

No. \_\_\_\_\_

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IN THE  
SUPREME COURT OF THE UNITED STATES

\_\_\_\_\_  
KLANDRICK ONICK,

*Petitioner*

v.

UNITED STATES OF AMERICA

*Respondent*

\_\_\_\_\_  
On Petition for Writ of Certiorari  
to the United States Court of Appeals  
For the Fifth Circuit

\_\_\_\_\_  
PETITION FOR A WRIT OF CERTIORARI

\_\_\_\_\_  
PETITIONER'S APPENDIX

\_\_\_\_\_  
Adam Nicholson  
*Assistant Federal Public Defender*

Federal Public Defender's  
Office Northern District of  
Texas  
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214.767.2746  
Adam\_Nicholson@fd.org

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## APPENDIX TABLE OF CONTENTS

Appendix	Document Description	Appendix Page Range
Appendix A	Judgment and Opinion of Fifth Circuit, CA No. 20-10165, dated November 17, 2020, <i>United States v. Onick</i> , 830 F. App'x 442 (5 <sup>th</sup> Cir. Dec. 1, 2020) (unpublished).	1 - 4
Appendix B	Judgment of Revocation and Sentence of the United States District Court for the Northern District of Texas, entered February 12, 2020.	1 - 2
Appendix C	Amended Judgment and Sentence of the United States District Court for the Northern District of Texas on Remand for Resentencing, entered February 27, 2018.	1 - 3
Appendix D	Judgment and Opinion of the Fifth Circuit, CA No. 16-11258, dated November 17, 2017, <i>United States v. Onick</i> , 702 F. App'x 231 (5 <sup>th</sup> Cir. November 17, 2017) (unpublished).	1 - 8
Appendix E	Judgment and Sentence of the United States District Court for the Northern District of Texas, entered August 12, 2016.	1 - 3

## APPENDIX A

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

December 1, 2020

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No. 20-10165  
Summary Calendar

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Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

KIANDRICK ONICK,

*Defendant—Appellant.*

---

Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:16-CR-25-1

---

Before DAVIS, STEWART, and DENNIS, *Circuit Judges.*

J U D G M E N T

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

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

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

December 1, 2020

Lyle W. Cayce  
Clerk

---

No. 20-10165  
Summary Calendar

---

UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

KIANDRICK ONICK,

*Defendant—Appellant.*

---

Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:16-CR-25-1

---

Before DAVIS, STEWART, and DENNIS, *Circuit Judges.*

PER CURIAM:\*

Kiandrick Onick pleaded guilty to possession of a firearm by a felon, and he was sentenced below the advisory guideline range to 32 months of imprisonment and three years of supervised release. After a remand for resentencing, *United States v. Onick*, 702 F. App'x 231, 233 (5th Cir. 2017),

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\* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 20-10165

the district court resentenced Onick to time served, with a three-year term of supervised release. Onick began serving his term of supervised release on February 28, 2018.

On March 26, 2019, the probation officer filed a petition charging that Onick had violated the mandatory conditions of his supervised release that he not commit another federal, state, or local crime, and that he not possess an illegal controlled substance. The report also alleged that Onick submitted four urine specimens that tested positive for marijuana, which violated his mandatory conditions of release, and that he violated the condition that he participate in a drug treatment and testing program by failing to report to submit urine specimens seven times.

Based on these alleged violations, Onick was subject to mandatory revocation under 18 U.S.C. § 3583(g), which requires revocation and a term of imprisonment for defendants found to have committed certain gun or drug violations. Onick objected that the mandatory revocation feature of § 3583(g) was unconstitutional under *United States v. Haymond*, 139 S. Ct. 2369 (2019). The district court rejected his argument and sentenced Onick to 11 months of imprisonment, with no additional term of supervised release.

Because Onick preserved his challenge, our review is de novo. *United States v. Garner*, 969 F.3d 550, 551 (5th Cir. 2020). In *Haymond*, the Supreme Court held that a different mandatory revocation provision, § 3583(k), violates the Fifth and Sixth Amendments. 139 S. Ct. at 2373. Onick argues that the Court's reasoning in *Haymond* invalidating § 3583(k) applies with equal force to § 3583(g). However, we rejected Onick's exact argument in *Garner*, concluding that § 3583(g) "lacks the three features which led the Court to hold § 3583(k) unconstitutional." *Id.* at 551. Specifically, we stated that (1) Subsection (g) applied more generally to violations of common supervised released conditions, while Subsection (k) applied only when a

No. 20-10165

defendant committed a discrete set of criminal offenses; (2) Subsection (g), unlike Subsection (k), did not dictate the length of the sentence imposed for the violation; and (3) Subsection (g), unlike Subsection (k), did not prescribe a sentence that was based on the violation, but instead granted the judge discretion to impose any sentence authorized under the general revocation statute. *Id.* at 553. Based on the differences between § 3583(k) and § 3583(g), we held that § 3583(g) “is not unconstitutional under *Haymond*.” *Id.*

AFFIRMED.

## APPENDIX B



# United States District Court

Northern District of Texas  
Fort Worth Division

UNITED STATES OF AMERICA

v.

KIANDRICK ONICK

**JUDGMENT IN A CRIMINAL CASE  
for revocation of supervised release**

Case number: 4:16-CR-025-Y (1)  
Aisha Saleem, assistant U.S. attorney  
Loui Itoh, attorney for the defendant

On February 11, 2020, a hearing was held, at which time the Court determined that the defendant, Kiandrick Onick, had violated his conditions of supervised release. Accordingly, the defendant is adjudged guilty of such violations, which involve the following conditions:

CONDITION	NATURE OF VIOLATION	VIOLATION CONCLUDED
Mandatory condition	Committing another federal, state, or local crime	October 2018; December 2018
Mandatory condition	Possessing cocaine	December 2018
Standard condition no. 9	Associating with person engaged in criminal activity	December 2018
Standard condition no. 7 and mandatory condition	Using and possessing marijuana	October 2018; November 2018; January 2019
Special condition	Failing to report to HOPE, Fort Worth, TX to submit urine specimens	June 2018; July 2018; September 2018; February 2019; March 2019

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

The defendant shall notify the United States attorney for this district within thirty (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.

Sentence imposed February 11, 2020.



TERRY R. MEANS  
UNITED STATES DISTRICT JUDGE

Signed February 12, 2020.

**IMPRISONMENT**

The defendant, Kiandrick Onick, is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of 11 months, pursuant to USSG §7B1.4(a), p.s. This sentence shall run consecutively to any sentence imposed in Criminal District Court No. 1, Tarrant County, Texas, in case no. 1573750D.

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

**SUPERVISED RELEASE**

The defendant shall not be placed on an additional term of supervised release upon his release from confinement.

**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 marshal

## APPENDIX C

**UNITED STATES DISTRICT COURT**  
NORTHERN DISTRICT OF TEXAS  
Fort Worth Division

UNITED STATES OF AMERICA

**JUDGMENT IN A CRIMINAL CASE  
UPON REMAND  
FOR RESENTENCING**

v.

KIANDRICK ONICK

Case Number: 4:16-CR-00025-Y(1)  
Frank L. Gatto, assistant U.S. attorney  
Peter Michael Fleury, attorney for the defendant

On April 6, 2016, the defendant, Kiandrick Onick, entered a plea of guilty to count one of the one-count indictment. Accordingly, the defendant is adjudged guilty of such count, which involves the following offense:

<u>TITLE &amp; SECTION</u>	<u>NATURE OF OFFENSE</u>	<u>OFFENSE CONCLUDED</u>	<u>COUNT</u>
18 U.S.C. §§ 922(g)(1) and 924(a)(2)	Felon in Possession of Firearm	November 3, 2015	One

The defendant is sentenced as provided in pages two through three of this judgment. The sentence is imposed pursuant to Title 18, United States Code §3553(a), taking the guidelines issued by the United States Sentencing Commission pursuant to Title 28, United States Code § 994(a)(1), as advisory only.

On December 21, 2017, the United States Court of Appeals for the Fifth Circuit vacated the sentence imposed on August 11 2016, and remanded the case for resentencing. The following sentence is imposed in response to and in compliance with the ruling of the court of appeals.

The defendant shall pay immediately a special assessment of \$100.00 for count one of the one-count indictment.

The defendant shall notify the United States attorney for this district within thirty 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.

Original sentence imposed August 11, 2016.  
Resentenced on February 27, 2018.

  
TERRY R. MEANS  
UNITED STATES DISTRICT JUDGE

Signed February 27, 2018.

### IMPRISONMENT

The defendant, Kiandrick Onick, is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of **TIME SERVED** on count one of the one-count indictment. The sentence shall run concurrently to any sentence that may be imposed in the 371st Judicial District Court, Tarrant County, Texas, in case no. 1435301D.

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

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of three years on count one of the one-count indictment.

While on supervised release, in compliance with the standard conditions of supervision adopted by the United States Sentencing Commission, the defendant shall:

- (1) not leave the judicial district without the permission of the Court or probation officer;
- (2) report to the probation officer in a manner and frequency directed by the Court or probation officer;
- (3) answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- (4) support the defendant's dependents and meet other family responsibilities;
- (5) work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- (6) notify the probation officer within seventy-two (72) hours of any change in residence or employment;
- (7) refrain from excessive use of alcohol and not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
- (8) not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- (9) not associate with any persons engaged in criminal activity and not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- (10) permit a probation officer to visit the defendant at any time at home or elsewhere and permit confiscation of any contraband observed in plain view by the probation officer;
- (11) notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer;
- (12) 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; and
- (13) notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement, as directed by the probation officer.

In addition the defendant shall:

- not commit another federal, state, or local crime;
- not possess illegal controlled substances;
- not possess a firearm, destructive device, or other dangerous weapon;
- cooperate in the collection of DNA as directed by the probation officer;

Judgment in a Criminal Case

Defendant: Kiandrick Onick

Case Number: 4:16-CR-00025-Y(1)

Judgment -- Page 3 of 3

report in person to the probation office in the district to which the defendant is released within seventy-two (72) hours of release from the custody of the Bureau of Prisons;

refrain from any unlawful use of a controlled substance, submitting to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer; and

participate in a program approved by the probation office for treatment of narcotic or drug or alcohol dependency that will include testing for the detection of substance use, abstaining from the use of alcohol and all other intoxicants during and after completion of treatment; contribute to the costs of services rendered (copayment) at the rate of at least \$25 per month.

### FINE/RESTITUTION

The Court does not order a fine or costs of incarceration because the defendant does not have the financial resources or future earning capacity to pay a fine or costs of incarceration.

Restitution is not ordered because there is no victim other than society at large.

### 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 marshal

## APPENDIX D

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 16-11258

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D.C. Docket No. 4:16-CR-25-1

United States Court of Appeals  
Fifth Circuit

**FILED**

November 17, 2017

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

KIANDRICK ONICK,

Defendant - Appellant

Appeal from the United States District Court for the  
Northern District of Texas

Before DENNIS, CLEMENT, and GRAVES, Circuit Judges.

J U D G M E N T

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

It is ordered and adjudged that the sentence imposed by the District Court is vacated and remanded for resentencing.



IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 16-11258

---

United States Court of Appeals  
Fifth Circuit

**FILED**

November 17, 2017

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

KIANDRICK ONICK,

Defendant - Appellant

---

Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:16-CR-25-1

---

Before DENNIS, CLEMENT, and GRAVES, Circuit Judges.

PER CURIAM:\*

Kiandrick Onick pleaded guilty to being a felon in possession of a firearm and was sentenced to thirty-two months of imprisonment. The district court, using the 2015 version of the Sentencing Guidelines, calculated an advisory Guidelines range of thirty-seven to forty-six months of imprisonment after applying an enhancement under U.S.S.G. § 2K2.1(a)(4)(A). Section 2K2.1(a)(4)(A) provides for an enhancement if the defendant sustained a prior

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

No. 16-11258

“felony conviction of either a crime of violence or a controlled substance offense.” The district court determined that Onick’s prior Texas conviction for delivery of a simulated controlled substance under section 482.002(a)(1) of the Texas Health & Safety Code (THSC) constituted a “controlled substance offense.”

Onick appeals his sentence, challenging the district court’s application of the enhancement. He argues, for the first time on appeal, that his conviction under THSC section 482.002(a)(1) was not a “controlled substance offense” within the meaning of the Guidelines because the Texas statute can be violated by merely making an offer to sell a controlled substance. Because Onick did not challenge the district court’s enhancement on those grounds below, we review his challenge for plain error. *See Puckett v. United States*, 556 U.S. 129, 133–34 (2009). To succeed on plain-error review, an appellant must show (1) a forfeited error (2) that is clear or obvious and (3) that affects his substantial rights. *See id.* at 135. If he makes that showing, we may exercise our discretion “to remedy the error . . . if the error seriously affects the fairness, integrity or public reputation of judicial proceedings.” *Id.* (cleaned up). The Government concedes that Onick’s argument is correct and that deeming THSC section 482.002(a)(1) a controlled substance offense is plainly erroneous. However, the Government contends that the error did not affect Onick’s substantial rights.

“In the context of sentencing, an error affects an appellant’s substantial rights when there is a reasonable probability that, but for the error, he would have received a lesser sentence.” *United States v. Kirkland*, 851 F.3d 499, 503 (5th Cir. 2017) (cleaned up). The application of the enhancement under § 2K2.1(a)(4)(A) resulted in an increase in Onick’s Guidelines range from between eighteen and twenty-four months of imprisonment to between thirty-seven and forty-six months of imprisonment. The Supreme Court has held that

No. 16-11258

“[i]n most cases a defendant who has shown that the district court mistakenly deemed applicable an incorrect, higher Guidelines range has demonstrated a reasonable probability of a different outcome.” *Molina-Martinez v. United States*, 136 S. Ct. 1338, 1346 (2016). The Government argues, however, that Onick failed to show an effect on his substantial rights. It contends that the same Guidelines range would be supported by another one of Onick’s prior convictions, his Texas conviction for deadly conduct by discharging a firearm under section 22.05 of the Texas Penal Code (TPC), which, according to the Government, constitutes a crime of violence under § 2K2.1.

Section 2K2.1 does not have its own freestanding definition of a crime of violence; instead, it incorporates that term’s definition at U.S.S.G. § 4B1.2(a). See § 2K2.1 cmt. n.1 ¶ 3. Section 4B1.2(a), in the 2015 version of the Guidelines, defines a crime of violence to include an offense that “involves use of explosives.” The Government asserts that Onick’s conviction of deadly conduct by discharging a firearm necessarily “involves use of explosives,” as it maintains that, for purposes of the Guidelines, the gunpowder contained in firearm ammunition is an “explosive” and discharging the firearm is “use” of that explosive.

In *United States v. Dixon*, 265 F. App’x 383, 385 (5th Cir. 2008), we held that TPC section 22.05(b)(2) does not constitute a crime of violence under § 4B1.2. After the parties filed their briefs, this court issued its opinion in *United States v. Perlaza-Ortiz*, 869 F.3d 375 (5th Cir. 2017). In *Perlaza-Ortiz*, the district court applied a crime-of-violence enhancement under U.S.S.G. § 2L1.2 (2015) based on the defendant’s prior conviction under TPC section 22.05(b). 869 F.3d at 376. On appeal, we determined that section 22.05(b) was not divisible. *Id.* at 380. Thus, expressly relying upon our prior holding in *Dixon* that a conviction under TPC section 22.05(b)(2) does not constitute a

No. 16-11258

crime of violence, we concluded that the district court erred in applying the crime-of-violence enhancement. *See Perlaza-Ortiz*, 869 F.3d at 377 n.2.

The Government contends that *Perlaza-Ortiz* has no impact on its argument in this appeal because that case involved a crime-of-violence enhancement under a different Guidelines provision, § 2L1.2, which has a different definition of crime of violence. But the Government overlooks that *Perlaza-Ortiz* adopted and expressly followed our prior holding in *Dixon* that TPC “[s]ection 22.05(b)(2) cannot support a crime-of-violence enhancement.” *Perlaza-Ortiz*, 869 F.3d at 377 n.2 (citing *Dixon*, 265 F. App’x at 385). And, as previously noted, in *Dixon*, we held that TPC section 22.05(b)(2) does not constitute a crime of violence under § 4B1.2, the same provision that supplies the applicable definition in the instant case. 265 F. App’x at 385. We therefore reject the Government’s contention that a crime-of-violence enhancement would have supported the Guidelines range applied by the district court in Onick’s case. Accordingly, the erroneous enhancement affected Onick’s substantial rights.

We will exercise our discretion to correct a plain, forfeited error affecting substantial rights only where “the error seriously affects the fairness, integrity or public reputation of judicial proceedings.” *United States v. Olano*, 507 U.S. 725, 736 (1993) (cleaned up). In evaluating this aspect of plain-error review, we consider the particular facts and degree of error in the instant case and compare those factors to other cases that have turned on the fourth prong. *United States v. Martinez-Rodriguez*, 821 F.3d 659, 664 (5th Cir. 2016).

As previously discussed, in the absence of the erroneous enhancement, Onick’s Guidelines range would have been reduced from between thirty-seven and forty-six months of imprisonment to between eighteen and twenty-four months of imprisonment. We have found smaller disparities to warrant the exercise of our discretion to correct plain errors. *See, e.g., United States v.*

No. 16-11258

*Guillen-Cruz*, 853 F.3d 768, 775 (5th Cir. 2017) (error resulted in sentencing range increase from between ten and sixteen months to between eighteen and twenty-four months); *United States v. Mudekanye*, 646 F.3d 281, 289–91 (5th Cir. 2011) (error resulted in sentencing range increase from between sixty-three and seventy-eight months to between seventy-eight and ninety-seven months). We therefore exercise our discretion to correct the error. Accordingly, we VACATE the district court’s sentence and REMAND for resentencing.

*United States Court of Appeals*

FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

TEL. 504-310-7700  
600 S. MAESTRI PLACE  
NEW ORLEANS, LA 70130

November 17, 2017

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing  
or Rehearing En Banc

No. 16-11258 USA v. Kiandrick Onick  
USDC No. 4:16-CR-25-1

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Enclosed is a copy of the court's decision. The court has entered judgment under FED R. APP. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

FED R. APP. P. 39 through 41, and 5<sup>TH</sup> CIR. R.s 35, 39, and 41 govern costs, rehearings, and mandates. **5<sup>TH</sup> CIR. R.s 35 and 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following FED R. APP. P. 40 and 5<sup>TH</sup> CIR. R. 35 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

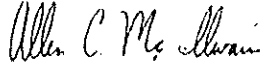
Direct Criminal Appeals. 5<sup>TH</sup> CIR. R. 41 provides that a motion for a stay of mandate under FED R. APP. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under FED R. APP. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari.** Additionally, you MUST confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

Sincerely,

LYLE W. CAYCE, Clerk

A handwritten signature in cursive script, appearing to read "Allen C. McIlwain".

By: \_\_\_\_\_  
Allen C. McIlwain, Deputy Clerk

Enclosure(s)

Mr. Christopher Allen Curtis  
Mr. James Wesley Hendrix  
Mr. Brian W. McKay

## APPENDIX E



# UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF TEXAS

Fort Worth Division

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

Case Number: 4:16-CR-00025-Y(1)

Frank L. Gatto, assistant U.S. attorney

KIANDRICK ONICK

Peter Michael Fleury, attorney for the defendant

On April 6, 2016, the defendant, Kiandrick Onick, entered a plea of guilty to count one of the one-count indictment. Accordingly, the defendant is adjudged guilty of such count, which involves the following offense:

<u>TITLE &amp; SECTION</u>	<u>NATURE OF OFFENSE</u>	<u>OFFENSE CONCLUDED</u>	<u>COUNT</u>
18 U.S.C. §§ 922(g)(1) and 924(a)(2)	Felon in Possession of Firearm	November 3, 2015	One

The defendant is sentenced as provided in pages two through three of this judgment. The sentence is imposed pursuant to Title 18, United States Code §3553(a), taking the guidelines issued by the United States Sentencing Commission pursuant to Title 28, United States Code § 994(a)(1), as advisory only.

The defendant shall pay immediately a special assessment of \$100.00 for count one of the one-count indictment.

The defendant shall notify the United States attorney for this district within thirty 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.

Sentence imposed August 11, 2016.

  
\_\_\_\_\_  
TERRY R. MEANS  
UNITED STATES DISTRICT JUDGE

Signed August 12, 2016.

### IMPRISONMENT

The defendant, Kiandrick Onick, is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of 32 months on count one of the one-count indictment. The sentence shall run concurrently to any sentence that may be imposed in the 371st Judicial District Court, Tarrant County, Texas, in case no. 1435301D.

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

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of three years on count one of the one-count indictment.

While on supervised release, in compliance with the standard conditions of supervision adopted by the United States Sentencing Commission, the defendant shall:

- (1) not leave the judicial district without the permission of the Court or probation officer;
- (2) report to the probation officer in a manner and frequency directed by the Court or probation officer;
- (3) answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- (4) support the defendant's dependents and meet other family responsibilities;
- (5) work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- (6) notify the probation officer within seventy-two (72) hours of any change in residence or employment;
- (7) refrain from excessive use of alcohol and not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
- (8) not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- (9) not associate with any persons engaged in criminal activity and not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- (10) permit a probation officer to visit the defendant at any time at home or elsewhere and permit confiscation of any contraband observed in plain view by the probation officer;
- (11) notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer;
- (12) 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; and
- (13) notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement, as directed by the probation officer.

In addition the defendant shall:

- not commit another federal, state, or local crime;
- not possess illegal controlled substances;
- not possess a firearm, destructive device, or other dangerous weapon;

cooperate in the collection of DNA as directed by the probation officer;

report in person to the probation office in the district to which the defendant is released within seventy-two (72) hours of release from the custody of the Bureau of Prisons;

refrain from any unlawful use of a controlled substance, submitting to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer; and

participate in a program approved by the probation office for treatment of narcotic or drug or alcohol dependency that will include testing for the detection of substance use, abstaining from the use of alcohol and all other intoxicants during and after completion of treatment; contribute to the costs of services rendered (copayment) at the rate of at least \$25 per month.

### FINE/RESTITUTION

The Court does not order a fine or costs of incarceration because the defendant does not have the financial resources or future earning capacity to pay a fine or costs of incarceration.

Restitution is not ordered because there is no victim other than society at large.

### 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 marshal