

BLD-011

October 15, 2020

**UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT**

C.A. No. 20-2023

UNITED STATES OF AMERICA

VS.

OMAR SIERRE FOLK, Appellant

(M.D. Pa. Crim. No. 1-11-cr-00292-001)

Present: AMBRO, SHWARTZ and PORTER, Circuit Judges

Submitted are:

- (1) By the Clerk for possible summary action under 3rd Cir. LAR 27.4 and Chapter 10.6 of the Court's Internal Operating Procedures;
- (2) Appellant's request for a certificate of appealability under 28 U.S.C. § 2253(c)(1); and
- (3) Appellant's supplemental request for a certificate of appealability in the above-captioned case.

Respectfully,

Clerk

ORDER

Appellant appeals from the order of the District Court (ECF No. 219) denying and dismissing motions that appellant filed at ECF Nos. 191, 209, 212, 215 and 216. Appellant's motion at ECF No. 209 in turn sought reconsideration of the District Court's order at ECF No. 208, which dismissed motions that appellant filed at ECF Nos. 196, 198, 203, 204, 205 and 206. In many of those documents, appellant sought to assert new claims under 28 U.S.C. § 2255.

To that extent, appellant's request for a certificate of appealability is denied because, following United States v. Folk, 954 F.3d 597 (3d Cir. 2020), jurists of reason

would not debate the dismissal of appellant's new claims as successive. See 28 U.S.C. § 2253(c)(2); Buck v. Davis, 137 S. Ct. 759, 777 (2017). That issue is not rendered debatable by either Magwood v. Patterson, 561 U.S. 320 (2010), which does not apply to appellant's amended judgment at ECF No. 181, or Banister v. Davis, 140 S. Ct. 1698 (2020), which does not apply to the motions at issue here. Appellant's new claims—including his claims based on Dean v. United States, 137 S. Ct. 1170 (2017), Gamble v. United States, 139 S. Ct. 1960 (2019), Rehaif v. United States, 139 S. Ct. 2191 (2019), and Holguin-Hernandez v. United States, 140 S. Ct. 762 (2020)—also do not qualify for authorization under 28 U.S.C. §§ 2244(b) and 2255(h), as we decided in part in denying appellant's § 2244 application at C.A. No. 20-1399.

To the extent that appellant might not require a certificate of appealability to challenge the District Court's denial of any of his other requests for relief, the District Court's ruling is affirmed. Among other things, any error in the District Court's failure to separately address appellant's filings at ECF Nos. 210 and 211 in connection with appellant's request for a status update at ECF No. 212 is harmless because the points discussed above apply equally to the claims set forth in those documents. Appellant also has not asserted any arguable grounds for relief from the terms regarding his fine in his amended judgment.

By the Court,

s/THOMAS L. AMBRO

Circuit Judge



Certified true copy and issued in lieu  
of a formal mandate on December 14, 2020

Teste: Patricia A. Rodriguez

Clerk, U.S. Court of Appeals for the Third Circuit

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA, : 1:11-cr-292  
: :  
V. : :  
: : Hon. John E. Jones III  
OMAR SIERRE FOLK, : :  
Defendant. : :

**ORDER**

**May 6, 2020**

Pending before the Court are the latest in a series of *pro se* Motions filed by Defendant Omar Sierre Folk. For the reasons that follow, the Motions shall be denied.<sup>1</sup>

In the motions docketed at entries numbered 191 and 209, Folk appears to contend that there is clerical error on the “Schedule of Payments” page of the Amended Judgment issued by this Court on March 5, 2018. (Doc. 181, p. 7). Folk contends that the Court incorrectly checked the box for “Special instructions regarding the payment of criminal monetary penalties” which provides instructions to the Bureau of Prisons as to the appropriate amounts to withdraw from Folk’s inmate trust fund account. To be sure, this box was not checked in error, as the same box was checked and the same instructions were provided in the original

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<sup>1</sup> The Court has done our best to discern the relief Folk is seeking within his filings, which are prolix, disjointed and replete with legal non-sequiturs.

judgment dated October 1, 2013. (Doc. 126). Thus, Folk's entreaties to the Court to have this box unchecked because it was a clerical error shall be denied.

In the motions docketed at entries numbered 215 and 216 Folk appears to be presenting claims for relief pursuant to 28 U.S.C. § 2255. Inasmuch as Folk has already litigated a prior 28 U.S.C. § 2255 Motion, he must first seek leave of the United States Court of Appeals for the Third Circuit to file a successive motion. It is of no moment that Folk contends his current motions "relate back" to his prior §2255 motion. He must seek leave of the appellate court to bring any new grounds for relief under §2255 before this Court. As such, these motions shall be dismissed without prejudice to Folk refiling them if he receives authorization to do so from the Third Circuit.

**NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

1. Defendant's motions docketed at 191 and 209 are **DENIED**.
2. Defendant's Motion for a Status Update (Doc. 212) is **DISMISSED** as **MOOT**.
3. Defendant's motions seeking relief pursuant to 28 U.S.C. § 2255 (Docs. 215 and 216) are **DISMISSED WITHOUT PREJUDICE** to Folk refiling such motion if he obtains authorization from the United States Court of Appeals for the Third Circuit to do so.

4. Along with this Order, the Clerk shall mail a copy of the docket sheet to the Defendant.

s/ John E. Jones III  
John E. Jones III  
United States District Judge

# UNITED STATES DISTRICT COURT

Middle District of Pennsylvania

UNITED STATES OF AMERICA

v.

OMAR SIERRE FOLK

Date of Original Judgment: 10/1/2013

(Or Date of Last Amended Judgment)

**Reason for Amendment:**

Correction of Sentence on Remand (18 U.S.C. 3742(f)(1) and (2))  
 Reduction of Sentence for Changed Circumstances (Fed. R. Crim. P. 35(b))  
 Correction of Sentence by Sentencing Court (Fed. R. Crim. P. 35(a))  
 Correction of Sentence for Clerical Mistake (Fed. R. Crim. P. 36)

) **AMENDED JUDGMENT IN A CRIMINAL CASE**  
)  
) Case Number: 1:11-CR-0292-01  
) USM Number: 70338-067  
) Heidi Freese, Esquire  
) Defendant's Attorney  
)  
)  Modification of Supervision Conditions (18 U.S.C. §§ 3563(c) or 3583(e))  
)  Modification of Imposed Term of Imprisonment for Extraordinary and  
Compelling Reasons (18 U.S.C. § 3582(c)(1))  
)  Modification of Imposed Term of Imprisonment for Retroactive Amendment(s)  
to the Sentencing Guidelines (18 U.S.C. § 3582(c)(2))  
)  Direct Motion to District Court Pursuant  28 U.S.C. § 2255 or  
 18 U.S.C. § 3559(c)(7)  
)  Modification of Restitution Order (18 U.S.C. § 3664)

**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) 1-4 of a Superseding Indictment after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21 USC § 841(a)(1)	Distribution and Possession with Intent to Distribute Cocaine & 280g and more of Cocaine Base	9/1/2011	-1ss
18 USC § 924(c)	Possession of a Firearm During and in Relation to a Drug Trafficking Offense	7/31/2010	-2ss-3ss-
18 USC § 922(g)(1)	Felon in Possession of a Firearm	9/1/2011	-4ss-

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

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

Count(s) \_\_\_\_\_ from orig indict and ss info.  is  are dismissed on the motion of the United States.

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

3/5/18

Date of Imposition of Judgment

s/John E. Jones III

Signature of Judge  
John E. Jones, III, United States District Judge

Name and Title of Judge

3/5/18

Date

DEFENDANT: OMAR SIERRE FOLK  
CASE NUMBER: 1:11-CR-0292-01

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## IMPRISONMENT

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

Two hundred and sixty four months (264). This term consists of terms of 204 months on Count 1 and 120 months on Count 4, to be served concurrently with each other, and 60 months on Count 3, to be served consecutively to all other counts. Count 2 is merged with Count 3 for sentencing.

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

That the Bureau of Prisons provide the defendant with substance abuse counseling and mental health treatment during the period of incarceration:

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

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

at \_\_\_\_\_  a.m.  p.m. on \_\_\_\_\_  
 as notified by the United States Marshal.

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

before 2 p.m. on \_\_\_\_\_  
 as notified by the United States Marshal.  
 as notified by the Probation or Pretrial Services Office.

## RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

at \_\_\_\_\_ with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: OMAR SIERRE FOLK  
CASE NUMBER: 1:11-CR-0292-01

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## SUPERVISED RELEASE

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

Five (5) years. This term consists of terms of 5 years on each of Counts 1 and 3, and 3 years on Count 4 to be served concurrently with each other.

## MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.  
 The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. (check if applicable)
4.  You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. (check if applicable)
5.  You must cooperate in the collection of DNA as directed by the probation officer. (check if applicable)
6.  You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. (check if applicable)
7.  You must participate in an approved program for domestic violence. (check if applicable)

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

DEFENDANT: OMAR SIERRE FOLK  
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## STANDARD CONDITIONS OF SUPERVISION

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

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

## U.S. Probation Office Use Only

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

Defendant's Signature

Date

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### ADDITIONAL SUPERVISED RELEASE TERMS

1. The defendant shall submit to one drug test within fifteen days of commencing supervision and at least two periodic drug tests thereafter for use of a controlled substance.
2. The defendant shall undergo a substance abuse evaluation and, if recommended, the defendant shall satisfactorily complete a program of outpatient or inpatient substance abuse treatment.
3. The defendant shall undergo a mental health evaluation and, if recommended, the defendant shall satisfactorily complete a program of outpatient or inpatient mental health treatment.
4. The defendant shall not incur new credit charges or open additional lines of credit without the approval of the probation officer unless the defendant is in compliance with the installment schedule for payment of restitution, fines, or special assessment.
5. The defendant shall provide the probation officer with access to any requested financial information.
6. The defendant shall apply ~~all~~ monies received from income tax refunds, lottery winnings, judgments, and/or other anticipated or unexpected financial gains to the outstanding court-ordered financial obligations.
7. The defendant shall cooperate in the collection of a DNA sample as directed by the probation officer, unless a sample was collected during imprisonment.

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## CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>JVTA Assessment</u>	<u>Fine</u> *	<u>Restitution</u>
<b>TOTALS</b>	\$ 300.00	\$ 0.00	\$ 1,500.00	\$ 0.00

- The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.
- The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

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

- Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_
- The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- The court determined that the defendant does not have the ability to pay interest, and it is ordered that:
  - the interest requirement is waived for  fine  restitution.
  - the interest requirement for the  fine  restitution is modified as follows:

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

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

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## 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 \$ 300.00 due immediately, balance due  
 not later than \_\_\_\_\_, or  
 in accordance with  C,  D,  E, or  F below; or

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

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

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

E  Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F  Special instructions regarding the payment of criminal monetary penalties:

During the term of imprisonment, the fine is payable every three months in an amount, after a telephone allowance, equal to 50 percent of the funds deposited into the defendant's inmate trust fund account. In the event the fine is not paid in full prior to the commencement of supervised release, the defendant shall, as a condition of supervised release, satisfy the amount due in monthly installments of no less than \$100.00, to commence thirty (30) days after release from confinement.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is 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.

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

Joint and Several.

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.