

Petitioner's Appendix A

United States of America
v.
Michael Angelo Williams

Decision of the United States
Court of Appeals for the Sixth Circuit
(unpublished)

Docket Number 20-5564

Issued April 23, 2021

NOT RECOMMENDED FOR PUBLICATION

File Name: 21a0220n.06

Case No. 20-5564

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

FILED

Apr 23, 2021

DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

MICHAEL ANGELO WILLIAMS,

Defendant-Appellant.

ON APPEAL FROM THE UNITED
STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF
KENTUCKY

BEFORE: GUY, DONALD, and MURPHY, Circuit Judges.

BERNICE BOUIE DONALD, Circuit Judge. Michael Angelo Williams pleaded guilty to a conspiracy charge and several drug-distribution charges. Months later, Williams twice moved to withdraw his guilty plea as to the conspiracy charge, but the district court denied his withdrawal requests. Following Williams' failed attempts to proceed to trial after entering his plea, the district court sentenced him to 150 months' imprisonment. Williams now challenges the district court's denial of his motions to partially withdraw his guilty plea, as well as two aspects of his sentence. For the reasons stated below, we AFFIRM the district court's judgment.

I.

On August 8, 2019, Williams was charged in a five-count indictment with: conspiracy to distribute and possess with intent to distribute 50 grams or more of methamphetamine, in violation of 21 U.S.C. § 846 (Count 1); distributing 50 grams or more of a mixture or substance containing methamphetamine, in violation of 21 U.S.C. § 841(a) (Count 2); and distributing 5 grams or more

of methamphetamine on three separate occasions, in violation of 21 U.S.C. § 841(a) (Counts 3, 4, and 5). On October 9, 2019, Williams pleaded guilty to all five counts. After Williams' initial counsel withdrew from representing him, his new counsel filed a motion to withdraw Williams' guilty plea as to Count 1 on February 18, 2020. In his motion, Williams argued that there was no indicted co-defendant with whom he could have engaged in the conspiracy that he was charged with committing. Williams explained that he reached this conclusion only after independently researching potential defenses, and informed his second counsel of this possible defense immediately upon making this discovery. The district court denied Williams' motion, finding that based on its evaluation of the relevant factors, Williams did not demonstrate that there was a fair and just reason supporting the withdrawal of his plea pursuant to Fed. R. Crim. P. 11(d)(2)(B).

Undeterred by this ruling, Williams filed a second motion to withdraw his guilty plea to Count 1 on May 7, 2020. In this motion, Williams contended that he did not knowingly and voluntarily enter his guilty plea because there were allegedly discrepancies relative to Count 1 that his original counsel should have explored. According to Williams, he entered his plea without the benefit of reviewing all of the discovery in his case, which did not transpire until his second counsel provided him with all documents tendered by the government. The district court was unconvinced by Williams' argument, and held that in addition to the fact that Williams could not adequately describe any alleged "discrepancies" that should have been further examined by his initial counsel, he again failed to meet his burden of proving that the withdrawal of his plea was for a fair and just reason.

Subsequent to these denials, the case proceeded to the sentencing phase. During Williams' sentencing hearing on May 13, 2020, the district court addressed the presentence report's recommendation that Williams' Guidelines offense level should be increased by two points

because of his alleged firearm possession. FBI Task Force Officer, Mark Stidham, testified at the hearing with regard to his role in the investigation that led to Williams' arrest. Stidham testified that a confidential informant notified him that when the informant purchased methamphetamine from Williams on July 17, 2019 at Williams' apartment, the informant observed a "black and silver handgun" sitting on a table in the residence. Stidham also testified that while he was searching Williams' car on August 14, 2019—the car which Williams used to drive to and from participating in several controlled drug buys—he recovered a loaded "black and silver handgun" underneath the steering wheel in the vehicle. Finally, Stidham additionally testified that when he was executing a search warrant on Williams' apartment on August 13, 2019, he retrieved Winchester Smith & Wesson .40 caliber bullets—the same type of bullets as those in the firearm found in Williams' vehicle the next day.

The district court ruled that although there was a gap in time—between when the informant saw the firearm in July 2019 and when Stidham located the firearm in Williams' vehicle in August 2019—the evidence set forth indicated that Williams possessed a weapon during drug trafficking. Consequently, the district court determined that the two-level enhancement was warranted. Williams' total offense level of 29, combined with his criminal history category of V, yielded an advisory Guidelines range of 140 to 175 months' imprisonment.

The district court then applied the 18 U.S.C. § 3553(a) factors before issuing Williams' sentence. With respect to the nature and circumstances of the charged offenses, the district court articulated that Williams' crimes—dealing in actual methamphetamine on different occasions—constituted serious offenses. Williams' personal circumstances were also considered by the district court, including the fact that Williams only had a tenth-grade education. The district court additionally acknowledged that it considered the need to protect the public, stating that Williams

had twenty-two prior adult convictions—which included unlawful firearm possession convictions—and had a history of recidivism. After evaluating the totality of the § 3553(a) factors, the district court sentenced Williams to 150 months’ imprisonment for each of the counts, all of which would run concurrently. The district court also mentioned that even if it was decided on appeal that the two-level sentencing enhancement was applied erroneously, it would still impose a 150-month sentence upon remand, as without the enhancement, Williams’ Guidelines range would have been 120 to 150 months’ imprisonment. This timely appeal followed.

II.

A. Withdrawal of the Guilty Plea

Williams first argues that the district court erred by denying his motions to withdraw his guilty plea as to Count 1. We review such claims for an abuse of discretion. *United States v. Giorgio*, 802 F.3d 845, 848 (6th Cir. 2015). “Abuse of discretion results when the district court relies on clearly erroneous findings of fact, improperly applies the law or uses an erroneous legal standard.” *United States v. Ellis*, 470 F.3d 275, 280 (6th Cir. 2006).

A defendant *may* withdraw his plea if he “can show a fair and just reason for requesting the withdrawal.” Fed. R. Crim. P. 11(d)(2)(B). As we have said previously, the purpose of this rule is “to allow a hastily entered plea made with unsure heart and confused mind to be undone, not to allow a defendant to make a tactical decision to enter a plea, wait several weeks, and then obtain a withdrawal if he believes that he made a bad choice in pleading guilty.” *United States v. Alexander*, 948 F.2d 1002, 1004 (6th Cir. 1991) (citation and internal quotation marks omitted). If a plea has been entered knowingly and voluntarily, “the occasion for setting aside a guilty plea should seldom arise.” *Ellis*, 470 F.3d at 280 (quotation omitted).

There are several factors that this Court considers in these instances, including:

(1) the amount of time that elapsed between the plea and the motion to withdraw it; (2) the presence (or absence) of a valid reason for the failure to move for withdrawal earlier in the proceedings; (3) whether the defendant has asserted or maintained his innocence; (4) the circumstances underlying the entry of the guilty plea; (5) the defendant's nature and background; (6) the degree to which the defendant has had prior experience with the criminal justice system; and (7) potential prejudice to the government if the motion to withdraw is granted.

United States v. Bashara, 27 F.3d 1174, 1181 (6th Cir. 1994), *superseded on other grounds by statute as recognized in United States v. Caseslorete*, 220 F.3d 727, 734 (6th Cir. 2000). This is “a general, non-exclusive list” and no single factor is controlling. *United States v. Bazzi*, 94 F.3d 1025, 1027 (6th Cir. 1996). In the instant case, each of the factors weigh against Williams. We analyze each factor in turn.

1. Length of Delay

Williams filed his first motion to withdraw over four months after he pleaded guilty. Our Court has denied motions to withdraw guilty pleas where less time has elapsed between the guilty plea and the motion to withdraw the plea. *See, e.g., United States v. Catchings*, 708 F.3d 710, 718 (6th Cir. 2013) (finding a delay of over two months favored the government); *United States v. Baez*, 87 F.3d 805, 808 (6th Cir.1996) (finding a sixty-seven day delay favored the government); *United States v. Spencer*, 836 F.2d 236, 239 (6th Cir. 1987) (finding a five-week delay favored the government). This factor certainly weighs in favor of the government.

2. Reason for the Delay

Williams contends that the delay should be considered excusable because he did not realize he had not reviewed all of the discovery until he had a meeting with his initial counsel on January

13, 2020.¹ Even if the Court were to accept this contention as true, Williams does not explain *why* that had an effect on his ability to file either of his motions to withdraw his plea sooner than he did. Further, Williams fails to reveal what he learned through gaining access to all of the discovery documents that led him to attempt to amend his guilty plea. Williams’ bare assertion does not qualify as a valid reason for his 132-day filing delay, and this factor therefore favors the government.

3. Assertion of Innocence

Williams claims that throughout his case, he has asserted his innocence by repeatedly arguing that the government could not prove he engaged in a conspiracy since there were no other individuals charged with conspiring with him. The Court is unpersuaded by Williams’ argument. For one, during his rearraignment hearing on October 9, 2019, Williams openly admitted that he conspired with at least one other person to distribute and possess with intent to distribute at least 50 grams of methamphetamine. Williams’ admission surely undermines his innocence claim. *See United States v. Martin*, 668 F.3d 787, 796 (6th Cir. 2012) (“Statements of guilt under oath at a plea hearing support the district judge’s decision not to permit withdrawal.”). Moreover, Williams’ contention that the government could not *prove* that he participated in the charged conspiracy solely because the government did not name an indicted co-defendant with whom Williams conspired is not an assertion of innocence—it is merely a flawed legal argument, *see United States v. Sachs*, 801 F.2d 839, 845 (6th Cir. 1986). This factor weighs in favor of the government.

¹ Williams does not reassert on appeal that his motions to withdraw his plea were timely because it was only after he pleaded guilty that he discovered a potential defense to the conspiracy charge. Accordingly, Williams has abandoned that argument. *United States v. Johnson*, 440 F.3d 832, 845-46 (6th Cir. 2006); Fed. R. App. P. 28(a)(8)(A).

4. Circumstances Underlying the Guilty Plea

The district court thoroughly discussed Williams' options during the arraignment hearing. The district court informed Williams of his right to proceed to trial and the consequences of pleading guilty. Furthermore, the record demonstrates that Williams entered his plea knowingly and voluntarily. Williams' only contention to the contrary is that he entered his plea without the benefit of receiving or understanding all of the discovery. As mentioned above, Williams does not explain why he was inclined to alter his plea after acquiring additional evidence through discovery. This factor weighs in favor of the government.

5. Williams' Nature and Background

Williams argues that this factor weighs in his favor because he had a tenth-grade education, never obtained his GED, and was labelled developmentally delayed in grade school. The district court, however, found that "[h]is personal history and characteristics do not distinguish him from most offenders charged with similar offenses[.]" We agree. Nothing in the record demonstrates that Williams did not understand that he was entering a plea of guilt, and Williams responded affirmatively when asked during his arraignment hearing if he understood his charges and the significance of pleading guilty. *See Martin*, 668 F.3d at 796–97 (holding that this factor weighed against withdrawal where a defendant only had some high school education and comprehended that he was pleading guilty to the charges he faced). This factor weighs in favor of the government.

6. Williams' Prior Experience with the Criminal Justice System

At the time Williams pleaded guilty, he had twenty-two prior adult convictions, including various felonies and misdemeanors. The record establishes that Williams was undoubtedly familiar with entering guilty pleas. Moreover, we find that it is of no consequence that Williams had not been previously charged specifically with violating 21 U.S.C. § 846 because he had a

significant amount of experience with the criminal justice system. This factor strongly weighs in favor of the government.

7. Potential Prejudice to the Government if Either Motion to Withdraw is Granted

We have held that “the government is not required to establish prejudice that would result from a plea withdrawal, unless and until the defendant advances and establishes a fair and just reason for allowing the withdrawal[.]” *Spencer*, 836 F.2d at 240. Considering that six of the factors weigh against Williams, he has not sufficiently proven that there is a fair and just reason to allow him to withdraw his guilty plea. We therefore need not address this factor.

Accordingly, because none of the *Bashara* factors weigh in favor of allowing Williams to withdraw his guilty plea, we hold that the district court did not abuse its discretion in denying either of Williams’ motions to withdraw his plea.

B. Firearm Enhancement Under § 2D1.1(b)(1) of the Sentencing Guidelines

Williams next argues that the district court erred by applying a two-level dangerous-weapon enhancement to his sentence under § 2D1.1(b)(1) of the Guidelines. Specifically, Williams claims that the record does not demonstrate that he actually or constructively possessed a “firearm” as defined by the Guidelines, and if we find otherwise, alternatively, there was insufficient evidence to prove that he used a weapon during the commission of his charged offenses. *See United States v. McCloud*, 935 F.3d 527, 531 (6th Cir. 2019). In response, the government contends that even if the district court erred in this regard, such an error would be harmless.

We agree with the government, and find that even if the district court did erroneously apply the dangerous-weapon enhancement, that error would have been harmless. Our Court has held that any “[e]rrors that do not affect the ultimate Guidelines range or sentence imposed are harmless

and do not require resentencing.” *United States v. Faulkner*, 926 F.3d 266, 275 (6th Cir. 2019). Here, when issuing Williams’ sentence, the district court emphasized that if our Court were to rule that the imposition of the enhancement constituted error, it would nevertheless sentence Williams to 150 months’ imprisonment.² Thus, because any error by the district court would have had no effect on Williams’ ultimate sentence, we need not determine whether the district court accurately increased Williams’ offense level pursuant to § 2D1.1(b)(1). *See United States v. Morrison*, 852 F.3d 488, 491 (6th Cir. 2017) (“If the record shows that the district court would have imposed its sentence regardless of the Guidelines range, then an error in calculating the Guidelines range is harmless.”).

C. Substantive Reasonableness

Williams additionally claims that his sentence was substantively unreasonable. We review whether a sentence was substantively reasonable under an abuse-of-discretion standard. *Gall v. United States*, 552 U.S. 38, 51 (2007). Sentences within the Guidelines are presumed reasonable. *United States v. Vonner*, 516 F.3d 382, 389 (6th Cir. 2008) (en banc). A sentence may be substantively unreasonable if “the court placed too much weight on some of the § 3553(a) factors and too little on others[.]” *United States v. Rayyan*, 885 F.3d 436, 442 (6th Cir. 2018).

Williams asserts that his sentence was substantively unreasonable because the district court failed to adequately take his history and characteristics into consideration when sentencing him. In particular, Williams argues that the district court should have given more weight to his difficult childhood and lack of formal education. During Williams’ sentencing hearing, the district court specifically stated that it evaluated Williams’ individual circumstances—including his challenging

² The district court also clarified that in such scenario, a sentence at the high end of the 120-150 month Guidelines range would be appropriate given Williams’ history of using and possessing handguns, substantial recidivism, and history of violating the conditions of his release.

upbringing and limited education. Williams’ contention, therefore, is that the district court improperly balanced the sentencing factors, which is a claim that is “beyond the scope of our appellate review.” *United States v. Ely*, 468 F.3d 399, 404 (6th Cir. 2006); *see also Gall*, 552 U.S. at 51 (“The fact that the appellate court might reasonably have concluded that a different sentence was appropriate is insufficient to justify reversal of the district court.”).

Accordingly, Williams’ 150 month within-Guidelines sentence was substantively reasonable.

III.

For the foregoing reasons, we AFFIRM the district court’s judgment.

Petitioner's Appendix B

United States of America
v.
Michael Angelo Williams

Judgment of the United States
District Court for the Eastern District
of Kentucky, Northern Division

(unpublished)

Docket Number 2:19-CR-60-DLB-CJS

Filed May 13, 2020

FILED

MAY 13 2020

AT COVINGTON
ROBERT R. CARR
U.S. DISTRICT COURTUNITED STATES DISTRICT COURT
Eastern District of Kentucky – Northern Division at Covington

UNITED STATES OF AMERICA

v.

Michael Angelo Williams
AKA Black

JUDGMENT IN A CRIMINAL CASE

Case Number: 2:19-CR-60-DLB-CJS

USM Number: 22744-032

Stefanie Lynn Durstock

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1-5 [DE#3]☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21:846	Conspiracy to Distribute Controlled Substance Including 50 Gr. Or More Of Methamphetamine	August 8, 2019	1
21:841(a)(1)	Distribution of a Controlled Substance - Methamphetamine	March 11, 2019	2
21:841(a)(1)	Distribution of a Controlled Substance - Methamphetamine	March 26, 2019	3
21:841(a)(1)	Distribution of a Controlled Substance - Methamphetamine	April 17, 2019	4
21:841(a)(1)	Distribution of a Controlled Substance - Methamphetamine	May 6, 2019	5

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) _____ ☐ 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.

May 13, 2020

Date of Imposition of Judgment

Signature of Judge

Honorable David L. Bunning, U.S. District Judge

Name and Title of Judge

May 13, 2020

Date

DEFENDANT: Michael Angelo Williams AKA Black
CASE NUMBER: 2:19-CR-60-DLB-CJS

IMPRISONMENT

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

**ONE HUNDRED FIFTY (150) MONTHS on Counts 1-5, to run concurrent
for a total of ONE HUNDRED FIFTY (150 MONTHS)**

- ☒ The court makes the following recommendations to the Bureau of Prisons:
- It is recommended that you participate in a program working toward the completion of a GED.
- It is recommended to the Bureau of Prisons that the defendant participate in the 500-Hour RDAP Program or in a substance abuse program for which he qualifies.
- It is recommended to the Bureau of Prisons that the defendant participate in a job skills and/or vocational training program.
- It is recommended to the Bureau of Prisons that the defendant be designated to FCI Ashland.

- ☒ 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: Michael Angelo Williams AKA Black
CASE NUMBER: 2:19-CR-60-DLB-CJS

SUPERVISED RELEASE

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

**FIVE (5) YEARS on Counts 1-5, to run concurrent,
for a total of FIVE (5) YEARS**

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: Michael Angelo Williams AKA Black
CASE NUMBER: 2:19-CR-60-DLB-CJS

STANDARD CONDITIONS OF SUPERVISION

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

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

U.S. Probation Office Use Only

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

Defendant's Signature _____

Date _____

DEFENDANT: Michael Angelo Williams AKA Black
CASE NUMBER: 2:19-CR-60-DLB-CJS

SPECIAL CONDITIONS OF SUPERVISION

1. You must participate in a substance abuse treatment program and must submit to periodic drug and alcohol testing at the direction and discretion of the probation officer during the term of supervision. You must pay for the cost of treatment services to the extent you are able as determined by the probation officer.
2. You must refrain from obstructing or attempting to obstruct or tamper, in any fashion, with the efficiency and accuracy of any prohibited substance testing which is required as a condition of release.
3. You must not purchase, possess, use, distribute or administer any controlled substance or paraphernalia related to controlled substances, except as prescribed by a physician, and must not frequent places where controlled substances are illegally sold, used, distributed or administered. Further, you may not use or consume marijuana even if such controlled substance were to be prescribed to you by a physician, licensed professional or other person.
4. You must submit your person, property, house, residence, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1), but including other devices excluded from this definition), other electronic communications or data storage devices or media, or office, to a search conducted by a United States probation officer. Failure to submit to a search will be grounds for revocation of release. You must warn any other occupants that the premises may be subject to searches pursuant to this condition.
5. Should you not complete a GED while in the custody of the Bureau of Prisons, you are to continue in such a program, as directed by the probation office, as a condition of supervision

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CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$ 500.00 (\$100/ct)	\$ Community Waived	\$ Waived	\$ N/A	\$ N/A

- ☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.
- ☐ The defendant must 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.

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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TOTALS \$ _____ \$ _____

- ☐ 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 the ☐ fine ☐ restitution.
- ☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** 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 is due as follows:

- A** ☒ Lump sum payment of \$ 500.00 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:

Criminal monetary penalties are payable to:
Clerk, U. S. District Court, Eastern District of Kentucky
35 West 5th Street, Room 289, Covington, KY 41011-1401

INCLUDE CASE NUMBER WITH ALL CORRESPONDENCE

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

Case Number

Defendant and Co-Defendant Names

(including defendant number)

Total Amount

Joint and Several Amount

Corresponding Payee, if appropriate

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVT A assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

Petitioner's Appendix C

Text of

Federal Rule of Criminal Procedure 11(d)

Fed. R. Crim. P. 11(d) – Withdrawing a Guilty or Nolo Contendere Plea.

A defendant may withdraw a plea of guilty or nolo contendere:

(1) before the court accepts the plea, for any reason or no reason; or

(2) after the court accepts the plea, but before it imposes sentence if:

(A) the court rejects a plea agreement under Rule 11(c)(5);

or

(B) the defendant can show a fair and just reason for requesting the withdrawal.

Petitioner's Appendix D

Text of

U.S.S.G. §2D1.1(b)(1)

U.S.S.G. §2D1.1(b)(1)

(b) Specific Offense Characteristics

(1) If a dangerous weapon (including a firearm) was possessed, increase by 2 levels.

Petitioner's Appendix E

Text of

18 U.S.C. §3553(a)

18 U.S.C. § 3553 -- Imposition of a sentence

(a) Factors to be considered in imposing a sentence.--

The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider--

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) the need for the sentence imposed—
 - (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
 - (B) to afford adequate deterrence to criminal conduct;
 - (C) to protect the public from further crimes of the defendant; and
 - (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
- (3) the kinds of sentences available;
- (4) the kinds of sentence and the sentencing range established for—
 - (A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines—

- (i) issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and
- (ii) that, except as provided in section 3742(g), are in effect on the date the defendant is sentenced; or

(B) in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to section 994(a)(3) of title 28, United States Code, taking into account any amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28);

(5) any pertinent policy statement—

(A) issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28, United States Code, subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(B) that, except as provided in section 3742(g), is in effect on the date the defendant is sentenced.

- (6)** the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and
- (7)** the need to provide restitution to any victims of the offense.