APPENDIX

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APPENDIX A

In the
United States Court of Appeals
For the Seventh Circuit

No. 20-2461

JAMAR E. PLUNKETT,

Petitioner-Appellant,

v.

DAN SPROUL,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Illinois.
No. 19-cv-00655 — **Nancy J. Rosenstengel**,
Chief Judge.

ARGUED SEPTEMBER 17, 2021 —
DECIDED OCTOBER 20, 2021

Before SYKES, *Chief Judge*, and FLAUM, and KIRSCH, *Circuit Judges*.

FLAUM, *Circuit Judge*. A grand jury indicted petitioner-appellant Jamar Plunkett on a charge of distributing crack cocaine. Plunkett pleaded guilty after the government established that his prior Illinois drug conviction subjected him to an enhanced statutory maximum sentence. Plunkett now appeals the district court's decision to deny his § 2241

collateral attack on his sentence. Plunkett, however, waived his appellate rights, subject only to limited exceptions not presently applicable. Given this waiver, we now dismiss his appeal.

I. Background

A. Underlying Criminal Case Proceedings

In January 2013, Plunkett sold crack cocaine to a confidential informant. A federal grand jury subsequently indicted Plunkett on one count of distributing cocaine base, a Schedule II controlled substance, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C). Convictions for offenses under § 841(b)(1)(C) carry a default statutory maximum sentence of twenty years' imprisonment. After Plunkett pleaded not guilty, the government filed an information under 21 U.S.C. § 851 notifying the district court that Plunkett had a 2008 Illinois felony conviction for unlawful delivery of cocaine in violation of 720 Ill. Comp. Stat. 570/401(d). The government asserted that this prior conviction qualified as a predicate "felony drug offense" under § 841(b)(1)(C) and thus subjected Plunkett to an increased statutory maximum prison term of thirty years for his federal drug offense.

Faced with a possible thirty-year prison term, Plunkett reached an agreement with the government to plead guilty in October 2013. In his plea agreement, Plunkett and the government agreed that he qualified as a career offender and that his advisory range under the U.S. Sentencing Guidelines was 188 to 235 months' imprisonment. The government further agreed to recommend a sentence at the low end of the sentencing range. In return, Plunkett

agreed to waive his rights to appeal or collaterally attack his conviction or sentence, with limited exceptions. Among these, Plunkett preserved his right to seek collateral review based on any subsequent change in the interpretation of the law declared retroactive by the Supreme Court or this Court that renders him actually innocent of the charges against him.

The district court accepted Plunkett's guilty plea. During the change-of-plea hearing, the court informed Plunkett multiple times that he faced a statutory maximum sentence of thirty years' imprisonment and engaged him in a lengthy colloquy regarding his understanding of his waiver of his appeal and collateral-attack rights.

The district court then held a sentencing hearing in January 2014. The court found that Plunkett qualified as a career offender and faced a statutory maximum sentence of thirty years' imprisonment. The court further found that the Guidelines recommended an advisory sentencing range of 188 to 235 months' imprisonment. Neither party objected to these findings. Consistent with the terms of the plea agreement, the government then recommended a low-end Guidelines sentence of 188 months. The district court, however, rejected the government's recommendation and ultimately sentenced Plunkett to 212 months in prison—two years above the Guidelines minimum—and six years of supervised release. The court also imposed a $500 fine and a $100 assessment.

B. Collateral Challenges

1. Section 2255 Motion

Plunkett did not appeal his conviction or sentence, but in January 2015 he filed a pro se motion in the district court to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255. In his motion, Plunkett argued that he received ineffective assistance of counsel because his lawyer did not correctly calculate his Guidelines sentencing range and did not appeal his sentence. He did not assert that the district court incorrectly classified him as a career offender or erroneously found that his prior Illinois felony drug conviction subjected him to an increased statutory maximum sentence under § 841(b)(1)(C).

The district court denied Plunkett's § 2255 motion, concluding that Plunkett's waiver of his appellate and collateral-attack rights foreclosed his claims, which lacked merit in any event. The court dismissed the motion with prejudice and did not issue a certificate of appealability. Plunkett filed a motion for reconsideration under Federal Rule of Civil Procedure 59(e), which the district court also denied.

2. Section 2241 Petition

In 2016, while Plunkett's § 2255 motion remained pending, the U.S. Supreme Court issued its opinion in *Mathis v. United States*, 136 S. Ct. 2243 (2016). That case reiterated that (1) the modified categorical approach applies only to divisible offenses, and (2) a state statute that lists alternative means, as opposed to elements, of committing the state offense defines a single, indivisible offense for the categorical analysis. *See* 136 S. Ct. at 2248, 2253, 2257. At the time,

Plunkett did not seek to supplement his pending § 2255 motion with any arguments based on *Mathis*.

In June 2019, two years after the denial of his § 2255 motion, Plunkett challenged the use of his 2008 Illinois drug conviction to increase his statutory maximum sentence for the first time. Plunkett filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2241 in the district court, asserting that his challenge fell within § 2255(e)'s "saving clause" exception that allows a prisoner to seek habeas relief under § 2241 when the remedy under § 2255 "is inadequate or ineffective to test the legality of his detention." *See* 28 U.S.C. § 2255(e). His petition asserted that after *Mathis* and our subsequent decision in *United States v. Elder*, 900 F.3d 491 (7th Cir. 2018), his 2008 Illinois conviction no longer qualified as a predicate offense; he further contended that because of this erroneous classification, his federal sentence was unlawfully enhanced. Specifically, he argued that, under *Mathis*, the statute underlying his state conviction—720 Ill. Comp. Stat. § 570/401—was categorically overbroad because it criminalized a broader range of conduct and substances than its federal counterpart. According to Plunkett, the erroneous application of the increased statutory maximum sentence caused him to suffer a miscarriage of justice because it resulted in an increase in his Guidelines sentencing range based on his career offender status.[1]

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[1] Specifically, Plunkett asserted that the increase in his statutory maximum sentence to thirty years based on his Illinois conviction resulted in an offense level of 34 and a criminal history category of VI, which together resulted in a Guidelines range of 262 to 327 months. Plunkett argued that without the enhanced

The district court denied Plunkett's § 2241 petition on preliminary review. The court interpreted Plunkett's argument that his prior Illinois drug offense should not qualify as a felony drug offense as a challenge to his "designation and sentence as a career offender." The court then explained that Plunkett's career-offender sentence was imposed under the advisory Sentencing Guidelines; therefore, our decision in *Hawkins v. United States*, 706 F.3d 820 (7th Cir.), *supplemented on denial of reh'g*, 724 F.3d 915 (7th Cir. 2013), which held that errors in calculating advisory Guidelines ranges are not cognizable on collateral review, precluded Plunkett's challenge. The district court further noted that even if Plunkett's prior Illinois convictions no longer pass muster after *Mathis*, he still had not demonstrated the requisite fundamental defect in his 212-month sentence because it did not exceed the nonenhanced statutory maximum of 240 months for his offense. The district court thus dismissed Plunkett's § 2241 petition with prejudice.

Plunkett again filed a motion for reconsideration. He asserted that the district court misinterpreted his petition as a challenge to his career-offender designation, when in fact he sought to challenge the use of his prior Illinois convictions as predicate offenses for the career-offender enhancement. The district court denied the motion. The court denied misunderstanding the nature of Plunkett's challenge

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statutory penalty, his offense level would have been 31, resulting in a Guidelines range of 188 to 235 months. With a further three-offense-level reduction for acceptance of responsibility, he asserted that his Guidelines range would have been 140 to 175 months.

and reiterated that it would not grant relief because Plunkett's final sentence fell within the 240-month statutory maximum even absent the enhancement. The court also explained that the Supreme Court's decision in *Brady v. United States*, 397 U.S. 742 (1970), foreclosed Plunkett's argument that the allegedly erroneous increase in the statutory maximum sentence distorted the plea negotiations and influenced his decision to plead guilty; the court noted that at the time he entered into the plea agreement, Plunkett agreed with the government's assessment that his Illinois drug conviction exposed him to a sentence ranging between 188 and 235 months. The district court concluded that because his sentence fell squarely within that range, he did not raise a viable habeas claim.

This appeal followed.

II. Discussion

Plunkett appeals the denial of his § 2241 petition, reasserting many of the arguments he raised before the district court. He contends that his collateral attack on his sentence falls within § 2255(e)'s "saving clause" exception that allows a prisoner to seek habeas relief under § 2241 when the remedy under § 2255 "is inadequate or ineffective to test the legality of his detention." *See* 28 U.S.C. § 2255(e). The government, in addition to responding to this argument, counters that Plunkett's waiver of his collateral-attack rights in his plea agreement precludes his § 2241 petition and requires dismissal of this appeal. "Generally speaking, appeal waivers are enforceable and preclude appellate review." *United States v. Desotell*, 929 F.3d 821, 826 (7th Cir. 2019)

(quoting *United States v. Worthen*, 842 F.3d 552, 554 (7th Cir. 2016)). Because we agree with the government that Plunkett's § 2241 challenge falls within the scope of his voluntary and knowing collateral-attack waiver, we do not reach the merits of his appeal.

A defendant may waive his right to challenge his sentence on collateral review through a plea agreement, assuming such waiver is knowing and voluntary. *See Dowell v. United States*, 694 F.3d 898, 901–02 (7th Cir. 2012); Fed. R. Crim. P. 11(b)(1)(N). We review de novo the enforceability of a collateral attack waiver in a plea agreement. *See Dowell*, 694 F.3d at 901. "[A] valid and enforceable waiver ... only precludes challenges that fall within its scope." *Garza v. Idaho*, 139 S. Ct. 738, 744 (2019) (second alteration in original) (citation omitted). "We generally enforce an appellate waiver if its terms are express and unambiguous and the record shows that it was knowing and voluntary." *United States v. Bridgewater*, 995 F.3d 591, 595 (7th Cir. 2021). In determining the scope of a waiver, "'[w]e interpret the terms of [a plea] agreement according to the parties' reasonable expectations' and construe any ambiguities in the light most favorable to [the petitioner]." *Dowell*, 694 F.3d at 902 (first alteration in original) (quoting *United States v. Quintero*, 618 F.3d 746, 751 (7th Cir. 2010)); *see also United States v. Galloway*, 917 F.3d 604, 606–07 (7th Cir. 2019) ("We interpret plea agreements—including appellate waivers contained within them—according to ordinary principles of contract law.").

A. Scope of Plunkett's Collateral-Attack Waiver

As described above, Plunkett's plea agreement contained a broad waiver of his right to seek collateral review of his conviction or sentence. Specifically, Plunkett acknowledged "that Title 18, Title 28, and other provisions of the United States Code afford every defendant limited rights to contest a conviction and/or sentence through appeal or collateral attack," but he agreed to "waive[] his right to contest any aspect of his conviction and sentence that could be contested under Title 18 or Title 28, or under any other provision of federal law," other than to appeal the reasonableness of his sentence. Title 28 governs collateral attacks brought under § 2241 and § 2255. Thus, by its terms, the waiver applies to Plunkett's challenge to his sentence.

Plunkett argues, however, that his petition falls outside the ambit of the collateral-attack waiver because the plea agreement preserved his right to challenge his sentence based on "any subsequent change in the interpretation of the law by the United States Supreme Court or the United States Court of Appeals for the Seventh Circuit that is declared retroactive by those Courts and that renders Defendant actually innocent of the charges covered herein." The parties do not dispute that Plunkett challenges his sentence based on intervening statutory decisions from the Supreme Court and this Court that apply retroactively.[2]

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[2] Our Circuit has not always taken a uniform approach to answering questions about *Mathis*'s retroactivity. *See Chazen v. Marske*, 938 F.3d 851, 861 (7th Cir. 2019) ("We have likewise

The determinative issue, therefore, is the meaning of the phrase "actually innocent of the charges covered herein." The government essentially contends that this phrase refers only to the underlying offense to which Plunkett pleaded guilty in the agreement.[3] If this definition applies, Plunkett's challenge does not fall within the exception to his collateral-attack waiver because he would remain guilty—that is, *not* actually innocent—of his federal drug offense, regardless of whether he prevails on his challenge to his sentence. Plunkett, on the other hand, argues that, when read in context, the phrase also refers to the applicable sentence enhancement.

We agree with the government's interpretation of the waiver's language. In interpreting plea agreements, we apply the ordinary principles of contract law and give unambiguous terms their plain meaning. *Galloway*, 917 F.3d at 607. "Charges"—and specifically "charges covered herein"—is one such term. Black's law dictionary defines a charge as "a formal accusation of an offense as a preliminary step

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suggested (without deciding) that *Mathis* is retroactive."); *see also Liscano v. Entzel*, 839 F. App'x 15, 16 (7th Cir. 2021) ("Our circuit's decisions about the retroactivity of *Mathis* seem to look in different directions."). Because we need not reach a decision on this issue to decide that Plunkett's relied-upon exception is inapplicable in this instance, we proceed, as the parties do, on the assumption that *Mathis* applies retroactively on collateral review.

[3] The government put forward the following definition of "charges" from Law.com: "the specific statement of what crime the party is accused (charged with) contained in the indictment or criminal complaint." *See Charge*, Law.com, https://dictionary.law.com/Default.aspx?typed=charge&type=1 (last visited Oct. 20, 2021).

to prosecution." *Charge*, Black's Law Dictionary (11th ed. 2019). This definition suggests that "charge" implies a connection to an offense, which would exclude a sentencing enhancement and which is in accord with common usage of the term.

Petitioner points to the government's use of the phrase "Charging Prior Offenses" to refer to the relevant prior drug offense in its filing titled "Information as to Sentencing" to suggest that the government itself refers to the sentencing enhancement as a "charge." While this argument is not entirely without merit, it is significantly undercut by the fact that this document has no operative effect other than to provide the sentencing court with information relevant to its sentencing decision. *See* 21 U.S.C. § 851. It does not add a charge to the indictment, nor does it indicate that the government will seek to prosecute Plunkett for any additional offense. As its opening sentence states, the document is merely "for use in enhancing any sentence rendered in this case …."

The plea agreement itself extinguishes any lingering doubt as to the meaning of "charges covered [t]herein." The only "charge[] covered [t]herein" is the charge for the distribution of cocaine base. The plea agreement never refers to the sentencing enhancement as a charge, and, in fact, language from another provision of the agreement demonstrates that it recognizes charges and sentencing enhancements as distinct. That provision states that if the Defendant violates any provision of the plea agreement, "the Government is not bound by the provisions herein and may request that the Court impose on the Defendant any penalty allowable by

law, including the filing of *additional charges or sentencing enhancement notices* ...." (emphasis added).

Given that the plea agreement refers to charges and sentencing enhancements as distinct concepts and given that the plain meaning of the term "charges" refers to charged offenses, we hold that a successful challenge to his sentence would not render Plunkett "actually innocent of the charges covered" in the plea agreement. Therefore, this appeal falls squarely into the category of appeals that Plunkett has waived his right to bring.

B. Plunkett's Waiver Was Knowing and Voluntary

Plunkett may nonetheless escape application of this waiver if it was not knowing and voluntary. In determining whether a waiver contained in a plea agreement was knowing and voluntary, "we must examine the language of the plea agreement itself and also look to the plea colloquy between the defendant and the judge." *United States v. Chapa*, 602 F.3d 865, 868 (7th Cir. 2010). A defendant's waiver is knowing and voluntary if he "understand[s] the choice confronting him and … understand[s] that choice is his to make." *United States v. Alcala*, 678 F.3d 574, 579 (7th Cir. 2012) (alterations in original) (quoting *United States ex rel. Williams v. DeRobertis*, 715 F.2d 1174, 1182–83 (7th Cir. 1983)); *see also United States v. Johnson*, 934 F.3d 716, 719 (7th Cir. 2019) (explaining that we consider circumstances surrounding the plea to "evaluat[e] whether the district court 'properly informed the defendant that the waiver may bar the right to appeal'" (quoting *United States v. Shah*, 665 F.3d 827, 837 (7th Cir.

2011))). "A written appellate waiver signed by the defendant will typically be voluntary and knowing, and thus enforceable through dismissal of a subsequent appeal." *Galloway*, 917 F.3d at 606.

Plunkett asserts that he could not have knowingly and voluntarily waived his right to collaterally attack his sentence under *Mathis* because he did not know the correct statutory maximum sentence when he pleaded guilty. We have long expressed the view, however, that plea-bargain appeal waivers involve risk:

> By binding oneself one assumes the risk of future changes in circumstances in light of which one's bargain may prove to have been a bad one. That is the risk inherent in all contracts; they limit the parties' ability to take advantage of what may happen over the period in which the contract is in effect.

United States v. Bownes, 405 F.3d 634, 636 (7th Cir. 2005). "That the risk materialized for [Plunkett] does not trump the knowing and voluntary nature of his plea and waiver when he accepted the [g]overnment's deal." *Alcala*, 678 F.3d at 580.

Plunkett argues that our longstanding rule does not apply to challenges, like his, based on intervening retroactive decisions construing the statutory sentence applicable at the time the defendant pleaded guilty. Here, Plunkett draws too fine a distinction. "We have consistently rejected arguments that an appeal waiver is invalid because the defendant did not anticipate subsequent legal developments." *United States v. McGraw*, 571 F.3d 624, 631 (7th Cir. 2009). "[T]here is abundant case law that appeal waivers ...

are effective even if the law changes in favor of the defendant after sentencing," even if those changes are "unforeseen legal changes" that bring about "a 'sea change' in the law." *Bownes*, 405 F.3d at 636–37; *see also United States v. Vela*, 740 F.3d 1150, 1151 (7th Cir. 2014) (holding that a subsequent change in the law does not render an appeal waiver involuntary). "The point of an appeal waiver, after all, is to prospectively surrender one's right to appeal, no matter how obvious or compelling the basis for an appeal may later turn out to be." *United States v. Smith*, 759 F.3d 702, 707 (7th Cir. 2014); *see also Oliver v. United States*, 951 F.3d 841, 845 (7th Cir. 2020) ("[O]ne major purpose of an express waiver is to account in advance for unpredicted future developments in the law."). As is the case with all contracts, then, parties to plea agreements accept the risk that future circumstances will change in ways that, had those circumstances existed at the time of the bargain, they may not have agreed to so bind themselves. But bind himself Plunkett did. And, per this Court's precedent, a subsequent change in the law regarding the statutory maximum sentence applicable at the time he struck his deal does not render his waiver unknowing or involuntary.

The record here otherwise reveals that Plunkett knowingly and voluntarily waived his right to collaterally challenge his conviction and sentence. In addition to signing a written waiver, which is presumed to be enforceable, *see Galloway*, 917 F.3d at 606, Plunkett also attested in his plea colloquy—to which we lend "particular credence," *Alcala*, 678 F.3d at 578—to the fact that he made the waiver knowingly

and voluntarily. And there is simply nothing else in the record to suggest otherwise.

III. Conclusion

Because Plunkett's plea agreement contained a valid waiver of his right to collaterally attack his sentence, this appeal is DISMISSED.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS

JAMAR E. PLUNKETT,)
Petitioner,)
vs.) Case No. 19-cv-655-NJR
WILLIAM TRUE,)
Respondent.)

MEMORANDUM AND ORDER

ROSENSTENGEL, Chief Judge:

This matter is before the Court on Petitioner Jamar E. Plunkett's Motion to Reconsider Judgment, brought under Federal Rule of Civil Procedure 59(e). (Doc. 8). He challenges the September 19, 2019, dismissal of his Habeas Corpus Petition on preliminary review. (Doc. 4). Plunkett's motion was timely filed under Rule 59(e).

Plunkett was convicted following a guilty plea in this District and was sentenced in 2013 to a 212-month prison term. *United States v. Plunkett*, Case No. 13-cr-30003-MJR (S.D. Ill.) ("criminal case"). He premised his habeas corpus claim on *Mathis v. United States*, -- U.S. --, 136 S. Ct. 2243 (2016), arguing that after *Mathis*, his earlier Illinois state drug conviction no longer qualifies as a predicate crime to enhance his federal sentence. This Court dismissed his Petition, concluding that Plunkett's challenge was precluded by binding precedent set forth in *Hawkins v. United States*, 706 F.3d 820 (7th Cir. 2013), supplemented on

denial of rehearing, 724 F.3d 915, 916 (7th Cir. 2013), because his career-offender sentence was imposed pursuant to the advisory Sentencing Guidelines and did not exceed the non-enhanced statutory maximum of 20 years.

A motion under Rule 59(e) may only be granted if the movant shows there was a manifest error of law or fact or presents newly discovered evidence that could not have been discovered previously. *See*, *e.g.*, *Sigsworth v. City of Aurora*, 487 F.3d 506, 511–12 (7th Cir. 2007); *Harrington v. City of Chicago*, 433 F.3d 542 (7th Cir. 2006) (citing *Bordelon v. Chicago Sch. Reform Bd. of Trs.*, 233 F.3d 524, 529 (7th Cir. 2000)). Plunkett's motion fails to demonstrate any legal or factual error, and presents no grounds for alteration or amendment of the Judgment in this case.

Plunkett argues that the Court misconstrued or misunderstood his Petition as attacking his career-offender designation when in fact he was mounting "an outright attack on the prior Illinois convictions that were employed to raise his statutory sentencing range." (Doc. 8, p. 1). Before Plunkett pled guilty, the Government filed a Section 851 notice stating that Plunkett would be subject to an enhanced statutory penalty under 21 U.S.C. § 841(b(1)(C) based on his 2008 state drug conviction. (Doc. 8, pp. 1–2; Doc. 23 in criminal case); *see* 21 U.S.C. § 851. Plunkett asserts that his Petition challenged the erroneous enhancement of his statutory maximum from 20 years to 30 years based on the prior state offense, which "inherently" raised his career offender Guideline level from 31 to 34. (Doc. 8, p. 3). He states the error "infected his entire plea negotiation" and without that mistake, he "would not have entered into his plea

agreement." *Id.* He insists that he did not intend to challenge his career offender designation, which would be "folly" because even without the Illinois drug convictions, he still had two or more prior "crimes of violence." (Doc. 8, p. 4).

Plunkett's Petition did argue that the Section 851 notice improperly increased his statutory maximum to 30 years and thus influenced the career offender Guidelines — which raised his offense level to 34 and criminal history category to VI, resulting in a career offender Guideline range of 262–327 months. Absent the 851 enhancement, he claims, his offense level would have been 31 with a Guideline range of 188–235 months, further reduced to 140–175 months with his 3-point reduction for acceptance of responsibility. (Doc. 1, pp. 28–29).[1]

The Court understood the nature of Plunkett's challenge to the enhancement of the statutory maximum sentence he faced. But that was only part of the picture and relief is not warranted on that basis. Plunkett's final sentence was well within the 20-year maximum dictated by 21 U.S.C. § 841(b)(1)(C) *before* any enhancement was applied. *Hawkins* requires the Court to examine both the Guidelines range and the applicable statutory range, and in light of that

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[1] The Presentence Report (PSR) in Plunkett's criminal case reflects that in his plea agreement, the parties agreed that his offense level began at 34 under the career offender Guideline in § 4B1.1(a), and was reduced by 3 points for acceptance of responsibility to a final level of 31. (Doc. 36, p. 3, in criminal case). His criminal history category was VI with or without the career offender designation. These calculations and the corresponding advisory range of 188–235 months are also set forth in the PSR at Doc. 36, pp. 6–18 & 25, in the criminal case.

precedent, Plunkett did not raise a viable habeas claim. His 212-month sentence still fell under the statutory 20-year limit, even though it may have been influenced by an advisory Guideline calculation that he argues was too high, or by the 30-year enhanced maximum.

Plunkett's argument that the allegedly improper increase in the statutory maximum from 20 to 30 years wrongfully infected the plea negotiations and influenced his decision to plead guilty, is without merit. That theory is foreclosed by *Brady v. United States*, 397 U.S. 742 (1970). In *Brady*, the Supreme Court stated that "a voluntary plea of guilty intelligently made in the light of the then applicable law does not become vulnerable because later judicial decisions indicate that the plea rested on a faulty premise." *Id.* at 757 (guilty plea was valid even though later change in law meant that defendant would not have faced the death penalty as believed when he pled). Further, a defendant's mistake about his potential sentence does not invalidate a guilty plea. *See United States v. Redmond*, 667 F.3d 863, 872 (7th Cir. 2012); *United States v. Bowlin*, 534 F.3d 654, 660 (7th Cir. 2008). The plea agreement demonstrates that Plunkett agreed at the time with the Government's assessment that his Illinois drug conviction exposed him to a sentence of 188–235 months under Section 4B1.1(a) of the career offender Guidelines, and he admits in his motion that a challenge to his career offender status would have been futile. His 212-month sentence fell right in the middle of that advisory range.

Interestingly, while Plunkett's Rule 59(e) motion asserts that he would not have pled guilty if he had

known the 30-year maximum sentence was not applicable to him, he never made this statement in the Petition. A Rule 59(e) motion is not an appropriate vehicle to present arguments that could have been presented before the challenged order or judgment was entered. *Sigsworth v. City of Aurora*, 487 F.3d 506, 512 (7th Cir. 2007). This tardy assertion is belied by the fact that Plunkett's plea deal still avoided the risk of the maximum 20-year (240-month) sentence he would have faced if the statutory enhancement had not applied. And even if Plunkett had included this claim, the Court's ruling would be the same in light of the above precedent.

Upon review of the record, the Court remains persuaded that its dismissal of the Habeas Petition with prejudice was correct. Therefore, Plunkett's Motion to Reconsider Judgment (Doc. 8) is **DENIED**.

Plunkett's filing of the Rule 59(e) motion (Doc. 8) suspended the deadline for him to appeal the dismissal of his case. Therefore, if he wishes to appeal the dismissal of his Habeas Petition, his notice of appeal must now be filed with this Court within 60 days of the date of ***this*** Order. FED. R. APP. P. 4(a)(1)(B) and 4(a)(4)(A). A motion for leave to appeal *in forma pauperis* ("IFP") must set forth the issues Petitioner plans to present on appeal. *See* FED. R. APP. P. 24(a)(1)(C). If Petitioner does choose to appeal and is allowed to proceed IFP, he will be liable for a portion of the $505.00 appellate filing fee (the amount to be determined based on his prison trust fund account records for the past six months) irrespective of the outcome of the appeal. *See* FED. R. APP. P. 3(e); 28 U.S.C. § 1915(e)(2); *Ammons v. Gerlinger*, 547 F.3d 724, 725–26 (7th Cir. 2008); *Sloan v. Lesza*, 181 F.3d

857, 858–59 (7th Cir. 1999); *Lucien v. Jockisch*, 133 F.3d 464, 467 (7th Cir. 1998). It is not necessary for Petitioner to obtain a certificate of appealability from this disposition of his Section 2241 Petition. *Walker v. O'Brien*, 216 F.3d 626, 638 (7th Cir. 2000).

IT IS SO ORDERED.

DATED: June 22, 2020

NANCY J. ROSENSTENGEL
Chief U.S. District Judge

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS

JAMAR E. PLUNKETT,)
Petitioner,)
vs.) Case No. 19-cv-655-NJR
WILLIAM TRUE,)
Respondent.)

MEMORANDUM AND ORDER

ROSENSTENGEL, Chief Judge:

Petitioner Jamar E. Plunkett, an inmate of the Federal Bureau of Prisons ("BOP") currently incarcerated at U.S. Penitentiary Marion ("USP Marion"), brings this habeas corpus action pursuant to 28 U.S.C. § 2241 in order to challenge his enhanced sentence as a career offender in *United States v. Plunkett*, Case No. 13-cv-30003-MJR (S.D. Ill.) ("Criminal Case") based on his prior drug conviction in Illinois. (Doc. 1). In support of his Petition, he relies on the Supreme Court's decision in *Mathis v. United States*, -- U.S. --, 136 S.Ct. 2243 (2016). He argues that, in light of *Mathis*, he should not have been subject to the career offender enhancement under the United States Sentencing Guidelines. Plunkett seeks a new sentence. (*Id.* at p. 32).

This matter is now before the Court for preliminary review of the Section 2241 Petition. Rule 4 of the Federal Rules Governing Section 2254 Cases in United States District Courts provides that upon

preliminary consideration by the district judge, "[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition and direct the clerk to notify the petitioner." Rule 1(b) gives this Court the authority to apply the rules to other habeas corpus cases.

Background

In 2013, Plunkett pled guilty to distributing crack cocaine in violation of 21 U.S.C. § 841(a)(1). (Doc. 32, Criminal Case). He was sentenced as a career offender (*see* U.S.S.G. §4B1.1) to 212 months' imprisonment. (Doc. 47, Criminal Case). Plunkett qualified as a career offender based on a prior conviction of possession of a controlled substance with the intent to distribute which qualified as a controlled substance offense under U.S.S.G. §4B1.1. Plunkett agreed in his plea agreement that he qualified as a career offender. (Doc. 33, Criminal Case). The plea agreement contained a waiver of the right to bring an appeal and collateral attack of Plunkett' s conviction and sentence, except as to any subsequent change in the interpretation of the law that is declared retroactive by the courts and renders Defendant actually innocent of the charges and appeals based on Sentencing Guidelines amendments that are made retroactive. (*Id.*). Plunkett did not appeal his conviction or sentence.

Plunkett filed a motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255, arguing that his counsel was ineffective for failing to object to his base offense level of 34 and for failing to file a direct appeal. *See Plunkett v. United States*, Case

No. 15-cv-81-MJR, Doc. 38 ("Section 2255 Petition"). Plunkett later amended his petition to add an argument based on the United States Supreme Court's decision in *Johnson v. United States*, 135 S.Ct. 2551 (2015). (Doc. 38, Section 2255 Petition). The petition was dismissed with prejudice on June 16, 2017 after the District Court determined that Plunkett's claims were foreclosed by his appeal waiver. (*Id.*). To the extent he added claims pursuant to *Johnson*, those claims were foreclosed by the Supreme Court's decision in *Beckles v. United States*, 137 S.Ct. 866 (2017), which held that the guidelines were not subject to vagueness challenges. (Doc. 38, p. 11, Section 2255 Petition). The instant Section 2241 Petition followed.

The Petition

Plunkett relies on the Supreme Court's decision in *Mathis* to challenge his designation and sentence as a career offender. He argues that his prior Illinois drug offense should not qualify as a felony drug offense because his prior conviction criminalizes a broader range of conduct than its federal counterpart, namely that Illinois' definition of "cocaine" is broader than the federal definition. (Doc. 1, pp. 19–29). He cites to the Seventh Circuit decision in *United States v. Elder*, 900 F.3d 491 (7th Cir. 2018) and the Southern District of Indiana's decision in *Caffie v. Krueger*, Case No. 17-cv-487-WTL-DLP, Doc. 41 (S.D. Ind. Jan. 25, 2019) to support his position. Plunkett's career offender guideline range was 188 to 235 months. (Doc. 48, Criminal Case). Plunkett argues that his guideline range would be as low as 140–175 months without the career offender enhancement and with the reduction for his acceptance of responsibility. (Doc. 1, pp. 28–

29). Plunkett's offense carried a statutory maximum penalty of not more than 20 years without the enhancement. *See* 21 U.S.C. 841(b)(1)(C). With the enhancement, the statutory maximum was not more than 30 years. *Id.*

Analysis

Under limited circumstances, a prisoner may challenge his federal conviction or sentence pursuant to 28 U.S.C. § 2241. Section 2255(e) contains a "savings clause" which authorizes a federal prisoner to file a § 2241 petition where the remedy under § 2255 is "inadequate or ineffective to test the legality of his detention." "A procedure for postconviction relief can fairly be termed inadequate when it is so configured as to deny a convicted defendant any opportunity for judicial rectification of so fundamental a defect in his conviction as having been imprisoned for a nonexistent offense." *In re Davenport*, 147 F.3d 605, 611 (7th Cir. 1998). Following *Davenport*, a petitioner must satisfy three conditions in order to trigger the savings clause: (1) he must demonstrate that he relies on a new statutory interpretation case and not a constitutional case; (2) he must demonstrate that he relies on a decision that he could not have invoked in his first § 2255 motion and that case must apply retroactively; and (3) he must demonstrate that there has been a "fundamental defect" in his conviction or sentence that is grave enough to be deemed a miscarriage of justice. *See Brown v. Caraway*, 719 F.3d 583, 586 (7th Cir. 2013); *Brown v. Rios*, 696 F3d 638, 640 (7th Cir. 2012).

Some errors can be raised on direct appeal, but not in a collateral attack pursuant to Sections 2255 or

2241. A claim that a defendant was erroneously treated as a career offender under the advisory Sentencing Guidelines is one such claim. As the Seventh Circuit has noted, "[W]e held in *Hawkins* that the error in calculating the Guidelines range did not constitute a miscarriage of justice for [Section] 2255 purposes given the advisory nature of the Guidelines and the district court's determination that the sentence was appropriate and that it did not exceed the statutory maximum.". *United States v. Coleman*, 763 F.3d 706, 708–09 (7th Cir. 2014); *see also Hawkins v. United States*, 706 F.3d 820 (7th Cir. 2013), supplemented on denial of rehearing, 724 F.3d 915 (7th Cir. 2013). More recently, the Seventh Circuit reiterated that the Sentencing Guidelines have been advisory ever since the Supreme Court decided *United States v. Booker*, 543 U.S. 220 (2005). *Perry v. United States*, 877 F.3d 751 (7th Cir. 2017).

The Guideline enhancement and sentencing range that applied to Plunkett was advisory, not mandatory, because he was sentenced in 2014, well after the *Booker* decision. *See United States v. Plunkett*, Case No. 13-cr-30003-MJR, Doc. 47 (S.D. Ill. Jan. 24, 2014) ("Criminal Case"). Plunkett received a sentence well within the statutory maximum as he received a sentence of 212 months and the non-enhanced statutory maximum was 20 years. *See* 21 U.S.C. §841(b)(1)(C); *see also* Criminal Case, Doc. 47, p. 2. Thus, Plunkett cannot demonstrate a miscarriage of justice so as to permit a Section 2241 petition. The savings clause affords Plunkett no relief.

The Court notes Plunkett's citation to *United States v. Elder*, 900 F.3d 491 (7th Cir. 2018) in support of his Petition. In *Elder*, the Seventh Circuit used the

framework of *Mathis* (which refined the rule of *Taylor v. United States*, 495 U.S. 575 (1990)) to analyze 21 U.S.C. § 841(b)(1)(A)'s mechanism to enhance the mandatory minimum sentence of drug trafficking offenders with prior "felony drug offenses" as defined by the United States Code. *Elder*, 900 F.3d at 495–96. After applying the categorical approach of *Taylor* and *Mathis* to the Arizona statute at issue in the case, the *Elder* panel concluded that the Arizona statute criminalized the possession of more substances than those contained in the definition of "felony drug offense" at 21 U.S.C. § 802(44). *Id.* at 501–03. The Court finds, however, that the analysis and conclusion of *Elder* is distinguishable from this case—*Elder* was not decided in the context of the Guidelines, nor does it discuss or implicate the rule in *Hawkins* in any way. *Id.* at pp. 493–504. Even if the Court were to assume that Plunkett's prior Illinois convictions no longer pass muster under the categorical approach employed in *Mathis* and *Elder*, *Hawkins* would still dictate that there was no "fundamental defect" sufficient to meet Section 2255(e)'s savings clause because his sentence was imposed pursuant to the advisory Guidelines, and it was within the statutory range for his offense. Further, the Southern District of Indiana's decision in *Caffie* is not binding on this Court.

In short, there is no meaningful way to distinguish *Hawkins* from this case. The issue in *Hawkins* was the same as the issue raised here by Plunkett: the use of a prior conviction that would allegedly no longer qualify as a predicate for a Guidelines enhancement under current law. In its supplemental opinion on denial of rehearing in *Hawkins*, the Seventh Circuit summarized its holding: "an error in calculating a

defendant's guidelines sentencing range does not justify postconviction relief unless the defendant had . . . been sentenced in the pre-*Booker* era, when the guidelines were mandatory rather than merely advisory." *Hawkins*, 724 F.3d at 916 (internal citations omitted). *Hawkins* remains binding precedent in this Circuit, and thus Plunkett's Petition must be dismissed.

Disposition

For these reasons, Plunkett's Petition for writ of habeas corpus under 28 U.S.C. § 2241 (Doc. 1) is **DENIED**. This action is **DISMISSED with prejudice**. The Clerk of Court is **DIRECTED** to enter judgment accordingly.

If Plunkett wishes to appeal the dismissal of this action, his notice of appeal must be filed with this Court within 60 days of the entry of judgment. FED. R. APP. P. 4(a)(1(A). A motion for leave to appeal *in forma pauperis* ("IFP") must set forth the issues Plunkett plans to present on appeal. *See* FED. R. APP. P. 24(a)(1)(C). If Plunkett does choose to appeal and is allowed to proceed IFP, he will be liable for a portion of the $505.00 appellate filing fee (the amount to be determined based on his prison trust fund account records for the past six months) irrespective of the outcome of the appeal. *See* FED. R. APP. P. 3(e); 28 U.S.C. § 1915(e)(2); *Ammons v. Gerlinger*, 547 F.3d 724, 725–26 (7th Cir. 2008); *Sloan v. Lesza*, 181 F.3d 857, 858–59 (7th Cir. 1999); *Lucien v. Jockisch*, 133 F.3d 464, 467 (7th Cir. 1998). A proper and timely motion filed pursuant to Federal Rule of Civil Procedure 59(e) may toll the 60-day appeal deadline. FED. R. APP. P. 4(a)(4). A Rule 59(e) motion must be

filed no more than twenty-eight (28) days after the entry of the judgment, and this 28-day deadline cannot be extended. Other motions, including a Rule 60 motion for relief from a final judgment, do not toll the deadline for an appeal. It is not necessary for Plunkett to obtain a certificate of appealability from this disposition of his Section 2241 Petition. *Walker v. O'Brien*, 216 F.3d 626, 638 (7th Cir. 2000).

IT IS SO ORDERED.

DATED: 9/19/2019

NANCY J. ROSENSTENGEL
Chief U.S. District Judge

APPENDIX D

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

February 8, 2022

Before

DIANE S. SYKES, *Chief Judge*

JOEL M. FLAUM, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 20-2461

JAMAR E. PLUNKETT, *Petitioner-Appellant*,	Appeal from the United States District Court for the Southern District of Illinois.
v.	No. 3:19-cv-00655
DAN SPROUL, *Respondent-Appellee*.	Nancy J. Rosenstengel, *Chief Judge*.

O R D E R

On December 6, 2021, petitioner-appellant filed a petition for *en banc* rehearing in connection with the above-referenced case. On January 24, 2022, an Answer was filed by the respondent-appellee to the petition for rehearing *en banc*. No judge in active service has requested a vote on the petition for rehearing *en banc*, and all judges on the original panel have voted to deny the petition for rehearing. The petition for rehearing is therefore DENIED.

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA	)	**CRIMINAL NO. 13-CR-30003-~~GPM~~ WDS**
Plaintiff,	)	
vs.	)	
JAMAR PLUNKETT,	)	
Defendant.	)	

PLEA AGREEMENT

The attorney for the Government and the attorney for the Defendant have engaged in discussions and have reached an agreement pursuant to Federal Rule of Criminal Procedure 11. As a result of the Plea Agreement, the Defendant intends to plead guilty in this case.

I.

1. By pleading guilty, the Defendant fully understands that Defendant is waiving the following rights: the right to plead not guilty to the charges; the right to be tried by a jury in a public and speedy trial; the right to file pretrial motions, including motions to suppress or exclude evidence; the right at such trial to a presumption of innocence; the right to require the Government to prove the elements of the offenses charged against the Defendant beyond a reasonable doubt; the right not to testify; the right not to present any evidence; the right to be protected from compelled self-incrimination; the right at trial to confront and

cross-examine adverse witnesses; the right to testify and present evidence; and the right to compel the attendance of witnesses.

2. The Defendant fully understands that the Defendant has the right to be represented by counsel, and, if necessary, to have the Court appoint counsel at trial and at every other stage of the proceeding. The Defendant's counsel has explained these rights and the consequences of the waiver of these rights. The Defendant fully understands that, as a result of the guilty plea, no trial will occur and that the only action remaining to be taken in this case is the imposition of the sentence.

3. The Defendant agrees that all agreements between the parties are written and that no oral promises, inducements, representations, or threats were made to induce Defendant to enter into the Plea Agreement and Stipulation of Facts.

4. It is further understood that the Plea Agreement is limited to the Southern District of Illinois and cannot bind other federal, state or local prosecuting authorities. It is further understood that the Plea Agreement does not prohibit the United States, any agency thereof, or any third party from initiating or prosecuting any civil proceedings directly or indirectly involving Defendant.

5. Defendant understands that pursuant to Title 18, United States Code, Section 3013, the Court will assess a "Special Assessment" of $100 per felony count. Defendant agrees that the full amount of the special assessment will be paid prior to or at the time of sentencing.

6. Defendant understands that the Court will impose a term of "supervised release" to follow incarceration. *See* 18 U.S.C. § 3583; U.S.S.G. § 5D1.1.

7. Defendant understands that the Court may impose a fine, costs of incarceration, and costs of supervision. The estimated costs of such incarceration or community confinement or supervision, pursuant to an advisory notice from the Administrative Office of the United States Courts pertaining to the fiscal year 2011, are, for imprisonment: $2,407.78 per month; for community confinement: $2,180.27 per month; and for supervision: $286.11 per month. The Defendant will cooperate fully with the United States Probation Office in its collection of information and preparation of the Presentence Report. Said cooperation will include signing all releases as requested. The Defendant agrees that any Probation Officer may share any and all financial information with the United States Attorney's Office and the Defendant waives any rights Defendant may have under the Right to Financial Privacy Act. The Defendant agrees to make complete financial disclosure by truthfully filling out, at the request of the United States Attorney's Office, a Financial Statement (OMB-500).

8. Defendant understands that Defendant is pleading guilty to a felony punishable by a term of imprisonment exceeding one year. Therefore, no matter what sentence the Court imposes (whether probation or any term of imprisonment), Defendant will be forbidden by federal firearms laws from possessing any type of firearm in Defendant's lifetime, unless Defendant obtains relief pursuant to 18 U.S.C. § 925 or other appropriate federal statute.

9. The Defendant understands and agrees that if Defendant commits any offense in violation of federal, state, or local law, or violates any condition of release, or violates any term or condition of the Plea Agreement, the Government is not bound by the provisions herein and may request that the Court impose on the Defendant any penalty allowable by law, including the filing of additional charges or sentencing enhancement notices, in addition to any sanctions that may be imposed for violation of the Court's order setting the conditions of release. No action taken or recommendation made by the Government pursuant to this paragraph shall be grounds for the Defendant to withdraw the plea of guilty.

10. The Defendant has read the Plea Agreement and has discussed it with defense counsel, understands it, and agrees to be bound by it.

II.

1. The Defendant will enter a plea of guilty to the indictment, which charges violation of the following statute, which carries the following penalties:

Count	**Statute**	**Charge**	**Statutory Penalty**
1	21 U.S.C. Section 841(a)(1)	Distribution of cocaine base	NMT 30 years' incarceration NMT $2 million fine NLT 6 years supervised release $100 mandatory special assessment fee

2. The Government and the Defendant agree that the following constitute the essential elements of the offenses, and Defendant admits that Defendant's conduct violated these essential elements of the offense:

FIRST: That the Defendant knowingly and intentionally distributed cocaine base, in the form commonly known as "crack" cocaine, a controlled substance, on the date stated in Count 1 of the Indictment; and

SECOND: That the Defendant knew the substance was a controlled substance.

3. The Government and Defendant submit that under the Sentencing Guidelines, after all factors have been considered, Defendant will have an Offense Level of 31, a Criminal History Category of VI, a sentencing range of 188–235 months, and a fine range of $15,000 to $150,000. The Government and Defendant agree that these calculations of Offense Level and Criminal History are not binding on the Court, and that the Court ultimately will determine the Guideline range after receiving the Presentence Report and giving both parties the opportunity to comment thereon. The Defendant expressly recognizes that, regardless of the Guideline range found or the sentence imposed by the Court, Defendant will not be permitted to withdraw Defendant's plea of guilty. The Government agrees to recommend a sentence and fine at the low end of the range ultimately found by the Court. The Government and the Defendant reserve the right to address the sentencing factors set forth in 18 U.S.C.

§ 3553(a), but agree not to seek a sentence outside the applicable Guideline range. The agreement by the parties to not seek a variance from the Guidelines is not binding upon the Court or the United States Probation Office, and the Court may impose any sentence authorized by law. In addition, the Defendant recognizes that the guideline calculation calculated by the parties is not binding on the court. The Government specifically reserves the right to argue for, present testimony, or otherwise support the Probation Office's or the Court's findings as to Offense Level and Criminal History Category (which may be in excess of the calculations set forth herein by the Defendant and the Government). The Defendant understands that the Sentencing Guidelines are advisory only and that the Court has the discretion to sentence the Defendant anywhere up to the statutory maximum sentence after consideration of the Sentencing Guidelines and the factors set forth in 18 U.S.C. § 3553(a), including the nature and circumstances of the offense and the criminal history and characteristics of the Defendant.

4. Defendant and the Government agree that the Base Offense Level in this case is 34 pursuant to U.S.S.G. § 2D1.

5. Defendant and the Government agree that no victim-related adjustments apply to this offense. *See* U.S.S.G. § 3.A.

6. Defendant and the Government agree that his role in the offense was such that his offense level should be neither increased (under 3B1.1) nor decreased (under 3B1.2).

7. Defendant and the Government agree that Defendant has not obstructed justice in this case and therefore, pursuant to U.S.S.G. § 3C1.1, the Defendant's base offense level should not be increased.

8. Defendant and the Government agree that Defendant has voluntarily demonstrated a recognition and affirmative acceptance of personal responsibility for this criminal conduct, and the Government will recommend a reduction of three (3) Levels, reducing the Offense Level from 34 to Offense Level 31. *See* U.S.S.G. § 3E1.1. A reduction for acceptance of responsibility is dependent on the Defendant not committing any acts or taking any position prior to sentencing inconsistent with acceptance of responsibility, including falsely denying relevant conduct or committing any acts constituting obstruction of justice.

9. Defendant and the Government submit that it appears that Defendant has amassed twenty-nine (29) Criminal History points and that, therefore, the Sentencing Guideline Criminal History Category is VI. Additionally, the Government and Defendant also agree that six of the below convictions, Aggravated Fleeing (Case No. 01-CF-3005), Aggravated Unlawful Use of a Weapon (Case No. 02-CF-720), Domestic Battery (Case No. 04-CF-3514), Domestic Battery (Case No. 05-CF-1591), Aggravated Fleeing (Case No. 06-CF-1469), and Aggravated Fleeing (Case No. 07-CF-1362) qualify as crimes of violence under U.S.S.G. § 4B1.1, and the Government and Defendant agree that one of the below convictions, Possession of a Controlled Substance with the Intent to Distribute (Case No. 08-CF-1135), qualifies as a controlled

substance offense under U.S.S.G. § 4B1.1. Therefore, the Government and Defendant agree that Defendant qualifies as a career offender with a Criminal History Category of VI. The Government and Defendant also agree that one of the below convictions, Possession of a Controlled Substance with the Intent to Distribute (Case No. 08-CF-1135), qualifies as a prior conviction for a felony drug offense that has become final under 21 U.S.C. § 841. Therefore, the Government and Defendant agree that Defendant faces a maximum term of 30 years' imprisonment. The Defendant and the Government arrived at this result based upon the following information:

DATE	**OFFENSE & CASE NO.**	**DISPO-SITION**	**GUIDE-LINE**	**SCORE**
01/03/13	On parole at time of instant offense (Case No. 08-CF-1135)		§ 4A1.1	2
06/13/08	Poss. Contr. Subst. with Intent to Distrib. (Case No. 08-CF-1135)	Guilty, Sentenced to 3 years' imprison-ment	§ 4A1.1	3

10/25/07	Aggravated Fleeing (Case No. 07-CF-1362)	Guilty, Sentenced to 2 years' imprison-ment	§ 4A1.1	3
10/25/07	Poss. Contr. Subst. (Case No. 07-CF-258)	Guilty, Sentenced to 2 years' imprison-ment	§ 4A1.1	3
10/25/07	Aggravated Fleeing (Case No. 06-CF-1469)	Guilty, Sentenced to 2 years' imprison-ment	§ 4A1.1	3
08/02/05	Domestic Battery (Case No. 05-CF-1591)	Guilty, Sentenced to 18 months' imprison-ment	§ 4A1.1	3
05/09/05	Domestic Battery (Case No. 04-CF-3514)	Guilty, Sentenced to 2 years' probation	§ 4A1.1	1
04/12/04	Damage Property (Case No. 04-CF-159)	Guilty, Sentenced to 1 year's imprison-ment	§ 4A1.1	2

05/31/02	Aggravated Unlawful Use of Weapon (Case No. 02-CF-720)	Guilty, Sentenced to 2 years' probation; Probation revoked, received 2 years' imprison-ment	§ 4A1.1	3
05/31/02	Aggravated Fleeing (Case No. 01-CF-3005)	Guilty, Sentenced to 2 years' probation; Probation revoked, received 2 years' imprison-ment	§ 4A1.1	3
08/01/01	Poss. Contr. Subst. (Case No. 01-CF-193)	Guilty, Sentenced to 2 years' probation; Probation revoked, received 2 years' imprison-ment	§ 4A1.1	3
				Total Points 29 Criminal History Category VI

Defendant expressly recognizes that the final calculation will be determined by the Court after considering the Presentence Report, the views of the parties, and any evidence submitted before sentencing. Defendant recognizes that, regardless of the criminal history found by the Court, Defendant will not be able to withdraw the plea of guilty.

10. The Defendant understands that the Government will recommend the imposition of a fine. The Defendant understands that the Government's recommendation may be based in part on the Defendant's projected earnings through the Inmate Financial Responsibility Program.

11. The Defendant acknowledges that Title 18, United States Code, Section 3143(a)(2) requires that, upon the Court's acceptance of a plea of guilty in this case, the Court must order the Defendant detained pending sentencing in the absence of exceptional circumstances as set forth in Title 18, United States Code, Section 3145(c).

III.

1. The Defendant understands that, by pleading guilty, Defendant is waiving all appellate issues that might have been available if Defendant had exercised the right to trial. The Defendant is fully satisfied with the representation received from defense counsel. The Defendant acknowledges that the Government has provided complete discovery compliance in this case. The Defendant has reviewed the Government's evidence and has discussed the Government's case, possible defenses and defense witnesses with defense counsel.

2. The Defendant is aware that Title 18, Title 28, and other provisions of the United States Code afford every defendant limited rights to contest a conviction and/or sentence through appeal or collateral attack. However, in exchange for the recommendations and concessions made by the United States in this plea agreement, the Defendant knowingly and voluntarily waives his right to contest any aspect of his conviction and sentence that could be contested under Title 18 or Title 28, or under any other provision of federal law, except that if the sentence imposed is in excess of the Sentencing Guidelines as determined by the Court (or any applicable statutory minimum, whichever is greater), the Defendant reserves the right to appeal the reasonableness of the sentence. The Defendant acknowledges that in the event such an appeal is taken, the Government reserves the right to fully and completely defend the sentence imposed, including any and all factual and legal findings supporting the sentence, even if the sentence imposed is more severe than that recommended by the Government.

3. Defendant's waiver of his right to appeal or bring collateral challenges shall not apply to: 1) any subsequent change in the interpretation of the law by the United States Supreme Court or the United States Court of Appeals for the Seventh Circuit that is declared retroactive by those Courts and that renders Defendant actually innocent of the charges covered herein; and 2) appeals based upon Sentencing Guideline amendments that are made retroactive by the United States Sentencing Commission (*see* U.S.S.G. § 1B1.10). The Government reserves the right to oppose such claims for relief.

4. Defendant's waiver of his appeal and collateral review rights shall not affect the Government's right to appeal Defendant's sentence pursuant to Title 18, United States Code, Section 3742(b). This is because United States Attorneys lack any right to control appeals by the United States through plea agreements or otherwise; that right belongs to the Solicitor General. 28 C.F.R. § 0.20(b).

5. Defendant hereby waives all rights, whether asserted directly or by a representative, to request or receive from any Department or Agency of the United States any records pertaining to the investigation or prosecution of this case, including, without limitation, any records that may be sought under the Freedom of Information Act, Title 5, United States Code, Section 552, or the Privacy Act of 1974, Title 5, United States Code, Section 552a.

6. Defendant waives all claims under the Hyde Amendment, Title 18, United States Code, Section 3006A, for attorney's fees and other litigation expenses arising out of the investigation or prosecution of this matter.

IV.

No matters are in dispute.

STEPHEN R.
WIGGINTON
United States Attorney

JAMAR E. PLUNKETT
Defendant

~~JUNGMIN LEE~~ Stuart Zarb
Special Assistant United States Attorney

MICHAEL S. GHIDINA
Attorney for Defendant

Date: 10-18-13 Date: _____

APPENDIX F

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA	)	
	)	
Plaintiff,	)	CRIMINAL NO.
vs.	)	13-CR-30003-GPM
JAMAR PLUNKETT,	)	
Defendant.	)	

INFORMATION AS TO SENTENCING

The United States of America, by Stephen R. Wigginton, United States Attorney for the Southern District of Illinois, and Jungmin Lee, Special Assistant United States Attorney, files the following Information as to Sentencing for use in enhancing any sentence rendered in this case pursuant to Title 21, United States Code, Sections 841, 850, and 851.

1. The Defendant has been charged by the Grand Jury in an Indictment with a violation of Title 21, United States Code, Section 841(a)(1), an offense which occurred on or about January 3, 2013.

2. On or about June 13, 2008 the Defendant was convicted in the Circuit Court of Madison County, Illinois, in case number 08-CF-1135, of the offense of Unlawful Delivery of a Controlled Substance, a felony offense under Illinois law, for which the Defendant was sentenced to 3 years in Illinois Department of Corrections.

3. The conviction became final before the commission of the current offense.

WHEREFORE, the United States of America hereby files this Information Charging Prior Offenses to subject the Defendant to the enhanced penalty provisions of Title 21, United States Code, Section 841(b)(1)(C), upon his conviction on the Indictment in this case.

Respectfully submitted,

STEPHEN R. WIGGINTON
United States Attorney

s/Jungmin Lee
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