. The first set was from the BSO records division, and then  
23 later I found out -- part of the problem was that the '91 cases  
24 were on microfiche at the Broward County Clerk's Office, and I  
25 had a problem getting quality type prints for comparison.



1           Just on Thursday I found out that there is another  
2 place to get fingerprints for convictions in Broward County.  
3 The Clerk's Office provided me with a certified copy, which I  
4 provided to Ms. Johnson just prior to court.

5 Q.   And that would be a certified copy of what?

6 A.   Of a conviction for that January 3rd arrest with a court  
7 case number 91 -- I am just going to refer to my notes, if I  
8 may.

9 Q.   Okay.

10 A.   91141CF10.

11 Q.   And do you have a copy of that certified copy with you?

12 A.   Yes.

13 Q.   Do you have that in front of you?

14 A.   Yes.

15 Q.   Is that what you provided to me?

16 A.   I provided you with one of the copies. I have an  
17 additional copy.

18 Q.   What is that document? What does it show?

19 A.   It is the judgment for the final conviction to that  
20 particular court case that happened on May 23rd of 1991 for  
21 Jefferey Green.

22 Q.   And how many page document is that?

23 A.   Just two pages, the judgment on front and along with  
24 copies of the prints that were taken in open court.

25           MR. BARDFELD: I move for admission of Government's

1 exhibit -- well, I mark it as Government's Exhibit Number 1  
2 into evidence.

3 MR. BARRAR: Your Honor, I have to object. If you  
4 take a look at this document -- granted, I recognize its  
5 certified copies are generally admissible, but if you look at  
6 this two-page document, Judge, page 2 of the document refers to  
7 Case 91141CF10, which is the case that's in question --  
8 although it's CF10A -- so I would object on that basis. But  
9 even more significantly, Judge, page 1 of this supposed  
10 certified copy talks about -- it's stamped 91214687.

11 THE COURT: Can I see it?

12 MR. BARRAR: Absolutely.

13 May I an approach?

14 THE COURT: Okay.

15 MR. BARRAR: (Handing to the Court.)

16 (Pause.)

17 THE COURT: The 91214687 is the docket number -- not  
18 the docket number -- it's a recording number probably where the  
19 judgment was recorded in the Broward County records.

20 The case number on page 1 is 91141CF10, which is the  
21 case number on page 2.

22 MR. BARRAR: Judge, even assuming -- assuming one can  
23 make that out -- and I am not -- I understand what the Court is  
24 saying. I am referring to the number that's stamped in. It's  
25 clear, as well as the fact, Judge, that the case that's cited

1 in the PSI is 91141CF10A.

2 THE COURT: The page (phonetic) just means  
3 co-defendant A. If there are two co-defendants, it would be B.

4 MR. BARRAR: I would just note our objection, Your  
5 Honor.

6 THE COURT: I mean, I was a Circuit Court Judge in  
7 Broward County. The "A" just means an A co-defendant. If it  
8 was a "B," there would be a B co-defendant.

9 On page 2 there is a stamp Recorded In The Official  
10 Records Of Broward County, L.A. Hester (phonetic) -- that's Lex  
11 Hester (phonetic) -- County Administrator. I think that's what  
12 that number is by the judgment. That's the County recording.  
13 The case number on both pages is the same. It's consistent  
14 with the case number in paragraph 28 of the PSI.

15 So Government's Exhibit 1 will be received.

16 (Plaintiff's Exhibit 1 was marked in evidence.)

17 BY MR. BARDFELD:

18 Q. What did you do with Government's Exhibit Number 1?

19 A. I took it to court here today and had just provided it to  
20 Ms. Johnson.

21 Q. Okay. What fingerprint comparison then did she make if  
22 she didn't do Government's Exhibit Number 1?

23 A. She did it to the original arrest print card for the  
24 Hollywood arrest on January 3rd when his fingerprints were  
25 taken at the Broward Sheriff's Office main jail.

1 MR. BARRAR: Your Honor, I will object and move to  
2 strike because her testimony was she couldn't -- she couldn't  
3 come up with the date that this officer has referenced, which  
4 correlates to the date in the PSI. The prosecutor specifically  
5 asked her, and she did not testify as to the January 3rd of  
6 1991 date.

7 THE COURT: That goes to the weight of her  
8 testimony.

9 Overruled.

10 Q. So what did you do with the arrest fingerprints?

11 A. The arrest fingerprints, along with the Marshal's Office  
12 fingerprints, I submitted to the A Fish (phonetic) unit -- the  
13 Broward Sheriff's A Fish (phonetic) unit on Thursday for  
14 comparison.

15 Q. Okay.

16 Now, how did you determine that those arrest  
17 fingerprints were the same as the judgment?

18 MR. BARRAR: Which judgment?

19 MR. BARDFELD: The '91 judgment.

20 A. A few ways. The criminal history references that arrest  
21 under Mr. Levine.

22 And then also looking through the certified -- the  
23 copies that I had from the Court case, in one particular area  
24 for Jefferey Green there was an affidavit for appointed  
25 counsel.

1 Q. What do you mean there was an affidavit for appointed  
2 counsel?

3 MR. BARRAR: Your Honor, I am going to object. All  
4 this is hearsay.

5 THE COURT: Overruled.

6 Q. Do you have documentation?

7 A. Yes, I do.

8 Q. Can you show us what you are referring to?

9 A. There was an affidavit signed on May 23, 1991. The  
10 plaintiff was listed as Jefferey Green for Case Number  
11 91-141CF10.

12 Q. The plaintiff or defendant?

13 A. As the defendant. I am sorry. The State of Florida was  
14 listed as the plaintiff.

15 MR. BARRAR: Your Honor, may I see what he is  
16 referring to because I haven't seen it?

17 THE COURT: Sure.

18 (Pause.)

19 MR. BARDFELD: This is Government's Exhibit Number 2  
20 again.

21 Q. Can you please describe that again?

22 A. Sure. It's called an Affidavit and Order of Insolvency  
23 and Order Appointing Counsel.

24 And, again, the defendant was Jefferey Green. The  
25 case number was 91-141CF10. Apparently there is -- the

1 defendant has to sign on the bottom, and where there is an "X,"  
2 it's written Levine -- comma -- Jeffrey.

3 Q. So it's signed Jeffrey Levine even though the defendant's  
4 name --

5 A. According to the document it was Jefferey Green, that's  
6 correct.

7 MR. BARDFELD: I move for admission of Government's  
8 Exhibit Number 2 into evidence.

9 MR. BARRAR: Your Honor, I don't believe it's a  
10 certified copy, so I would object.

11 THE COURT: Can I see it?

12 MR. BARDFELD: (Handing to the Court.)

13 (Pause.)

14 THE COURT: Where did the detective say he got this?

15 THE WITNESS: Sir, I had gotten copies -- certified  
16 copies -- prior to Mr. Levine's arrest. I don't have the  
17 certified copies. That was a copy of the certified copy.

18 THE COURT: And where did you get the certified  
19 copies from?

20 THE WITNESS: From the Clerk's Office -- the Broward  
21 County Clerk's Office.

22 THE COURT: Okay. Overruled. It will be received as  
23 Government's Exhibit Number 2.

24 (Plaintiff's Exhibit 2 was marked in evidence.)

25 A. Now, there was one additional item that I did do.

1 Q. What's that?

2 A. Also on the paper work for the Jefferey Green conviction  
3 it showed that he was going to be sentenced to Florida state  
4 prison and to serve the sentence concurrent. It didn't list  
5 what case number he would be serving it concurrent with, so I  
6 contacted the Florida Department of Corrections, their records  
7 division, and they were able to provide me with --

8 MR. BARRAR: Objection, Your Honor. It calls for  
9 hearsay.

10 THE COURT: I think hearsay is admissible at a  
11 sentencing hearing as long as you have an opportunity to fairly  
12 dispute it. So, overruled.

13 A. When I contacted the records division they were able to  
14 provide me with copies of Mr. Levine's history with them under  
15 DC Number 677130. He was in Florida state prison twice, once  
16 in 1981 and once in 1991.

17 When I reviewed the 1991, he was sent there in  
18 February of '91 under a Broward case number. They have it  
19 listed as 06-9101642, which was an arrest that he also had in  
20 1991 under his real name, Jeffrey Levine.

21 Also, on 5/23/91, which would correlate to the date  
22 of his conviction under Jefferey Green or somebody's conviction  
23 under Jefferey Green, was case number -- a Broward Case Number  
24 06-9100141, and that was a one year eight month sentence, which  
25 corresponded to the conviction under Jefferey Green.

1           Also, in those records was a record of where he was  
2   in Florida state prison. He was committed on February 26,  
3   1991, and on May 20, 1991, he was signed out of Florida state  
4   prison and brought into Broward, and he was returned back to  
5   Florida state prison on 5/28/91 under Jeffrey Levine, which  
6   would correspond to the dates where Jefferey Green pled guilty  
7   in Broward County Circuit Court.

8   Q.   Now, let's just go through -- I think we have got  
9   Government's Exhibit Number 1 and Government's Exhibit Number  
10   2.

11           Let's just introduce the rest of this.

12           (Pause.)

13   Q.   I show you what's going to be marked as Government's  
14   Exhibit Number.

15           Can you identify this?

16   A.   Yes. This was the comparison document after the request  
17   that he had made to the Broward Sheriff's A Fish unit  
18   (phonetic).

19   Q.   Can you tell the Court what comparisons -- what  
20   fingerprints were compared, because you said there are  
21   fingerprints on the conviction, but those were not compared, is  
22   that right?

23           The 1991 conviction.

24   A.   She did -- Ms. Johnson did compare those in court, and I  
25   am not -- she had gotten calls. I don't know if she was able



1 to --

2 Q. But she did have an opportunity to look -- go ahead. I am  
3 sorry.

4 A. But the prints that I actually submitted to them on July  
5 12th were a photocopy that I received from Deputy Marshal Jim  
6 Miller from this building from Mr. Levine's arrest on December  
7 14, 2000, and also a photocopy of the print card that I  
8 obtained from the Broward Sheriff's Office records division  
9 from his arrest under Hollywood Case Number -- Hollywood arrest  
10 HW910065, which corresponds to the Court case number --

11 Q. Okay.

12 A. -- 91-141CF10.

13 MR. BARDFELD: I now move for the admission of  
14 Government's Exhibit Number 3 into evidence.

15 MR. BARRAR: Judge, we will object on the basis that  
16 these are copies of uncertified documents. They are not  
17 certified copies whatsoever.

18 THE COURT: Can I see number three?

19 MR. BARDFELD: (Handing to the Court.)

20 (Pause.)

21 THE COURT: Okay. Overruled.

22 3 will be received.

23 (Plaintiff's Exhibit 3 was marked in evidence.)

24 MR. BARDFELD: At this point I have no further  
25 questions of this witness.

1 THE COURT: Cross examination?

2 CROSS EXAMINATION

3 BY MR. BARRAR:

4 Q. Good afternoon, Detective.

5 A. Good afternoon.

6 Q. Detective, you said you spoke to people at FDLE?

7 A. No, sir. The Florida Department of Corrections.

8 Q. The Florida Department of Corrections.

9 And do you know the name of the person you spoke to?

10 A. Yes, sir. If I refer to my -- the paper in front of me,  
11 her name was Judy Lansinger (phonetic).

12 Q. Had you ever spoken to her before?

13 A. No, sir.

14 Q. So you wouldn't recognize her voice?

15 A. I don't know if I would.

16 Q. I mean, on the day you spoke to her, you wouldn't  
17 recognize her voice since you had never spoken to her in the  
18 past?

19 A. Yes, that would be correct.

20 Q. So you have no idea if this lady was even who she  
21 portrayed herself to be, do you?

22 A. I called the Florida Department of Corrections records  
23 division and she answered the phone.

24 Q. Okay.

25 A. She didn't give me the phone number to call.

1 Q. Did you do any independent verification to determine  
2 whether or not she even worked at the place she indicated she  
3 did?

4 A. No, sir, I did not.

5 MR. BARRAR: I have nothing further.

6 THE COURT: Redirect?

7 MR. BARDFELD: Nothing, Your Honor.

8 THE COURT: Thank you Detective. You may step down  
9 and you are excused.

10 THE WITNESS: Thank you, sir.

11 (Witness complies.)

12 THE COURT: Mr. Bardfeld, you may call your next  
13 witness.

14 MR. BARDFELD: At this time we would recall Rolanda  
15 Johnson.

16 THE COURT: Okay.

17 Ms. Johnson, if you could resume the stand.

18 You understand you are still under oath?

19 THE WITNESS: Yes.

20 THE COURT: Okay.

21 ROLANDA JOHNSON, PLAINTIFF'S WITNESS, PREVIOUSLY  
22 SWORN.

23 DIRECT EXAMINATION

24 BY MR. BARDFELD:

25 Q. Ms. Johnson, Government's Exhibit Number 3, which has been

1 admitted into evidence is in front of you.

2 Can you identify that?

3 A. Yes.

4 Q. What is it?

5 A. A comparison I did. The examination -- the results of.

6 Q. And how did you do the comparison?

7 MR. BARRAR: Your Honor, I will renew my objection on  
8 the basis of lack of foundation and lack of predicate. Her  
9 testimony has been that she has testified in cases of  
10 fingerprint analysis. That was the extent of where she has  
11 been qualified as an expert. It's my recollection she has  
12 never been qualified as an expert in fingerprint comparison.

13 THE COURT: I thought her testimony was every Friday  
14 for about a year she testified in state court regarding  
15 fingerprints in the repeat offender court, which is very  
16 similar to what she is doing here.

17 Overruled.

18 A. With state attorneys -- I will try to make it clearer.

19 State attorneys submit cases for us daily, and they  
20 are assigned to us on a regular basis. Like we get cases -- I  
21 mean, like I say today I did seven from the state attorney.  
22 And we get them certified.

23 Q. And how --

24 A. We don't have to go to court for every one because they  
25 are submitted daily and distributed through the rest of the

1 analysts. So we get hundreds a day. So we do state attorney  
2 comparison reports.

3 Q. And what kind of comparisons are made? What are you  
4 trying to do when you compare them?

5 A. Convictions.

6 Q. What do you do with those convictions?

7 A. Which are -- what we do, the state -- the attorney  
8 supplies those records, which is similar to this one.

9 Q. Okay.

10 A. And -- on prior convictions. And what they do -- I would  
11 say it's a little different today -- the prints would say the  
12 subject in court.

13 Q. Okay.

14 A. Fingerprints taken in court today are compared to prior  
15 conviction.

16 Q. Okay. In this case, though, you don't have fingerprints  
17 that are taken in court?

18 A. Right.

19 Q. Okay. You just have known prints from the Marshal's  
20 Service, is that right?

21 A. Exactly.

22 Q. And what did you do when you compared the Marshal's prints  
23 that you knew Jeffrey Levine and the fingerprints from the  
24 arrest of Jefferey Green?

25 A. He submitted a letter asking me what to compare, and he

1 asked me to compare -- he submitted the thing to compare  
2 Hollywood 910065 court case, which is irrelevant, but I would  
3 say he did the homework on it. He got the prints for me. I  
4 didn't go get the prints.

5 Q. Okay.

6 A. So he supplied me with the Case Number 9141CF10A.

7 So when he asked me for docket, I do have -- also in  
8 my job I have to take a docket case number and I also -- we add  
9 charge (phonetic) people when they come in Broward County.

10 Q. Let me --

11 A. If we process the prints --

12 Q. Right.

13 A. -- and we find aliases, and they are one and the same  
14 person, we submit it to warrants. Warrants send it back, send  
15 us the case number, and, therefore, I have to run the case  
16 number and docket it and obtain the arrest that that case went  
17 back to. So in this case I didn't do that. The detective did  
18 all the work --

19 Q. Detective Cunneen did that?

20 A. -- and supplied with me it so I didn't have to do that  
21 part -- that detailed part, but I normally do it.

22 Q. Okay. Did you make that comparison in this case between  
23 known prints of Jeffrey Levine from his arrest in this case to  
24 the 1991 arrest?

25 A. Yes, I did.

1 Q. What was the conclusion that you reached?

2 A. They are one and the same print -- the same person.

3 MR. BARDFELD: I have no further questions of this  
4 witness.

5 THE COURT: Cross examination?

6 MR. BARRAR: Thank you, Your Honor.

7 CROSS EXAMINATION

8 BY MR. BARRAR:

9 Q. Ma'am, you mentioned during direct examination you were  
10 provided, I believe, an irrelevant police report, is that  
11 correct?

12 A. A police report or prints?

13 Not -- I don't get a report.

14 Q. I don't want to put words in your mouth, but you said you  
15 got something that was irrelevant.

16 Am I right?

17 A. Case.

18 Q. And what exactly did you get that was irrelevant?

19 A. I am saying -- in a letter he stated that Hollywood  
20 910065, court Case Number 9141CF10A, that was the arrest that  
21 goes back to that case number.

22 Q. What are you referring to? What's irrelevant?

23 A. Okay. It's related to.

24 Q. How can you say --

25 A. Okay.

1 Q. Why did you say on direct examination --

2 A. I can go and docket myself and run the case number and do  
3 the research myself. So that's why I said it's referenced --  
4 it's a '91 arrest and it's a '91 case.

5 Q. Didn't you say -- I don't mean to interrupt you, but  
6 didn't you say on direct examination you used the term you were  
7 given irrelevant -- what I recall was an irrelevant case  
8 number?

9 A. "Irrelevant." Okay. Well, I used the wrong word, I  
10 guess. So I meant related to case. This arrest number is  
11 related to that case number.

12 Q. Okay.

13 A. But I don't know that because I didn't go and docket.

14 Q. Okay.

15 Now, in your duties as a fingerprint comparison  
16 examiner, am I correct that your daily function is to take  
17 certified copies of convictions and compare them to in-court  
18 standards of fingerprints that are taken? Is that correct?

19 A. That's one of them, yes. That's one of my duties.

20 Q. All right. Have you ever at any time compared a copy of  
21 fingerprints taken at an arrest to a copy of fingerprints taken  
22 at another arrest from the Marshals? Have you ever done that?

23 A. Yes, we have. Yes.

24 Q. I am not asking "we." I am asking have you specifically  
25 ever done that, that is, taken copies of prints obtained from



1 an arrest from the United States Marshal's Service to copies of  
2 an arrest and the fingerprints taken at the Hollywood Police  
3 Department? Have you ever done that specifically?

4 A. Okay.

5 Q. Yes or no?

6 A. Not to say specific like -- how I can distinct --

7 Q. Ma'am, I am just asking if you have ever done that?

8 A. Yes. They submit -- I have done these before, but it's  
9 not recent, like not a year ago. This is maybe the first one I  
10 have done in a year.

11 Q. I am not talking about these. I am asking specifically  
12 have you ever compared copies --

13 A. From the U.S. Marshal's --

14 Q. -- copies of prints from the United States Marshal's  
15 Service --

16 A. Yes.

17 Q. -- to copies of prints taken by the Hollywood Police  
18 Department?

19 A. I can't be specific to say Hollywood. I won't say that  
20 specific -- no, I won't say that.

21 Q. Now, in your opinion is it fair to say that the best way  
22 to do a comparison is with a certified copy of prints from the  
23 court file and compare those to standard prints that are taken  
24 on the spot? Is that fair to say?

25 A. Is that fair to say is that the best way?

1 Q. Is that the best way?

2 A. To me prints -- prints are prints. It doesn't matter --

3 Q. Is it?

4 A. If they match, they match.

5 Q. Is it your testimony a photocopy of something can never  
6 distort the items that you are comparing? Is that your  
7 testimony?

8 A. Did never distort -- no, I wouldn't say that, no.

9 Q. Okay. So you would acknowledge with me, then, that a  
10 photocopy from time to time distorts the items you are  
11 comparing, correct?

12 A. Okay.

13 Q. Is that right?

14 A. You want me to agree with you that --

15 Q. I just want you to --

16 A. Can I say this to understand you?

17 Are you asking me that it should be certified to say  
18 they are one and the same? If you are, I would disagree with  
19 you.

20 Q. what I am asking you is simply this: Is it fair to say if  
21 you take photostatic copies of two sets of prints --

22 A. Yes.

23 Q. -- those photostatic copies sometimes distort the items you  
24 are comparing, is that correct?

25 A. Does it distort it?

1 Q. Yes.

2 A. Meaning that you can't ID to it?

3 It doesn't distort it enough that I can't say that  
4 they are one and the same. No, it does not distort it that  
5 bad.

6 Q. Is it your testimony that every photocopy of anything  
7 taken is going to be the exact same as that item from which the  
8 copy is made?

9 A. Only fingerprints -- I can only answer you in  
10 fingerprints.

11 Q. So it's your testimony that as to fingerprints every  
12 photostatic copy is going to be identical to what the original  
13 version of the copy was before it was copied?

14 A. I would -- yes -- I would -- are you asking me a photocopy  
15 machine takes what it see?

16 Q. No. What I am asking you -- very simple question. If you  
17 copy a set of prints on a photocopier, say, a hundred times, is  
18 it your testimony that out of those hundred times every copy is  
19 going to be exact to the original with no distortions? Is that  
20 your testimony?

21 A. Yes.

22 MR. BARRAR: Nothing further.

23 THE COURT: Redirect?

24 MR. BARDFELD: Nothing, Your Honor.

25 THE COURT: Thank you, ma'am. You may step down and

1 you are excused.

2 (Witness complies.)

3 THE COURT: Anything further, Mr. Bardfeld?

4 MR. BARDFELD: No, Your Honor.

5 THE COURT: Mr. Barrar, anything on this issue of the  
6 prior conviction?

7 MR. BARRAR: No, sir, other than preserving the  
8 objections we made, of course.

9 THE COURT: Okay. Can I see the exhibits that have  
10 been admitted into evidence.

11 MR. BARDFELD: Yes, Your Honor.

12 THE COURT: Any other objections to the Presentence  
13 Investigation Report from the Government?

14 MR. BARDFELD: No, Your Honor. I would just point  
15 out when Ms. Pratt (phonetic) indicated at paragraph 31 the  
16 defendant was convicted of battery on a law enforcement  
17 officer. That would be a qualifying offense in this particular  
18 case. And the defendant can also be -- found to be a career  
19 offender based on a conviction of -- that conviction and one  
20 other.

21 MR. BARRAR: Your Honor, quite frankly, we are not  
22 prepared to address that issue because it wasn't raised in the  
23 PSI.

24 THE COURT: Okay.

25 MR. BARRAR: And, Your Honor, one other thing as to

1 the PSI.

2 My client informs me that the prior attributed to him  
3 at number 30, he doesn't believe is him either. And I was just  
4 informed of that.

5 THE COURT: Okay. If he wants to testify to it, he  
6 can.

7 (Pause.)

8 MR. BARRAR: Judge, I am sorry. I misunderstood my  
9 client.

10 At number 30, the 60 days credit time served was  
11 correct, but the charge was reduced to a different charge --  
12 that's all -- which I believe is dealing in stolen property.

13 I just want to make that correction, Judge.

14 THE COURT: Dealing in stolen property is a more  
15 serious charge.

16 MR. BARRAR: Well, Judge, perhaps, perhaps not. It  
17 depends on the amount of the grand theft. I recognize dealing  
18 in stolen property is a second-degree felony, Judge --

19 THE COURT: So you are saying grand theft is a  
20 first-degree felony?

21 MR. BARRAR: I don't know. I am just reciting what  
22 my client indicated, that he was not convicted of grand theft  
23 apparently.

24 THE COURT: Maybe he was convicted of petty theft.

25 MR. BARRAR: Maybe it was petty theft. I don't

1 know.

2 THE COURT: I don't know that that makes much of a  
3 difference for the career offender determination. It may make  
4 a difference on the scoring, but if he turns out to be a career  
5 offender, then it doesn't really matter the points. It goes to  
6 a category six automatically.

7 MR. BARRAR: I understand that, Judge.

8 THE COURT: Any other objections to the Presentence  
9 Investigation Report?

10 MR. BARRAR: None other than what are contained in my  
11 written pleading, Judge.

12 THE COURT: Anything you want to say, Mr. Levine,  
13 before I impose sentence?

14 THE DEFENDANT: No, sir.

15 MR. BARRAR: Your Honor, I do have a motion for a  
16 downward departure --

17 THE COURT: Okay.

18 MR. BARRAR: -- that's addressed in my written  
19 pleading, as well as the fact, Judge, that the pleading I filed  
20 with the Court indicates that it would be incorrect to  
21 attribute the weight of the cocaine on September 14th, which is  
22 11.8 grams --

23 THE COURT: It doesn't make any difference in the  
24 scoring, does it?

25 MR. BARRAR: I don't believe so. But, nonetheless,

1 Judge --

2 THE COURT: All right.

3 MR. BARRAR: -- nonetheless, Probation attributed  
4 that weight to him and he was acquitted on that.

5 THE COURT: Being acquitted of it doesn't prevent  
6 Probation from attributing it to him or from me attributing it  
7 to him as part of relevant conduct at the time of sentencing,  
8 but --

9 MR. BARRAR: Judge, I would submit that it does  
10 because of the Apprendi case in which the Government has to  
11 prove those facts such as weight beyond a reasonable doubt. He  
12 was acquitted.

13 THE COURT: That's not what Apprendi says. Apprendi  
14 says they have to prove beyond a reasonable doubt elements of  
15 the crime that would enhance the crime.

16 The weight in this case is only being considered for  
17 sentencing guidelines purposes. It's not enhancing. If you  
18 add that 11 grams in or if you don't add it in, it doesn't  
19 affect the statutory maximum at all. And, ironically, it  
20 doesn't affect the guidelines either.

21 MR. BARRAR: I understand that, sir.

22 THE COURT: So I don't think this is an Apprendi  
23 issue. I don't even think it's a guideline issue, because if  
24 you ignore the 11 grams, he is still in the 50 to 150 gram  
25 area, and it doesn't make a difference in the scoring.

1 MR. BARRAR: I understand that, Judge.

2 THE COURT: Any other objections?

3 You said you had a downward departure argument?

4 MR. BARRAR: I do, Judge.

5 THE COURT: Okay.

6 MR. BARRAR: Judge, it's pretty well set forth in my  
7 written motion, but it's primarily based -- Judge, as you will  
8 recall, during the trial Detective Meletich testified that the  
9 Government -- and/or the Government agents -- were not  
10 interested in making an arrest of any individuals with powder  
11 cocaine, only crack cocaine.

12 At the time, Your Honor, I made a motion to dismiss  
13 the Indictment based upon that information that came forth  
14 during the detective's testimony. The Court denied that  
15 motion.

16 And I also made a post-trial motion to dismiss  
17 when -- but when I had had some time to reflect and do some  
18 research as to that issue. The Court denied that post-trial  
19 motion.

20 But, Your Honor, I would submit that that would be an  
21 additional basis or actually a legal basis for a downward  
22 departure.

23 Judge, it's pretty well set forth in my written  
24 motion, which was attached and filed jointly with my objections  
25 to the presentence investigation. But basically, Judge, the



1 Court has discretion to grant a downward departure when it  
2 finds a mitigating circumstance that was not adequately  
3 addressed and considered by the Commission in formulating these  
4 Sentencing Guidelines.

5 The issue we are raising here, Your Honor, does not  
6 and was not considered by the Commission when establishing the  
7 Sentencing Guidelines, that being that it is our position, as  
8 it was in the trial and post-trial, that the dealing of crack  
9 cocaine unfairly discriminates against blacks in that blacks  
10 are the ones that primarily and almost exclusively deal in  
11 crack cocaine, whereas whites are the ones that deal in powder  
12 cocaine.

13 Detective Meletich specifically testified that, as I  
14 recall, even if they would have come across somebody dealing  
15 with powder cocaine, they were going to let it go. And we  
16 would submit, Judge, that based upon that issue, as well as the  
17 citations contained in our motion for downward departure and  
18 the Court's discretion, the Court would have discretion to  
19 deviate downward from the Guidelines.

20 Judge, finally, that the Court also has discretion,  
21 if the Court finds the defendant to be a career offender, to  
22 depart downward if the defendant's criminal history  
23 significantly over-represents the seriousness of his prior  
24 criminal conduct.

25 Your Honor, in this case Jeff is a 30-year-old

1 individual who is going to be turning 31 next month.

2 The last felony offense, other than the one before  
3 the Court, for which he has been convicted occurred about six  
4 years ago, Your Honor. And we would submit based upon that, as  
5 well as the other argument concerning the basis to depart  
6 downward, based upon the discriminatory effect of the Federal  
7 Sentencing Guidelines and Federal statutes, vis-a-vis blacks  
8 and crack cocaine and whites and powder cocaine, as is set  
9 forth in the authority cited in my motion for downward  
10 departure, the Court certainly has the discretion to depart  
11 downward, and I would ask the Court to do so.

12 THE COURT: Anything further before I impose  
13 sentence?

14 Anything further from the Government?

15 MR. BARDFELD: Nothing, Your Honor.

16 THE COURT: Anything further, Mr. Barrar?

17 MR. BARRAR: No, sir.

18 THE COURT: Anything further, Mr. Levine, before I  
19 impose sentence?

20 THE DEFENDANT: No, sir.

21 THE COURT: I take notes when trials occur, and I  
22 wrote down as to count two 96.4 grams of crack cocaine. That's  
23 a little different than the 97.2 grams in the PSI, but it's  
24 close enough, and I think that amount of crack cocaine is what  
25 should be attributable to Mr. Levine. It doesn't make a

1 difference under Appendi. It doesn't make a difference under  
2 the guidelines. But that's the amount of crack cocaine that I  
3 will attribute to Mr. Levine, realizing that I could attribute  
4 the amount in count one if I wanted to; that an acquittal  
5 doesn't mean that I can't satisfy myself by a preponderance of  
6 the evidence. I don't think it has to be beyond a reasonable  
7 doubt. But the jury found him not guilty. I am not going to  
8 consider that 11.8 grams.

9 As far as the prior conviction goes, I don't think I  
10 have to get to paragraph 31, the battery on a law enforcement  
11 officer being a violent crime -- and Mr. Barrar correctly notes  
12 that the PSI didn't put him on notice of the fact that that  
13 battery was going to be offered as a predicate crime for a  
14 career offender, so I am not going to consider that battery on  
15 a law enforcement officer crime.

16 The delivery of cocaine crime -- coincidentally I was  
17 a Judge on when I was a state court Judge -- is a felony drug  
18 offense that would qualify the sale of counterfeit controlled  
19 substances, a felony drug offense that would qualify.

20 There is no question that Mr. Levine was the  
21 individual on the delivery of cocaine in paragraph 29.

22 And I am satisfied that the Government has  
23 established that Mr. Levine, under the name Jefferey Green, was  
24 the individual in paragraph 28. It just makes sense. He gets  
25 arrested under the name Jefferey Green on January 3rd of '91.

1 By the time he gets to the booking desk to get his prints  
2 rolled, it's January 4th. He bonds out, gets himself arrested  
3 three weeks later on the 25th. He is out on bond. So he uses  
4 a different name. He comes in front of me. I give him a  
5 prison sentence. He goes off to prison. And then the  
6 Sheriff's Office puts two and two together, figuring out that  
7 Jefferey Green and Jeffrey Levine are the same. They bring him  
8 back from prison. He gets a concurrent sentence in front of  
9 Judge Franza and goes back to prison.

10 Government's Exhibit Number 1 is the judgment and  
11 sentence from 91-141CF in front of Judge Franza for the sale of  
12 a counterfeit controlled substance under the name Jefferey  
13 Green.

14 Government's Exhibit Number 2 is the Affidavit of  
15 Insolvency appointing the Public Defender on that case  
16 91-141CF, and the defendant's name there is Levine -- comma --  
17 Jeffrey on the Jefferey Green case.

18 Government's Exhibit Number 3 is the fingerprint  
19 comparison report from fingerprint analyst Johnson. It  
20 includes the Marshal's fingerprints on Mr. Levine. There has  
21 never been any argument or question that those aren't his  
22 fingerprints. It includes the booking fingerprints from the  
23 Hollywood arrest. The date the prints were rolled is January  
24 4th of '91.

25 And I note that the address for Jefferey Green on

1 those fingerprints is the same address in the previous case,  
2 that being 2235 Forrest Street in Hollywood.

3 The date of the birth is the same month and the same  
4 year.

5 The picture on the booking sheet looks like  
6 Mr. Levine.

7 And based on everything that I have heard, I have got  
8 no doubt that the Jefferey Green that got 20 months in prison  
9 from Judge Franza in May of '91 is the same Jeffrey Levine that  
10 I sent to prison in February of '91, is the same Jeffrey Levine  
11 in court here today.

12 And, consequently, I find that he has the two prior  
13 predicate convictions that qualify as a career offender. I  
14 find him to be a career offender, which gives us a level 37,  
15 criminal history category of 6, is that correct?

16 MR. BARDFELD: Yes, Your Honor.

17 THE COURT: Which gives us a range of 360 months to  
18 life.

19 I recognize that I have the discretion to do a  
20 downward departure. I don't find that Mr. Levine's criminal  
21 history is over-represented by scoring at a level six. March  
22 7th of '89 he got two years of probation on two different  
23 felony drug cases. He violated that probation.

24 Later the same year, by committing two more felony  
25 crimes, and was sent to prison in '89.

1           He got out of prison and then got arrested twice in  
2   January of '91 on the cases we already talked about that caused  
3   him to be a career offender; went to prison, got out of  
4   prison.

5           He got arrested on the grand theft charge. He went  
6   back to the County jail in '93. He got out of jail, got put on  
7   probation in '95. Probation was revoked. He was sent to the  
8   County jail again on the revocation of probation in two more  
9   cases. He got out of the county jail. He got arrested and got  
10   another year probation in '97. He finished that and then got  
11   arrested and got a suspended sentence in '99.

12           I don't find that the category six over-represents  
13   Mr. Levine's criminal history.

14           The fact that Mr. Levine is an African-American and  
15   is charged with crack cocaine doesn't persuade me that a  
16   downward departure is appropriate in this case. I realize I  
17   have the discretion to do downward departures, but I choose not  
18   to exercise my discretion. And the motion for a downward  
19   departure is denied.

20           It will be the judgment of the Court and sentence of  
21   law that Mr. Levine be sentenced to life in prison.

22           If he ever gets out of prison, I place him on five  
23   years of supervised release. While on supervised release he  
24   shall not commit any crimes; he shall be prohibited from  
25   possessing a firearm or other dangerous device;. He shall not

1 possess any controlled substances; he shall comply with the  
2 standard conditions of supervised release.

3 I find that he is not able to pay a fine. I waive  
4 the fine.

5 I impose a \$100 special assessment.

6 Mr. Levine, it's my duty to inform you that you have  
7 ten days which within to appeal the judgment and sentence of  
8 this Court. Should you desire to appeal and be without funds  
9 with which to prosecute an appeal, an attorney will be  
10 appointed to represent you in connection with that appeal.  
11 Should you fail to appeal within that ten-day period, it will  
12 constitute a waiver of your right to appeal.

13 Also, it's my duty to elicit from counsel for all  
14 parties fully articulated objections to the Court's findings of  
15 fact and conclusions of law as announced at this sentencing  
16 hearing and to further elicit any objections which any party  
17 may have to the manner in which the sentence was imposed in  
18 this case.

19 Are there any objections from the Government?

20 MR. BARDFELD: No, Your Honor.

21 THE COURT: Mr. Barrar?

22 MR. BARRAR: Judge, we would just renew the  
23 objections previously made.

24 THE COURT: Okay. The Marshal will execute the  
25 sentence of the Court.

1                   Good luck to you, Mr. Levine.

2                   MR. BARRAR: Your Honor --

3                   THE COURT: Yes.

4                   MR. BARRAR: -- one other matter -- and I was about  
5 to address it, and you dressed it -- Your Honor, concerning my  
6 client's appeal, he does not have funds to prosecute an  
7 appeal. I think the Court recognizes that. His family did  
8 retain me for the purposes of the trial. They have not  
9 retained me for purposes of the appeal, and I would ask to be  
10 relieved from the responsibility of filing the Notice Of Appeal  
11 and prosecuting the appeal, and that the Public Defender be  
12 appointed. If such a such time the family elects to retain  
13 either myself, my office or some other lawyer, then that would  
14 be dealt with at the appropriate time. But I would, Judge,  
15 that the Court appoint the Public Defender's Office to  
16 prosecute -- well, to file his Notice Of Appeal and prosecute  
17 the appeal, unless any other arrangements are made.

18                  THE COURT: Does of the Government have any  
19 position?

20                  MR. BARDFELD: No position, Your Honor.

21                  THE COURT: Mr. Levine, your lawyer is saying that  
22 you only hired him for the trial, you didn't hire him for the  
23 appeal, and he wants to get off the case unless you want to pay  
24 him some more money and have the Public Defender represent you  
25 on an appeal.



1           What's your position on that?

2           THE DEFENDANT: I would like to talk to my family and  
3 see what they are going to do about the appeal.

4           THE COURT: Right. Do you want Mr. Barrar to get off  
5 the case, and then if your family can come up with some more  
6 money, to hire him to take the appeal?

7           THE DEFENDANT: I want him to appeal my case.

8           THE COURT: Okay.

9           He is saying you didn't pay him to do that.

10          THE DEFENDANT: I am trying to. I am going to talk  
11 to my family and see if they can get an appointment to see him  
12 to pay him some money -- see if they can come up with --

13          THE COURT: You don't dispute the fact that he is  
14 just hired for the trial as opposed to the appeal?

15          THE DEFENDANT: No, sir.

16          THE COURT: All right. So under -- having conducted  
17 a Tjoflat hearing, I will grant the motion to withdraw;  
18 although, perhaps, you need to file the Notice Of Appeal -- I  
19 don't know -- to make sure it gets filed within the ten days.

20          MR. BARRAR: Judge, can we do this? I will submit an  
21 order that requires me to file the Notice Of Appeal. What I  
22 would ask, Judge, is that you declare him indigent for costs,  
23 and that you also enter an order that after I file the Notice  
24 Of Appeal that I am discharged from any further responsibility  
25 unless otherwise retained. I mean, I want to protect Jeff's

1 appellate rights, but on the other hand, Your Honor --

2 THE COURT: Mr. Levine, do you have any money  
3 yourself to hire Mr. Barrar?

4 THE DEFENDANT: No, sir.

5 THE COURT: Do you have any money in the bank, stocks  
6 and bonds, real estate, anything to hire him?

7 THE DEFENDANT: No, sir.

8 THE COURT: So if he gets hired, it's somebody else  
9 doing it out of the kindness of their heart to help you,  
10 relatives or something?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. So I will grant the motion to  
13 withdraw. If you want to submit an order, Mr. Barrar, I will  
14 sign it, and I will appoint the Public Defender to represent  
15 Mr. Levine. But let's just make sure that the Notice Of Appeal  
16 is timely filed so that it doesn't get dismissed on that type  
17 of a aground. Okay?

18 MR. BARRAR: I will take care of filing the Notice Of  
19 Appeal, Judge.

20 He is declared indigent, though, for the purposes of  
21 the cost of filing the notice?

22 THE COURT: Right.

23 MR. BARRAR: Okay. All right. Thank you, sir.

24 THE COURT: Okay.

25 (Proceedings concluded at 2:00 p.m.)

## REPORTER'S CERTIFICATION

I hereby certify that the foregoing is a true and accurate transcript of the proceedings recorded by me and reduced to typewriting at my direction.

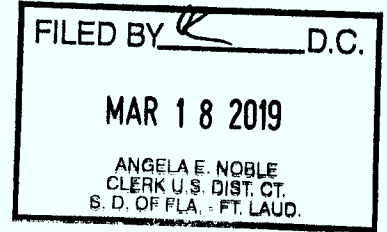
Court Reporter

Robert Ryckoff

Date:

**A-7**

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
FORT LAUDERDALE DIVISION



UNITED STATES OF AMERICA,  
Plaintiff,

vs.

JEFFERSON LEVINE,  
Defendant.

Case No. 0:00-cr-06353-WPD-1

MOTION FOR APPOINTMENT OF COUNSEL

NOW COMES, Jefferson Levine, defendant, pro se, in the above listed criminal case, in accord with Section 404 of the recently passed "FIRST STEP ACT;" pertaining to the retroactive application of the "FAIR SENTENCING ACT;" to request this Court appoint him an attorney, pursuant to the "CRIMINAL JUSTICE ACT" 18 U.S.C. §3006(A).

AUTHORITY

1. June 29, 2001, pursuant to the "Career Offender Guidelines" defendant was sentenced to serve LIFE imprisonment for his convictions of violating 21 U.S.C. §841(b)(1)(B) (count One) "Possession with Intent to Distribute Cocaine Base" [CRACK]; which carried the relevant 'Offense Statutory Maximum' sentence of LIFE imprisonment.

2. The FIRST STEP ACT was signed into law December 21, 2013, which stated:

"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.

The Act defined "covered offense" to mean:

"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."

3. The "FAIR SENTENCING ACT" of 2010, modified the disparity between "**crack**" and "**Powder Cocaine**" in the statutes by requiring 28 grams of cocaine base for a conviction under 21 U.S.C. §841(b)(1)(B), which carries a statutory maximum penalty of 20 years, triggering the offense level 32 in the Career Offender guideline.


4. As defendant was convicted and sentenced as a 'Career Offender' based on the Statutory Maximum of LIFE under 21 U.S.C. §841 pursuant to the "100 to 1" ratio for his conviction. The FIRST STEP ACT directly affects his case.

5. As such, due to the nuances and uncertainties surrounding this brand new prospect for relief; the specific situations in defendant's case, and; defendants achievements while in BOP's custody, he makes this request for appointment of counsel to bring a proper motion to this Court's attention.

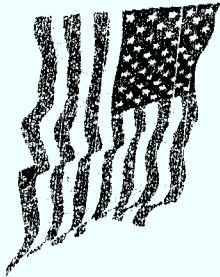
#### CONCLUSION

WHEREFORE, pursuant to 18 U.S.C. §3006(A), defendant prays this Court will GRANT this motion and appoint an attorney to bring forth a Motion pursuant to Section 404's provision in the FIRST STEP ACT.

Respectfully submitted this 12 day of January, 2019.

  
Jefferson Levine # 55586-004  
FCI Jesup-Medium  
2680 Highway 301 South  
Jesup, GA. 31599

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CLERK OF CIRCUIT AND COUNTY COURT  
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA,

CASE NO. 00-6353-CR-DIMITROULEAS

Plaintiff,

vs.

JEFFERSON LEVINE,

Defendant.

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**ORDER DENYING REQUEST FOR COUNSEL**

THIS CAUSE having been heard upon Defendant's (Levine) January 12, 2019<sup>1</sup> Motion for Appointment of Counsel [DE-100], and the Court having presided over the trial of this cause and having reviewed the court file, transcripts, and Pre-Sentence Investigation (PSI), finds as follows:

1. On December 14, 2000 Levine was indicted and charged with two counts of Possession with Intent to Distribute over 5 and 50 grams of crack cocaine, respectively. [DE-3]. The crimes occurred on or about September 14 and 21, 2000, respectively. In a detention order, Magistrate Judge Seltzer found that Levine sold 97.2 grams of crack cocaine on September 21, 2000. [DE-16]. Levine was found guilty of Count Two, which alleged 50 grams or more of crack cocaine, on September 21, 2000. [DE-34].

2. On June 25, 2001, Levine filed objections to the (PSI). He objected to being classified as a career offender. [DE-44]. On July 16, 2001, Levine was sentenced to life in prison. [DE-51]. His guidelines were scored as an Offense level 37, Criminal History Category Six for a range of 360 months to life. (para 55 of PSIR).

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<sup>1</sup> Received March 18, 2019.

3. On September 9, 2002, the Eleventh Circuit Court of Appeals affirmed the conviction for possession with intent to distribute, in excess of 50 grams of crack cocaine. [DE-75]. In part, the appellate court found that this court did not err in finding Levine to be a career offender. *U.S. v. Levine*, 49 Fed. Appx. 287 (11th Cir. 2002). Mandate issued on October 9, 2002. [DE-75].

4. In a September 3, 2003 Motion to Vacate, Levine made the following complaints:

- A. Trial counsel was ineffective in not objecting to a career offender classification.
- B. Trial counsel was ineffective in not objecting to the constructive amendment of the Indictment.
- C. Trial counsel was ineffective in not filing a Motion to Suppress.
- D. Trial counsel was ineffective in not objecting to the scoring of related convictions.
- E. Trial counsel was ineffective in not objecting to the *Allen*<sup>2</sup> charge.
- F. Trial counsel was ineffective in allowing the video tape to be played in the jury room during deliberations.
- G. Appellate counsel was ineffective in failing to raise these issues on appeal.

The Court denied relief on September 26, 2003 [DE-82]. On January 22, 2004, the Eleventh Circuit denied a certificate of appealability [DE-13 in 03-61711-CIV].

5. On December 7, 2006, the Court denied a Motion for Relief from Judgment [DE-87]. No appeal was taken.

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<sup>2</sup> *Allen v. U.S.*, 17 S. Ct. 154 (1896).


6. On July 23, 2007, the Court denied a Motion for Belated Appeal. [DE-91]. No appeal was taken.

7. On October 6, 2016, President Obama commuted Levine's sentence to 327 months in prison. [DE-97].

8. In this latest request, Levine seeks counsel to assist him in filing a Motion pursuant to Section 404 of the First Step Act. Count Two now would be punishable by up to forty (40) years in prison. As a Career Offender, the guidelines now would have been Offense Level 34, Criminal History Category VI for a range of 262-327 months in prison. The Court previously sentenced at the high end of the guidelines. No relief is due since Levine is serving a commuted sentence of 327 months.

Wherefore, Levine's Motion for Appointment of Counsel [DE-100] is Denied, without prejudice to his filing a Motion to Reduce Sentence.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 19th day of March, 2019.

  
WILLIAM P. DIMITROULEAS  
United States District Judge

Copies furnished to:

Jefferson Levine, #55586-004  
c/o FCI Jesup Medium  
2680 Highway 301 South  
Jesup, Ga. 31599

Larry Bardfeld, AUSA





UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 00-6353-CR-DIMITROULEAS

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JEFFERSON LEVINE,

Defendant.

\_\_\_\_\_ /

**DEFENDANT MOTION FOR IMPOSITION OF A REDUCED  
SENTENCE UNDER THE FIRST STEP ACT MOTION**

Jefferson Levine, through undersigned counsel,<sup>1</sup> respectfully moves this Court to impose a reduced sentence under Section 404 of the First Step Act of 2018, and in support thereof, states as follows:

**Background**

1. On December 14, 2000, Mr. Levine was charged in a two-count indictment with: possessing with intent to distribute in excess of five (5) grams of a substance containing a detectable amount of crack cocaine on September 14, 2000 (Count 1), and possessing with intent to distribute in excess of fifty (50) grams of a substance containing a detectable amount of crack cocaine on September 21, 2000 (Count 2), both in violation of 21 U.S.C. § 841(a)(1). (DE 3).

2. On March 26, 2001, the jury acquitted Mr. Levine of Count 1, but

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<sup>1</sup> On July 26, 2001, this Court appointed the Federal Defender's Office to represent Mr. Levine on appeal to the Eleventh Circuit. (DE 53). Undersigned counsel represented Mr. Levine on appeal (DE 54), and has remained counsel of record for Mr. Levine since that time.

convicted him of count 2 as charged. (DE 34).

3. In the PSI, the Probation Office asserted that Mr. Levine's base offense level was 32 because he was accountable for 109 grams of crack. Ultimately, however, that had no effect on Mr. Levine's sentence. According to the Probation Officer, he faced a penalty of 10-life on Count 2 (for 50 g. or more of crack), and qualified as a Career Offender. As a Career Offender with a statutory maximum of life under § 841(b)(1)(A), his guideline offense level automatically rose to a 37. And with a criminal history category of VI, his Guideline range as a Career Offender was 360 months-life. (PSI, ¶¶ 54-55).

4. On July 17, 2001, the Court sentenced Mr. Levine at the top of the then-mandatory Guideline range, to life imprisonment, followed by 5 years supervised release. (DE 51).

5. On October 11, 2016, President Obama commuted Mr. Levine's life sentence to a term of 327 months imprisonment, leaving intact his 5-year term of supervised release. Executive Grant of Clemency (DE 97).

6. On December 20, 2018, Congress passed the First Step Act of 2018, and President Trump signed it into law on December 21, 2018. Section 404 of the Act provides as follows:

(a) Definition of Covered Offense.—In this section, the term “covered offense” means 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 (Public Law 111-220; 124 Stat. 2372), that was committed before August 3, 2010.

(b) Defendants Previously Sentenced.—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 (Public Law

111-220; 124 Stat. 2372) were in effect at the time the covered offense was committed.

(c) Limitations.—No court shall entertain a motion made under this section to reduce a sentence if the sentence was previously imposed or previously reduced in accordance with the amendments made by sections 2 and 3 of the Fair Sentencing Act (Public Law 111-220; 124 Stat. 2372), or if a previous motion made under this section to reduce the sentence was, after the date of enactment of this Act, denied after a complete review of the motion on the merits. Nothing in this section shall be construed to require a court to reduce any sentence pursuant to this section.

Pub. L. No. 115-391, Title IV, § 404, Dec. 21, 2018.

7. Even though the Federal Defender's Office had remained counsel of record for Mr. Levine since his appeal (DE 53, DE 54), on March 18, 2019, he filed a *pro se* "Motion for Appointment of Counsel" to assist him in "bring[ing] a proper [First Step Act] motion to this Court's attention." (DE 100).<sup>2</sup>

8. On March 20, 2019, the Court entered an order denying Mr. Levine's request for the appointment of counsel, stating:

Count Two now would be punishable by up to forty (40) years in prison. As a Career Offender, the guidelines now would have been Offense Level 34, Criminal History Category VI for a range of 262-327 months in prison. The Court previously sentenced at the high end of the guidelines. No relief is due since Levine is serving a commuted sentence of 327 months.

Wherefore, Levine's Motion for Appointment of Counsel [DE -100] is Denied, without prejudice to his filing a Motion to Reduce Sentence.

(DE 101).

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<sup>2</sup> There appears to have been a miscommunication with or misunderstanding by Mr. Levine as to this Office's continued representation of him. As counsel of record, this Office would have easily filed a motion on his behalf under the First Step Act. It has done so for many prior clients.



### Summary of Argument

Because this Court “imposed a sentence for a covered offense,” and Mr. Levine’s sentence has not been “previously imposed or previously reduced in accordance” with section 2 of the Fair Sentencing Act, the Court “may . . . impose a reduced sentence as if” section 2 of the Fair Sentencing Act “were in effect.” Under Section 2 of the Fair Sentencing Act, Mr. Levine’s statutory range has been reduced from a term of 10 years-life and a term of supervised release of 5-life under 21 U.S.C. § 841(b)(1)(A)(2001), to a term of imprisonment of 5-40 years and a term of supervised release of at least 4 years under 21 U.S.C. § 841(b)(1)(B). Mr. Levine has already served over 18 straight years in prison.<sup>3</sup> His projected release date on his current term of 327 months imprisonment is December 13, 2024. For the following reasons, Mr. Levine requests that this Court, pursuant to Section 404 of the First Step Act, impose a reduced sentence of 262 months – the bottom of the now-applicable Career Offender range – and reduce his term of supervised release to the now-applicable minimum term of 4 years.

The Court incorrectly stated in its prior order that “No relief is due since Levine is serving a commuted sentence of 327 months.” As every court that has considered this very issue has ruled, the fact that Mr. Levine’s previously-imposed life sentence was commuted by President Obama does *not* bar the Court from imposing a further reduced term of imprisonment and supervised release pursuant to the First Step Act. Indeed, the fact that the order of commutation expressly left intact Mr. Levine’s prior 5-year term of supervised release imposed under §

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<sup>3</sup> Mr. Levine was arrested on December 15, 2000. He was taken into custody at that time and has remained in custody ever since.

841(b)(1)(A) in and of itself confirms that he is now eligible for a further reduction in both his imprisonment and supervised release under the First Step Act.

### Argument

#### **I. Mr. Levine is eligible for relief under the plain language of the First Step Act.**

The plain language of the First Step Act refutes the Court's suggestion in its prior order that defendants whose sentences were commuted are ineligible for relief under Section 404. In that section of the Act, Congress directed that "a court that imposed a sentence for a covered offense may," upon motion, "impose a reduced sentence as if sections 2 and 3 of the Fair Sentencing Act [] were in effect at the time the covered offense was committed." Pub. L. 115-391, Title IV, § 404(b), Dec. 21, 2018. And it defined a "covered offense" to mean "a violation of a Federal criminal statute, the statutory penalties for which were modified" by section 2 or 3 of the Fair Sentencing Act. *Id.*, § 404(a). Eligibility thus depends on two requirements: (1) that the court imposed a sentence; and (2) that the sentence was for a "covered offense." Mr. Levine satisfies both of those requirements. Under the Fair Sentencing Act, a defendant charged with 28 grams or more but less than 280 grams of crack, now faces reduced penalties of 5-40 years imprisonment, and a reduced 4 year minimum term of supervised release under 21 U.S.C. § (b)(1)(B). In analogous circumstances, where the statutory range has been reduced from that previously-applicable under § 841(b)(1)(A), to that applicable under § 841(b)(1)(B), other judges within this district have granted reductions under the First Step Act –

even to defendants who originally received life sentences, and/or were sentenced as Career Offenders, like Mr. Levine.<sup>4</sup>

Congress placed only two limitations on a court's authority to entertain a motion, neither of which applies here: "the sentence was previously imposed or previously reduced in accordance with the amendments made by sections 2 and 3 of the Fair Sentencing Act," or "a previous motion made under this section to reduce

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<sup>4</sup> See, e.g., *United States v. Brifel*, No. 97-cr-14015-MOORE, DE 188 (S.D. Fla. March 7, 2019) (reducing sentence from life to 150 months imprisonment, which rendered the defendant eligible for immediate release, where the statutory range was reduced from mandatory life under § 841(b)(1)(A), to 10-life under § 841(b)(1)(B)); *United States v. Byrd*, No. 94-cr-14084-MIDDLEBROOKS, DE 144 (S.D. Fla. Apr. 4, 2019) (reducing sentence from life to 330 months imprisonment, which rendered the defendant eligible for immediate release, where the statutory range was reduced from mandatory life under § 841(b)(1)(A), to 10 years-life under § 841(b)(1)(B); also reducing supervised release term from 10 to 8 years); see also *United States v. Strong*, No. 05-cr-14040-MOORE, DE 106 (S.D. Fla. Feb. 15, 2019) (reducing sentence from 262 months to 188 months, where statutory range was reduced from 10 years-life under § 841(b)(1)(A), to 5-40 years under § 841(b)(1)(B) by the First Step Act); *United States v. Wallace*, No. 01-cr-06060-ZLOCH, DE 270 (S.D. Fla. Feb. 8, 2019) (reducing sentence from 327 to 175 months, where the statutory range was reduced from 20 years-life under § 841(b)(1)(A), to 10-life under § 841(b)(1)(B) by the First Step Act); *United States v. Tucker*, No. 02-cr-20794-GRAHAM, DE 247 (S.D. Fla. Mar. 4, 2019) (reducing sentence from 262 months to 188 months, where the statutory range was reduced from 10 years-life under § 841(b)(1)(A), to 5-40 years under § 841(b)(1)(B) by the First Step Act); *United States v. Walters*, No. 07-cr-60302-MARRA, DE 51 (S.D. Fla. Feb. 6, 2019) (reducing sentence from 192 months to 137 months, where the original statutory range was 10 years-life under § 841(b)(1)(A), but the defendant received a reduction based upon substantial assistance at the original sentencing; the First Step Act reduced the statutory range to 5-40 years under § 841(b)(1)(B)); *United States v. Anderson*, No. 08-cr-20601-COHN, DE 197 (S.D. Fla. Mar. 6, 2019) (reducing sentence from 210 months to 150 months, where statutory range was reduced from 10-life under § 841(b)(1)(A), to 5-40 years under § 841(b)(1)(B) by the First Step Act); see also *United States v. Wester*, No. 97-08032-cr-MORENO, DE 86 (reducing sentence from 360 to 262 months – the bottom of the reduced Career Offender range – "in accord with the clear legislative intent underlying the passage of the First Step Act;" court originally sentenced defendant under § 841(b)(1)(B) using a 10-life statutory range, and the new statutory range was 0-30 under § 841(b)(1)(C)).

the sentence was, after [December 21, 2018], denied after a complete review of the motion on the merits.” *Id.*, Sec. 404(c). If Congress had intended that courts could not entertain a motion of a defendant whose sentence had been previously commuted, it would have said so. It did not. And indeed, it chose *not* to say so with knowledge that just two years previously, President Obama had commuted the sentences of 1,715 non-violent drug offenders, many of whom would be eligible for relief under the language Congress chose to use.<sup>5</sup>

As a practical matter, courts must consider the remaining judicially imposed sentence when determining to what extent they can reduce the sentence “as if” the Fair Sentencing Act “were in effect.” For example, if Mr. Levine’s term of imprisonment had been commuted to 5 years and his term of supervised release to 4 years, it would not be possible for the Court to grant relief under Section 404. But that is not this case. When President Obama commuted Mr. Levine’s sentence, he left “intact and in effect” 327 months of his judicially-imposed term of imprisonment, as well as his original 5-year term of supervised release. *See* Executive Grant of Clemency (DE 80). Therefore, under the plain terms of Section 404, this Court may now impose a reduced term of imprisonment as low as 5 years and a reduced term of supervised release as low as 4 years. And indeed, *even if* the President had commuted Mr. Levine’s term of imprisonment to the new statutory minimum of 5 years, the fact that his prior 5-year term of supervised release was

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<sup>5</sup> See Gregory Korte, *Obama Grants 330 more Commutations, Bringing Total to a Record 1,715*, USA Today (Jan. 19, 2017), <https://www.usatoday.com/story/news/politics/2017/01/19/obama-grants-330-more-commutations-bringing-total-record-1715/96791186/>.

left intact, would still make him eligible for a reduction in the supervised release portion of his sentenced pursuant to the plain terms of the First Step Act.

In short, Mr. Levine's offense is a "covered offense," and his sentence was not "previously imposed or previously reduced in accordance with" section 2 of the Fair Sentencing Act. Accordingly, the Court may "impose a reduced sentence as if" section 2 of the Fair Sentencing Act "were in effect." Any component of the sentence imposed by the Court that remains unsatisfied continues to stand and may be reduced by this Court under Section 404.

Notably, every court to have considered the issue of previously-commuted sentences under the First Step Act has agreed that the mere fact that President Obama commuted a term of imprisonment does *not* preclude a defendant from receiving a further reduction in his term of imprisonment and/or supervised release under the Act. *See United States v. Stilling*, No. 8:08-cr-230-T-24SPF, DE 112:2-3 (M.D.Fla. March 15, 2019) (Bucklew, J.) (after commutation of defendant's sentence from 188 to 168 months, imposing a reduced sentence of 140 months by granting defendant a variance of approximately 15 months given his good conduct while incarcerated); *United States v. Walker*, 2019 WL 1226856 at \*2 (N.D. Ohio March 15, 2019) (after commutation of defendant's sentence from life to 360 months imprisonment, further reducing sentence under the First Step Act to "time served;" "[a]bsent an express prohibition in its language, the Court finds that the First Step Act's relief applies to defendants with presidential commutations;" "To find otherwise would penalize defendants for receiving presidential commutations," which is "both counter-intuitive and unfair"); *United States v. Pugh*, 2019 WL

1331684 at \*2 (N.D.Ohio March 25, 2019) (after commutation of defendant's sentence from life to 360 months, further reducing sentence to 288 months imprisonment which was an effective "time served" sentence; holding that "the Constitution vests legislative powers in the Congress, judicial powers in the courts, and the execution of laws in the president;" since the President does not have the power to "impose a sentence" or "vacate a court's judgment," commutation is not a "new sentence;" as such, the court has the power to reduce it under the First Step Act); *United States v. Dodd*, 372 F.Supp.3d 795, 798- (S.D.Iowa Apr. 9, 2019) (after commutation of defendant's sentence from life to 240 months imprisonment, agreeing with and following *Walker*; resentencing defendant to 180 months imprisonment followed by a reduced term of 8 years supervised release; holding that defendant "is eligible for relief even after his commutation" according to the express terms of the First Step Act, and "[n]othing about the nature of the commutation prevents this Court's action when the commutation does not moot the legal issue"); *United States v. Cook*, No. 05-258, DE179 (E.D. Mo. Apr. 17, 2019) (after commutation of defendant's sentence from 240 to 200 months imprisonment, further reducing sentence to 180 under the First Step Act); *United States v. Biggs*, 2019 WL 2120226 (N.D.Ill. May 15, 2019) (after commutation of defendant's sentence from 360 months to 262 months imprisonment, further reducing his sentence under the First Step Act to 180 months imprisonment – an effective "time served" sentence; noting as support that the defendant had been a "model inmate," and had had only "three minor disciplinary infractions over the last fourteen years in custody;" finding it "unlikely that five more years of continued imprisonment are

required to deter him (and others) any more than has been accomplished in the fourteen years served;” noting that “the Fair Sentencing Act and the First Step Act reflect Congress’ judgment that shorter prison sentences adequately reflect the seriousness of crack cocaine offenses;” thus “reduction of Biggs’ sentence aligns the statutory purposes of sentencing with the goal of the reform legislation”); *United States v. Gary Brown*, No. 05-cr-00070-GZS, DE 152 (D. Me. May 17, 2019) (after defendant’s sentence was commuted from mandatory life to 240 months imprisonment, further reducing sentence under the First Step Act to “time served;” defendant had served 166 months plus “good time” and had completed multiple educational, vocational, and re-entry programs).

**II. In light of the now-applicable reduced statutory minimum terms of imprisonment and supervised release, the Court should impose a reduced sentence of 262 months imprisonment, followed by 4 years supervised release**

As President Obama rightly recognized in commuting Mr. Levine’s sentence in 2017 from life to 327 months imprisonment, Mr. Levine had not wasted the time he had spent behind bars. Even while serving his life sentence – thinking he might never see a day of freedom – he had demonstrated in multiple ways that he had an intense desire to turn his life around, educate himself, rehabilitate himself, become a better parent, and become a more productive member of society. As indicated by the attached Progress Report and Certificates, from 2002 through 2017 (that is, before he received the commutation from President Obama), Mr. Levine took and completed the following coursework:

- Anger Management (2002)
- Adult Continuing Education (ACE) Commercial Drivers’ License (2002)

- ACE Real Estate (2002)
- AIDS Awareness Counselor (2002)
- Pre-GED (2005)
- RPP5 Release Requirement Class (2005)
- Electronic Law Library Training (2006)
- Legal Research (2008)
- Creative Writing (2008)
- Business Concepts (2008)
- Freedom from Drugs (Drug Abuse Education) (2009)
- Basketball Officiating Class (2009)
- RPP1 Infectious Disease Awareness (2010)
- RPP6 Healthy/Unhealthy Stress (2010)
- RPP3 Banking Tutorial (2010)
- RPP2 Dress for Success (2010)
- RPP5 Release Requirements (2010)
- Inside out Dad 3-Parent Seminar (2011)
- Inside out Dad 4-Parent Seminar (2011)
- RPP2 Job Search (2012)
- Basic Math (2012)
- RPP#1 AIDS Awareness (2013)
- Literacy Orientation Class (2013)
- Learning Needs (2014)
- Financial Basics (2014)



- Conflict Management (2014)
- Building Ind. Wealth 1 (2014)
- Parenting Class 1 (2014)
- ACE Spanish 1 Class (2015)
- Pre-GED (2015)
- GED (2015)
- Legal Research Class (2016)
- Public Speaking Class (2016).

And indeed, since receiving his grant of clemency, he has continued to work diligently toward obtaining his GED. He stands before the Court today a different man than he was when the Court sentenced him in 2001.

Most notably, unlike the many defendants in this district who have received substantial reductions under the First Step Act despite lengthy disciplinary records while in jail,<sup>6</sup> Mr. Levine *has not had even one disciplinary infraction for the past 18 years*. After two early DRs in 2001 for “being in unauthorized area,” and “refusing to obey an order,” Mr. Levine completely turned himself around. *He has had perfect behavior while in prison ever since*. Judge Bucklew in *Stilling* rightly took into account the defendant’s good conduct in imposing a reduced sentence after a commutation. So did Judge Lefkowitz in *Biggs*. The Court should do so here as well.

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<sup>6</sup> See, e.g., *United States v. Jerrard Daniels*, Case No. 02-20805-cr-GRAHAM, DE 120, 121 (reducing sentence from 300 months to 240 months); *United States v. Arthur Green*, Case No. 07-20400-cr-HUCK, DE 113, 118 (reducing sentence from 220 to 187 months); *United States v. Robert Potts*, Case No. 98-14010-cr-ROSENBERG, DE 202, 223 (reducing sentence from life to 302 months); *United States v. Anthony Bell*, Case No. 04-60275-cr-COHN, DE 352, 353 (reducing sentence from 360 to 324 months); *United States v. Benjamin Lewis*, Case No. 05-20639-cr-UNGARO, DE 107, 109, 110 (reducing sentence from 200 months to time served notwithstanding 26 disciplinary incidents in 14 years).

For the Court to refuse such clearly-authorized and well-deserved relief for Mr. Levine, when the similarly-situated defendants in *Stilling*, *Pugh*, *Walker*, *Dodd*, *Cook*, *Biggs*, and *Brown* have all had their commuted sentences further reduced pursuant to the First Step Act, would create unwarranted disparities contrary to Congress' intent.

Finally, unlike the many above-discussed defendants who have received a "time served" sentence through a variance below the Career Offender range, Mr. Levine is *not* asking the Court for a variance. He is simply seeking a sentence at the bottom of the newly-applicable reduced Career Offender range, as well as the now-reduced the minimum statutory term of supervised release.

### CONCLUSION

For these reasons, it is respectfully requested that pursuant to Section 404 of the First Step Act of 2018, the Court impose a reduced sentence of 262 months imprisonment, followed by a reduced term of 4 years supervised release.

Respectfully submitted,

MICHAEL CARUSO  
FEDERAL PUBLIC DEFENDER

BY: /s/Brenda G. Bryn  
Brenda G. Bryn  
Assistant Federal Public Defender  
1 E. Broward Boulevard, Suite 1100  
Ft. Lauderdale, Florida 33301  
Tel.:(954) 356-7436  
[Brenda\\_bryn@fd.org](mailto:Brenda_bryn@fd.org)

**CERTIFICATE OF SERVICE**

I HEREBY certify that on June 18, 2019, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

**/s/Brenda G. Bryn**  
Brenda G. Bryn

# *Certificate of Completion*

Let it be known that

*Jefferson Levine*

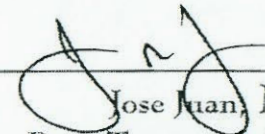
Register Number# 55586-004

has satisfactory completed  
the Freedom from Drugs drug abuse education  
at U.S.P-1 Coleman, Coleman, Florida.

April 10, 2009



Raymond Proetto, Ph.D.,  
Drug Treatment Coordinator



Jose Juan, M.S.  
Drug Treatment Specialist




# *Certificate of Completion*

Let it be known that

***Jefferson Levine***

Register Number 55586-004

has satisfactorily completed  
the Anger Management Course  
at U.S.P. Coleman, Coleman, Florida.

  
\_\_\_\_\_  
Javier Mouriz, Ph.D.



April 1, 2002



# Certificate of Achievement

This certifies that  
*Jefferson Levine*  
has satisfactorily completed  
*Legal Research*  
consisting of 12 hours of training  
June 12, 2008



A. Rich, ACE Coordinator



# Certificate of Achievement

This certifies that  
*Jefferson Levine*  
has satisfactorily completed  
*Legal Research*  
consisting of 12 hours of training  
June 12, 2008



A. Rich, ACE Coordinator



# Certificate of Achievement

This certifies that

*Jefferson Levine*

has satisfactorily completed

*Creative Writing*

consisting of 12 hours of training

May 27, 2008



A. Rich, ACE Coordinator



# Certificate of Achievement

This certifies that  
*Jefferson Levine*  
has satisfactorily completed  
*Business Concepts*  
consisting of 12 hours of training  
June 12, 2008



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A. Rich, ACE Coordinator



**Summary Reentry Plan - Progress Report**

SEQUENCE: 00090173

 Dept. of Justice / Federal Bureau of Prisons  
 Plan is for inmate: LEVINE, JEFFERSON 55586-004

Report Date: 02-22-2019


 Facility: JES JESUP FCI  
 Name: LEVINE, JEFFERSON  
 Register No.: 55586-004  
 Quarters: [REDACTED]  
 Age: 48  
 Date of Birth: [REDACTED]

 Custody Level: IN  
 Security Level: MEDIUM  
 Proj. Rel Date: 12-13-2024  
 Release Method: GCT REL  
 DNA Status: [REDACTED]
**Offenses and Sentences Imposed**

Charge	Terms In Effect
21:841(A)(1) POSSESSION WITH INTENT TO DISTRIBUTE 50 GRAMS OR MORE OF COCAINE BASE	327 MONTHS

Date Sentence Computation Began: 07-16-2001

Sentencing District: FLORIDA, SOUTHERN DISTRICT

Days FSGT / WSGT / DGCT  
0 / 0 / 0Days GCT or EGT / SGT  
864Time Served  
Years: 18 Months: 5 Days:+ Jail Credit - InOp Time  
+ 214 JC - 0 InOp**Detainers**

Detaining Agency	Remarks
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NO DETAINER

**Program Plans**

\*\* No notes entered \*\*

**Current Work Assignments**

Fac	Assignment	Description	Start
JES	ORDERLY E2	E2 UNIT ORDERLY	11-04-2016

**Work Assignment Summary**

\*\* No notes entered \*\*

**Current Education Information**

Fac	Assignment	Description	Start
JES	ESL HAS	ENGLISH PROFICIENT	08-22-2001
JES	GED EP	ENROLL GED PROMOTE W/CAUSE	11-14-2014
JES	GED SAT	GED PROGRESS SATISFACTORY	04-29-2014

**Education Courses**

SubFac	Action	Description	Start	Stop
JES		GED 1:30PM-3:30PM	09-23-2016	CURRENT
JES	C	WELLNESS CLASS @ FCI	06-25-2018	07-08-2018
JES	C	BUILDING IND. WEALTH 1 @ FCI	04-03-2017	06-30-2017
JES	C	PUBLIC SPEAKING CLASS @ FCI	09-26-2016	12-23-2016
JES	C	LEGAL RESEARCH CLASS @ FCI	09-26-2016	12-23-2016
JES	W	GED 7:40-9:30 RPP#6	09-09-2016	09-23-2016
JES	W	GED 1200-130; RPP#6	08-02-2016	09-09-2016
JES	W	GED 9:30-1130; RPP#6	12-07-2015	08-02-2016
JES	W	GED 7:40-9:30 RPP#6	09-17-2015	12-07-2015
JES	W	PRE-GED 7:40AM-9:30AM	08-11-2015	09-17-2015
JES	W	PRE-GED 12:00PM-1:30PM	07-02-2015	08-11-2015
JES	W	PRE-GED 9:30AM-11:00AM	09-22-2014	07-02-2015
JES	C	ACE SPANISH 1 CLASS @ FCI	04-06-2015	06-09-2015
JES	C	PARENTING CLASS 1 @ FCI	08-30-2014	11-24-2014
JES	C	BUILDING IND. WEALTH 1 @ FCI	08-30-2014	11-24-2014





# Summary Reentry Plan - Progress Report

Dept. of Justice / Federal Bureau of Prisons  
Plan is for inmate: LEVINE, JEFFERSON 55586-004

SEQUENCE: 00090173

Report Date: 02-22-2019

SubFac	Action	Description	Start	Stop
JES	C	(I)CONFLICT MANAGEMENT-CAI	09-02-2014	10-14-2014
JES	C	(D) FINANCIAL BASICS - CAI	09-02-2014	10-14-2014
JES	C	LEARNING NEEDS 9:30AM-11:00AM	01-02-2014	09-22-2014
JES	C	REAL ESTATE CLASS @ FCI	02-28-2014	05-08-2014
JES	C	BEG PENCIL DRAWING CLASS @ FCI	12-29-2013	02-19-2014
JES	C	LITERACY ORIENTATION CLASS@FCI	10-29-2013	12-20-2013
JES	C	RPP#1 AIDS AWARENESS	09-18-2013	09-18-2013
YAM	C	JUMP ROPE II	07-05-2013	07-30-2013
YAM	C	CROCHET	12-23-2012	03-24-2013
YAM	C	BASIC MATH	04-03-2012	06-18-2012
YAM	C	RPP2 JOB SEARCH	03-20-2012	04-12-2012
YAM	C	SPINNING I PM	02-27-2012	03-27-2012
YAM	C	BIGGEST LOSER	02-28-2012	03-27-2012
YAM	C	AEROBICS II PM	02-27-2012	03-27-2012
YAM	C	INSIDE OUT DAD 4-PARENT SEMINR	08-03-2011	08-08-2011
YAM	C	INSIDE OUT DAD 3-PARENT SEMINR	03-02-2011	03-03-2011
YAM	C	RPP4 CCC/USPO/AUSA SEMINAR	12-20-2010	12-20-2010
YAM	C	RPP5 RELEASE REQUIREMENTS	12-20-2010	12-20-2010
YAM	C	RPP2 DRESS FOR SUCCESS	12-20-2010	12-20-2010
YAM	C	RPP3 BANKING TUTORIAL	12-20-2010	12-20-2010
YAM	C	RPP6 HEALTHY/UNHEALTHY STRESS	12-20-2010	12-20-2010
YAM	C	RPP1 INFECTIOUS DISEASE AWARE	07-22-2010	07-22-2010
YAM	C	CALISTHENICS AM	04-19-2010	06-11-2010
YAM	C	AEROBICS I AM	04-19-2010	06-11-2010
COP	C	BASKETBALL OFFICIATING CLASS	10-13-2009	10-19-2009
COP	C	ADVANCED CIRCUIT TRAINING	06-27-2009	07-25-2009
COP	C	ADVANCED CORE TRAIN CLASS	06-27-2009	07-21-2009
COP	C	INTERMEDIATE CIRCUIT TRAINING	05-29-2009	06-27-2009
COP	C	INTERMEDIATE CORE TRAIN CLASS	05-30-2009	06-12-2009
COP	C	BEGINNING CIRCUIT TRAINING	04-27-2009	05-27-2009
COP	C	BEGINNING CORE TRAIN CLASS	04-27-2009	05-27-2009
COP	C	PRE-EXERCISE CLASS	04-22-2007	07-11-2007
COP	C	ELECTRONIC LAW LIB TRAINING	01-19-2006	01-19-2006
COP	C	RPP5 RELEASE REQUIREMENT CLASS	09-28-2005	09-28-2005
COP	W	PREGED ROOM3,1230 M-F	10-01-2001	02-02-2005
COP	C	AIDS AWARENESS COUNSELOR	09-13-2002	10-18-2002
COP	C	ACE REAL ESTATE - MON/WED	10-02-2002	12-05-2002
COP	C	ACE COM DRIVERS' LICENSE-THURS	06-04-2002	06-06-2002

## Education Information Summary

\*\* No notes entered \*\*

## Discipline Reports

Hearing Date	Prohibited Acts
12-11-2001	316 : BEING IN UNAUTHORIZED AREA
07-17-2001	307 : REFUSING TO OBEY AN ORDER

## Discipline Summary

\*\* No notes entered \*\*

## ARS Assignments

Fac	Assignment	Reason	Start	Stop
JES	A-DES	TRANSFER RECEIVED	09-13-2013	CURRENT
YAM	A-DES	TRANSFER RECEIVED	03-16-2010	09-04-2013
COP	A-DES	US DISTRICT COURT COMMITMENT	08-07-2001	03-09-2010





# Summary Reentry Plan - Progress Report

Dept. of Justice / Federal Bureau of Prisons  
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SEQUENCE: 00090173

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## Current Care Assignments

Assignment	Description	Start
CARE1	HEALTHY OR SIMPLE CHRONIC CARE	01-27-2005
CARE1-MH	CARE1-MENTAL HEALTH	08-11-2010

## Current Medical Duty Status Assignments

Assignment	Description	Start
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[REDACTED]

## Current PTP Assignments

Assignment	Description	Start
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NO ASSIGNMENTS

## Current Drug Assignments

Assignment	Description	Start
DAP UNQUAL	RESIDENT DRUG TRMT UNQUALIFIED	04-26-2017
ED COMP	DRUG EDUCATION COMPLETE	04-10-2009

## Physical and Mental Health Summary

\*\* No notes entered \*\*

## FRP Details

Most Recent Payment Plan

FRP Assignment: COMPLT FINANC RESP-COMPLETED Start: 09-15-2002

Inmate Decision: AGREED \$25.00 Frequency: QUARTERLY

Payments past 6 months: \$0.00 Obligation Balance: \$0.00

## Financial Obligations

No.	Type	Amount	Balance	Payable	Status
1	ASSMT	\$100.00	\$0.00	IMMEDIATE	COMPLETEDZ

\*\* NO ADJUSTMENTS MADE IN LAST 6 MONTHS \*\*

## Financial Responsibility Summary

\*\* No notes entered \*\*

## Release Planning

\*\* No notes entered \*\*

## General Comments

\*\* No notes entered \*\*



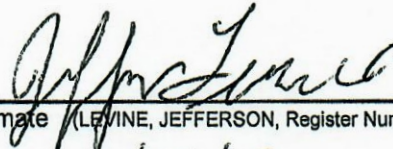
## Summary Reentry Plan - Progress Report

Dept. of Justice / Federal Bureau of Prisons  
Plan is for inmate: LEVINE, JEFFERSON 55586-004

SEQUENCE: 00090173

Report Date: 02-22-2019

Name: LEVINE, JEFFERSON  
Register Num: 55586-004  
Age: 48  
Date of Birth: [REDACTED]  
DNA Status: [REDACTED]


  
Inmate (LEVINE, JEFFERSON, Register Num: 55586-004)

Date

2/22/19

Chairperson

Date

  
Case Manager

Date

2-22-19