

Appendix

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FEB 26 2021

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ALBERT LAMONT HECTOR, AKA
Hector Allen, AKA Cartoon, AKA Lil
Cartoon, AKA lilcartoon, AKA Lamont
Murkison, AKA Sean Murks,

Defendant-Appellant.

No. 19-50290

D.C. No. 2:16-cr-00486-PA-1

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Percy Anderson, District Judge, Presiding

Submitted February 24, 2021**
Pasadena, California

Before: WARDLAW, BYBEE, and MILLER, Circuit Judges.

Following a jury trial, Albert Lamont Hector was convicted on one count of distribution of cocaine base and one count of possession of cocaine base with

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See Fed. R. App. P. 34(a)(2).*

intent to distribute, both in violation of 21 U.S.C. § 841(a)(1). He was also convicted on one count of being a felon in possession of a firearm and ammunition, in violation of 18 U.S.C. § 922(g)(1). We previously vacated his sentence and remanded for resentencing. *United States v. Hector*, 772 F. App'x 547, 548–49 (9th Cir. 2019). Hector again appeals his sentence. We have jurisdiction under 18 U.S.C. § 3742(a) and 28 U.S.C. § 1291, and we affirm.

1. Hector argues that the district court erred by applying a four-level enhancement under the advisory Sentencing Guidelines for “possess[ing] any firearm or ammunition in connection with another felony offense.” U.S.S.G. § 2K2.1(b)(6)(B). That enhancement applies if the firearm “facilitated, or had the potential of facilitating, another felony offense,” *id.* cmt. n.14(A), such as when the firearm “is found in close proximity to drugs,” *id.* cmt. n.14(B). Although “mere possession” of a firearm is not enough, we have upheld a finding of facilitation where a firearm is possessed in a manner that has “some potential emboldening role in” the defendant’s felonious conduct. *United States v. Routon*, 25 F.3d 815, 819 (9th Cir. 1994) (citation omitted).

The district court applied the enhancement “for the same reasons that were given” at Hector’s original sentencing hearing, at which the court found by clear and convincing evidence that Hector possessed the handgun recovered from his studio apartment in connection with his felonious drug sales. Hector was twice

observed selling narcotics through his kitchen window. The gun, which was loaded, was found wedged between couch cushions in an adjacent room. And the police recovered cash, suggesting that Hector was “depositing his drug proceeds in his apartment.” The district court found that although Hector “was not always within arm’s reach of the gun, nevertheless, he was selling narcotics in the vicinity of his couch and thus could have availed himself of his gun at any time.” It explained that the “presence of the gun in [Hector’s] apartment potentially emboldened him to undertake his illicit drug sales, since it afforded him a ready means of compelling payment or of defending the cash or drugs stored in the apartment.” Because there was support in the record for the finding that Hector possessed the handgun in connection with his drug sales and because possession of the firearm more likely than not emboldened Hector, the district court did not abuse its discretion in applying the enhancement. *See United States v. Chadwell*, 798 F.3d 910, 917 (9th Cir. 2015); *United States v. Polanco*, 93 F.3d 555, 567 (9th Cir. 1996).

Even though the jury found Hector not guilty of possessing a firearm in furtherance of a drug-trafficking crime, in violation of 18 U.S.C. § 924(c), the application of the enhancement did not violate Hector’s due process and Sixth Amendment rights. “[A] jury’s verdict of acquittal does not prevent the sentencing court from considering conduct underlying the acquitted charge, so long as that

conduct has been proved by a preponderance of the evidence.” *United States v. Watts*, 519 U.S. 148, 157 (1997) (per curiam); *see also United States v. Mercado*, 474 F.3d 654, 657 (9th Cir. 2007). The district court found the requisite conduct by clear and convincing evidence.

2. Hector next argues that the district court applied the firearm enhancement under the mistaken belief that the presentence report recommended its application. At the original sentencing hearing, the district court explained that it had “received, read and considered the Presentence Report, a First and Second Addendum to the Presentence Report and the parties[’] sentencing memoranda.” The court recognized that Hector objected to the enhancement and allowed both parties to advocate their positions. And it asked both parties whether “the Probation Office correctly analyzed and applied the Guidelines in this case, assuming that the possessing the firearm enhancement applies.” Both sides answered in the affirmative.

On resentencing, the district court again stated that it had read the relevant papers, recognized that Hector objected to the firearm enhancement, and decided to apply it “for the same reasons” it had given at the original sentencing hearing. The district court then articulated the correct Guidelines range after finding that the firearm enhancement applied, and neither party objected. The record does not suggest that the district court applied the enhancement because it misunderstood

the Probation Office's position.

3. Finally, Hector argues that his within-Guidelines sentence is substantively unreasonable because it is greater than necessary in light of the "very limited amount of drugs involved, [his] family circumstances, and the significant rehabilitative efforts he has made in his years in custody." Hector also argues that empirical research indicates that lengthy sentences increase, rather than decrease, recidivism. The district court was familiar with those arguments. It emphasized that it had "considered the mitigating factors including [Hector's] family history, his substance abuse problems, [and] the rehabilitative efforts [he had] made while incarcerated." But it found that "the offenses of conviction committed by the defendant [were] serious, the drugs the defendant chose to traffic [were] insidious, and the defendant ignored the serious consequences of trafficking." And while the district court "commend[ed] [Hector] for the steps that [he had] taken while incarcerated," it also found that the sentence was "need[ed] to protect the public and deter [Hector] and others from future crimes." In short, the district court considered Hector's mitigating factors but found them outweighed by other considerations. Hector's sentence is not substantively unreasonable. *See United States v. George*, 949 F.3d 1181, 1188 (9th Cir. 2020); *United States v. Carty*, 520 F.3d 984, 993, 995 (9th Cir. 2008) (en banc).

AFFIRMED.

13 | REPORTER'S TRANSCRIPT OF PROCEEDINGS

14 MONDAY, SEPTEMBER 9, 2019

11:06 A.M.

LOS ANGELES, CALIFORNIA

CHIA MEI JUI, CSR 3287, CCRR, FCRR
UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

1 APPEARANCES OF COUNSEL:

2 FOR THE PLAINTIFF:

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10 FOR THE DEFENDANT:

11 OFFICE OF THE FEDERAL PUBLIC DEFENDER
12 BY: KIM SAVO
13 DEPUTY FEDERAL PUBLIC DEFENDER
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1 LOS ANGELES, CALIFORNIA; MONDAY, SEPTEMBER 9, 2019

11:06 A.M.

— — —

4 THE CLERK: Calling CR 16-486-PA, United States of
5 America versus Albert Lamont Hector.

6 Counsel, please step forward and state your
7 appearances.

8 MS. DIAZ: Good morning, Your Honor. Damaris Diaz
9 on behalf of the United States.

10 THE COURT: Good morning.

11 MS. SAVO: Good morning, Your Honor. Kim Savo
12 from the Federal Public Defender on behalf of Mr. Hector.
13 He is present in custody before the Court.

14 THE COURT: Good morning.

15 This matter is before the Court for the
16 pronouncement of judgment and the imposition of sentence.

17 Is there any reason why judgment and sentence
18 should not be imposed at this time?

19 MS. DIAZ: No, Your Honor.

20 MS. SAVO: No.

24 The defendant shall comply with the rules and
25 regulations of the United States probation office and

1 General Order 18-10.

2 The defendant shall refrain from any unlawful use
3 of a controlled substance.

4 The defendant shall submit to one drug test within
5 15 days of release from custody and at least two periodic
6 drug tests thereafter not to exceed eight tests per month as
7 directed by the probation officer.

8 The defendant shall participate in an outpatient
9 substance abuse treatment and counseling program that
10 includes urinalysis, breath, and/or sweat patch testing as
11 directed by the probation officer.

12 The defendant shall abstain from using alcohol and
13 illicit drugs and from abusing prescription medications
14 during the period of supervision.

15 During the course of supervision the probation
16 officer, with the agreement of the defendant and his
17 counsel, may place the defendant in a residential drug
18 treatment program approved by the probation office for the
19 treatment of narcotic addiction or drug dependency which may
20 include counseling and testing to determine if the defendant
21 has reverted to the use of drugs, and the defendant shall
22 reside in the treatment program until discharged by the
23 program director and the probation officer.

24 As directed by the probation officer, the
25 defendant shall pay all or part of the costs of any court

1 ordered treatment to the aftercare contractor during the
2 period of supervision. The defendant shall provide payment
3 or proof of payment as directed by the probation officer.

4 During the period of supervision, the defendant
5 shall pay the special assessment in accordance with the
6 judgment's orders pertaining to such payment.

7 When not employed or excused by the probation
8 officer for schooling, training, or other acceptable
9 reasons, the defendant shall perform 20 years community
10 service per week as directed by the probation officer.

11 The defendant shall not obtain, possess any
12 driver's license, social security number, birth certificate,
13 passport, or any other form of identification in any name
14 other than the defendant's true legal name, nor should the
15 defendant use any name other than his true legal name
16 without the prior written approval of the probation officer.

17 The defendant shall cooperate in the collection of
18 a DNA sample.

19 The defendant shall not associate with anyone
20 known to him to be a member of the Rolling 60's Crips gang
21 and others known to him to be participants in that gang's
22 criminal activities with the exception of his family
23 members.

24 He may not wear, display, use, or possess any gang
25 insignias, emblems, badges, buttons, caps, hats, jackets,

1 shoes, or any other clothing that the defendant knows
2 evidences affiliation with that gang, and he may not display
3 any signs, gestures that the defendant knows evidences
4 affiliation with that gang.

5 As directed by the probation officer, the
6 defendant shall not be present in any area known to him to
7 be a location where members of the Rolling 60's Crips gang
8 meet and/or assemble.

9 The Court authorizes the probation officer to
10 disclose the presentence report to the substance abuse
11 treatment provider to facilitate the defendant's treatment
12 for narcotic addiction or drug dependency.

13 And further redisclosure of the presentence report
14 by the treatment provider is prohibited without the consent
15 of the Court.

16 Do you wish to confer with your client?

17 MS. SAVO: No, Your Honor, those are the same
18 conditions. We accept them.

19 THE COURT: All right. Was the presentence report
20 timely disclosed to both parties?

21 MS. DIAZ: Yes, Your Honor.

22 MS. SAVO: Yes.

23 THE COURT: The Court received, read, and
24 considered the presentence report, a first and second
25 addendum to the presentence report, and the parties'

1 sentencing memoranda.

6 MS. SAVO: None that weren't previously made.

7 MS. DIAZ: Your Honor, with the exception of the
8 statutory maximum for Count 5, which should be 120 months,
9 no other corrections.

10 THE COURT: I believe you originally objected to
11 the firearm enhancement.

12 MS. SAVO: That's correct.

13 THE COURT: And the Court had overruled your
14 objection.

15 MS. SAVO: That's correct.

21 MS. SAVO: No. I have made my arguments on that
22 ground.

1 Court overruled -- or the Court sustained the objection, and
2 I intend to do the same thing this time.

3 MS. DIAZ: Nothing further from the government on
4 that point, Your Honor.

5 THE COURT: Has the defendant and both counsel
6 read the presentence report and the first and second
7 addendum to the presentence report?

8 MS. SAVO: Yes.

9 THE COURT: Do you wish to be heard?

10 MS. SAVO: Yes. Thank you, Your Honor.

11 Just for purposes of the record, I renew all of my
12 prior arguments and objections, and the only thing I think
13 is different here is that we're not dealing with the same
14 exact person we were dealing with at the time of the
15 original sentencing, which I have tried to capture in the
16 materials that I provided to the Court for consideration at
17 the sentencing on remand.

18 It's my view that, to reimpose the identical
19 sentence, given that Mr. Hector has made incredibly
20 productive use of his time while he was in custody, would
21 fail to acknowledge that he has, in fact, I think made some
22 important change that makes him less of a risk for
23 recidivism than he was at the time of the original
24 sentencing, and I think we want to continue to encourage him
25 to move in that forward direction. And even if the Court

1 didn't want to impose the sentence that I recommended, I
2 would ask that the Court give some consideration for the
3 change that Mr. Hector has made while he has been
4 incarcerated.

5 THE COURT: Does the government wish to be heard?

6 MS. DIAZ: Your Honor, in response to defendant's
7 papers, I would just like to note over the weekend I looked
8 up the sentencing papers from Mr. Hector's prior federal
9 case, and while I do commend Mr. Hector on the
10 accomplishments he has made in prison and the efforts he has
11 made, I would -- would caution for some of the same
12 arguments that he made in his prior federal case. And if
13 the Court would allow, I would like to hand up a copy of
14 those prior papers that I can refer to.

15 THE COURT: Has the defense seen those?

16 MS. DIAZ: I have a copy now for them.

17 And I have tabbed Exhibit A, which is a letter
18 from Mr. Hector to the Court in his prior federal case if
19 the Court prefers to read to yourself or I can highlight a
20 portion.

21 (Brief pause in the proceedings.)

22 THE COURT: All right. I have read that exhibit.

23 MS. DIAZ: Your Honor, I -- it's difficult for the
24 government to not view Mr. Hector's current arguments with a
25 little bit of skepticism given that we have heard these

1 arguments before. I don't necessarily think that discounts
2 what he is saying now, and I would also like to hear from
3 the defendant, as I am sure the Court would as well, but I
4 would also be interested to know what is different this time
5 that wasn't the case when he wrote that letter to
6 Judge Pregerson in 2008 or in the 2008 case.

7 Aside from that, the government would submit that
8 the prior sentence is the appropriate sentence here with the
9 exception that it should be 120 months on the felon in
10 possession count and 130 months on the drug counts.

11 Unless the Court has any further inquiry of the
12 government, I submit.

13 THE COURT: All right. Thank you.

14 Are you aware whether there were any victims that
15 wish to address the Court?

16 MS. DIAZ: I am not aware of any victims.

17 THE COURT: Does the defendant wish to be heard?

18 MS. SAVO: May I have a moment, Your Honor?

19 THE COURT: Yes.

20 (Brief pause in the proceedings.)

21 THE DEFENDANT: Good afternoon, Your Honor. Thank
22 you for hearing me.

23 I am sorry for being such an idiot. I was
24 arrogant when I came to jail. I was stupid and foolish
25 because I thought that I could beat the system. I thought

1 that I was slick, and I am sorry.

2 I want to go to school. I want to be a student.

3 I want to graduate. I want to be a productive citizen in
4 society. That is what I want to do. My father is getting
5 older. I want to help him. He is 84 years old. He is not
6 able to take care of himself, and I want to help him.

7 I made excuses all my life, and there is no more
8 excuses. If -- excuse my expression, if an illegal alien
9 can come to this country and find a job and make a life for
10 himself, then there is no excuse for me. There is no
11 excuse.

12 I want to be an American. I don't want to be a
13 prisoner anymore. I want -- I have a nine-year-old child
14 that I was raising. She was six when I came to jail. She
15 will be ten in February, and I want to be a dad to that
16 fatherless little girl.

17 I am sorry for being so pigheaded. I have been so
18 stubborn and stupid, and I am so ashamed of myself. But now
19 I have the ability to learn, and I am in an educational
20 program, and I'm learning how important knowledge and
21 education is. It is crucially important, and I want to take
22 advantage of that.

23 I am so inspired by my accomplishments in college.
24 I am 20 units away from getting three degrees. And I am in
25 a process that, if I continue on that -- with that

1 framework, as I have a 3.67 GPA right now, I can get out of
2 prison and get a Pell Grant and get an academic scholarship
3 to continue to go to school and get my bachelor's degree
4 because I understand now the importance of education.

5 I have been a fool, and I am so ashamed of myself.
6 I have let so many people down, and now I understand. I
7 didn't understand that at first because I was arrogant. I
8 get it now.

9 I cannot have a weapon in my home, I don't care
10 how violent the community may be, for protection. It will
11 send me to federal prison. One gram of cocaine will send me
12 to federal prison for ten years. I understand that now.
13 And I am sorry. I am very sorry. I want to be an American.
14 I want to be a citizen.

15 Thank you.

16 THE COURT: Thank you.

17 All right. The Court adopts the factual finding
18 and the guideline application set forth in the presentence
19 report, finds that the advisory guidelines establish a total
20 offense level of 28, a Criminal History Category of five
21 which results in advisory sentencing guideline range of 130
22 to 162 months of incarceration.

23 Does either counsel wish to be heard on the
24 mathematical calculation of the guidelines?

25 MS. DIAZ: No, Your Honor.

1 MS. SAVO: No.

2 THE COURT: This defendant was found guilty by a
3 jury of the distribution of cocaine base, possession with
4 the intent to distribute cocaine base in the form of crack
5 cocaine and a felon in possession of a firearm and
6 ammunition.

7 Defendant regrettably has a long history of
8 dealing in narcotics. As the Court stated when we were here
9 before, recidivism and defendant's lack of respect for the
10 law are concerning to the Court. In aggravation this
11 defendant has ten prior convictions including a felony drug
12 conviction. Many of his convictions are indeed drug
13 related. The defendant has shown little respect for the law
14 and unfortunately was undeterred by the previous punishment
15 approaches undertaken by a number of Courts up until now.

16 The Court has considered the various sentences
17 available and considering the nature and circumstances of
18 the offense, the history and characteristics of the
19 defendant. The Court finds that the offenses of conviction
20 committed by the defendant are serious, the drugs the
21 defendant chose to traffic are insidious, and the defendant
22 ignored the serious consequences of trafficking.

23 I believe, as I stated before, the people who
24 choose to traffic in those drugs are willing to profit off
25 the misery of people who are hopelessly addicted and with --

1 and at the expense of the communities who have to live with
2 the fallout.

3 There are consequences for the choices we make and
4 the actions we take. This defendant has engaged in serious
5 criminal conduct, and I believe that I had some doubts that
6 the term of imprisonment imposed by the Court will drive
7 home to this defendant the seriousness of his conduct based
8 on his conduct while in prison. Maybe it has, but that
9 sentence also needs to protect the public and deter this
10 defendant and others from future crimes.

11 And as the government has stated, I too commend
12 the defendant for the steps that he's taken while
13 incarcerated. But having considered the seriousness of this
14 offense, the Court believes that the previous sentence of
15 130 months of imprisonment was appropriate then, and it's
16 appropriate now, followed by a three-year term of supervised
17 release, a mandatory special assessment of \$300.

18 Court believes that that sentence reflects the
19 seriousness of the offense, will promote respect for the
20 law, provides for a just punishment, will protect the
21 public, deter this defendant and others, and is sufficient
22 but not greater than necessary to achieve the statutory
23 goals of sentencing.

24 In fashioning this sentence, I have considered the
25 mitigating factors including the defendant's family history,

1 his substance abuse problems, the rehabilitative efforts
2 he's made while incarcerated including taking courses to
3 equip him to become a productive member of society when he
4 is released and for which he is to be commended. However,
5 this defendant has a substantial criminal history that
6 includes firearm or controlled substance convictions,
7 including a felon in possession resulting from an incident
8 in which he pointed a gun at a female victim, threatened
9 her, and six of his prior felony convictions did not earn
10 criminal history points.

11 The Court believes that the sentence of 130 months
12 was appropriate and that the proposed sentence in this -- at
13 this time is appropriate, and not greater than necessary to
14 achieve the statutory goals of sentencing.

15 The Court is aware of its discretion to grant a
16 variance in this case but for the reasons stated believe
17 that a variance is not appropriate in this case.

18 Are there any objections that were not previously
19 addressed?

20 MS. SAVO: No.

21 THE COURT: Any legal reason why sentence should
22 not be imposed at this time?

23 MS. SAVO: No.

24 MS. DIAZ: No, Your Honor.

25 THE COURT: It's ordered that the defendant shall

1 pay the United States a special assessment of \$300 which is
2 due immediately. Any unpaid balance shall be due during the
3 period of imprisonment at a rate of not less than \$25 per
4 quarter and pursuant to the Bureau of Prisons Inmate
5 Financial Responsibility Program.

6 Just one second.

7 (Brief pause in the proceedings.)

8 THE COURT: Let me just state that the Court, if I
9 haven't already, that the Court adopts the factual findings
10 and the guideline application set forth in the presentence
11 report, finds that the advisory guidelines established a
12 total offense level of 28, criminal history category of five
13 which results in an advisory sentencing guideline range of
14 130 to 162 months of incarceration.

15 Does either counsel wish to be heard on the
16 mathematical calculation of the guidelines?

17 MS. SAVO: No, Your Honor.

18 MS. DIAZ: No.

19 THE COURT: All right. It's ordered that the
20 defendant shall pay the United States a special assessment
21 of \$300 which is due immediately. Any unpaid balance shall
22 be due during the period of imprisonment at a rate of not
23 less than \$25 per quarter and pursuant to the Bureau of
24 Prisons Inmate Financial Responsibility Program.

25 Pursuant to Section 5E1.2 all fines are waived as

1 the Court finds that the defendant has established that he
2 is unable to pay and is not likely to become able to pay any
3 fine.

4 Pursuant to Title 21 of the United States Code
5 Section 862(a)(1)(C), the defendant having been convicted of
6 a third or subsequent drug distribution offense is
7 permanently ineligible for all federal benefits.

8 Pursuant to the Sentencing Reform Act, it is the
9 judgment of the Court that the defendant is hereby committed
10 on Counts 2, 3, and 5 of the Indictment to the custody of
11 the Bureau of Prisons for a term of 130 months. This term
12 consists of 130 months on each of Counts 2 and 3 and 120
13 months on Count 5 to be served concurrently.

14 Upon release from imprisonment, the defendant
15 shall be placed on supervised release for a term of three
16 years.

17 This term consists of three years on each of
18 Counts 2, 3, and 5 of the Indictment, all such terms to run
19 concurrently under the terms and conditions previously
20 announced by the Court.

21 Was he sentenced to three years of supervised
22 release the last time or five years?

23 MS. DIAZ: Three years, Your Honor.

24 THE COURT: All right.

25 Does anybody wish to have the terms and conditions

1 of supervised release restated?

2 MS. SAVO: No.

3 MS. DIAZ: No, Your Honor.

4 THE COURT: All right, sir. You have the right of
5 appeal from the judgment and sentence within 14 days from
6 today's date. The failure to appeal within that 14-day
7 period will constitute a waiver of your right to appeal.

8 You are also advised that you are entitled to the
9 assistance of counsel in taking an appeal. And if you are
10 unable to afford a lawyer, one will be provided to you. If
11 you are unable to afford the filing fee, the Clerk of the
12 Court will be directed to accept the Notice of Appeal
13 without such a fee.

14 The defendant is hereby remanded to the custody of
15 the United States Marshal to await designation by the Bureau
16 of Prisons.

17 Is there anything else?

18 MS. SAVO: Your Honor, would you please recommend
19 to the Bureau of Prisons that they redesignate Mr. Hector to
20 Terminal Island? There is a specific educational program
21 that he is interested in attending that is available there.

22 THE COURT: Where is he now?

23 MS. SAVO: Lompoc.

24 THE COURT: I will make that recommendation.

25 MS. SAVO: Thank you.

1 MS. DIAZ: Nothing from the government,

2 Your Honor.

3 THE COURT: Anything else?

4 MS. SAVO: Not at this time.

5 THE COURT: All right. Thank you very much.

6 Good luck.

7 MS. DIAZ: Thank you, Your Honor.

8 THE CLERK: All rise. This Court is in recess.

9 (Proceedings concluded at 11:32 a.m.)

10 --oo--

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1 CERTIFICATE
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4 I hereby certify that pursuant to Section 753,
5 Title 28, United States Code, the foregoing is a true and
6 correct transcript of the stenographically reported
7 proceedings held in the above-entitled matter and that the
8 transcript page format is in conformance with the
9 regulations of the Judicial Conference of the United States.

10 Date: October 15, 2019.

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14 /S/ CHIA MEI JUI _____
15 Chia Mei Jui, CSR No. 3287
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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

THE HON. JUDGE PERCY ANDERSON, JUDGE PRESIDING

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Monday, January 9, 2017

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1 *Los Angeles, California; Monday, January 9, 2017;*

2 *8:56 a.m.*

3 *-00o-*

4 THE CLERK: Calling Item Number 1, CR-16-486,

5 *U.S.A. versus Albert Lamont Hector.*

6 Counsel, please state your appearances.

7 MR. MAUSNER: Good morning, Your Honor. Joshua
8 Mausner and Damaris Diaz for the United States.

9 THE COURT: Good morning.

10 MS. SAVO: Good morning, Your Honor. Kim Savo
11 from the Federal Public Defender on behalf of Albert Lamont
12 Hector, who is present and in custody

13 THE COURT: Good morning.

14 This matter is before the court for the
15 pronouncement of judgment and the imposition of sentence.

16 Is there any reason why judgment and sentence
17 should not be imposed at this time?

18 MS. SAVO: No.

19 MR. MAUSNER: No, Your Honor.

20 THE COURT: The court is contemplating imposing
21 several conditions of supervised release. I want to give
22 you notice of those conditions so that if you have any
23 objections, we can discuss them now, or I'll put the matter
24 over to allow you to file written objections.

25 And those conditions are as follows:

Lisa M. Gonzalez, Official Reporter

1 The defendant shall comply with the rules and
2 regulations of the United States Probation Office and
3 General Rule 05-02.

4 The defendant shall refrain from any unlawful use
5 of a controlled substance. The defendant shall submit to
6 one drug test within 15 days of release from custody and at
7 least two periodic drug tests thereafter, not to exceed
8 eight tests per month, as directed by the Probation Officer.

9 The defendant shall participate in an outpatient
10 substance abuse treatment and counseling program that
11 includes urinalysis, breath and/or sweat patch testing, as
12 directed by the Probation Officer.

13 The defendant shall abstain from using alcohol and
14 illicit drugs and from abusing prescription medications
15 during the period of supervision.

16 During the course of supervision, the Probation
17 Officer, with the agreement of the defendant and his
18 counsel, may place the defendant in a residential drug
19 treatment program approved by the Probation Office for the
20 treatment of narcotic addiction or drug dependency, which
21 may include counseling and testing, to determine if the
22 defendant has reverted to the use of drugs, and the
23 defendant shall reside in the treatment program until
24 discharged by the program director and the Probation
25 Officer.

1 As directed by the Probation Officer, the
2 defendant shall pay all or part of the costs of the
3 court-ordered treatment to the aftercare contractor during
4 the period of community supervision.

5 The defendant shall provide payment and proof of
6 payment as directed by the Probation Officer.

7 During the period of community supervision, the
8 defendant shall pay the special assessment in accordance
9 with this judgment's orders pertaining to such payment.

10 When not employed or excused by the Probation
11 Officer for schooling, training, or other acceptable
12 reasons, the defendant shall perform 20 hours of community
13 service per week as directed by the Probation Officer.

14 The defendant shall not obtain, possess any
15 driver's license, Social Security number, birth certificate,
16 passport, or any other form of identification in any name
17 other than his true legal name, nor shall the defendant use
18 any other name other than his true legal name without the
19 prior written approval of the Probation Officer.

20 The defendant shall cooperate in the collection of
21 a DNA sample.

22 The defendant shall not associate with anyone
23 known to him to be a member of the Rollin 60's Crip gang and
24 others known to him to be participants in that gang's
25 criminal activities, with the exception of his family

1 members. He may not wear, display, use, or possess any gang
2 insignias, emblems, badges, buttons, caps, hats, jackets,
3 shoes, or any other clothing that defendant knows evidence
4 an affiliation with that gang, and may not display any signs
5 or gestures that defendant knows evidence an affiliation
6 with that gang.

7 As directed by the Probation Officer, the
8 defendant shall not be present in any area known to him to
9 be a location where members of that gang will meet and/or
10 assemble.

11 And the Court authorizes the Probation Office to
12 disclose the Presentence Report to the substance abuse
13 treatment provider to facilitate the defendant's treatment
14 for narcotic addiction and drug dependency.

15 And further redisclosure of the Presentence Report
16 by the treatment provider is prohibited without the consent
17 of the court.

18 Do you wish to confer with your client?

19 MS. SAVO: May I have a moment?

20 THE COURT: Yes.

21 MS. SAVO: We have no objection, Your Honor.

22 THE COURT: Was the Presentence Report timely
23 disclosed to both parties?

24 MS. SAVO: It was.

25 MR. MAUSNER: Yes, Your Honor.

1 THE COURT: The Court has received, read and
2 considered the Presentence Report, a First and Second
3 Addendum to the Presentence Report and the parties
4 sentencing memoranda.

5 Apart from any issues raised in your sentencing
6 memoranda, which we'll address shortly, is the Presentence
7 Report factually accurate?

8 Do you have any objections, corrections or
9 additions?

10 MS. SAVO: We do not.

11 MR. MAUSNER: Not in addition to our objections in
12 the papers, Your Honor.

13 THE COURT: I believe the defendant objects to the
14 firearm enhancement.

15 Do you wish to be heard on that issue?

16 MS. SAVO: Your Honor, I think that I addressed it
17 clearly in my papers. I think that the Ninth Circuit case
18 law is clear that in order for the enhancement to apply,
19 there has to be evidence that Mr. Hector formed, quote, "An
20 intent to use the gun for a felonious purpose," unquote.
21 And that is from *United States v. Jimison*, 493 F.3d 1148.

22 I think the case law most recently in 2014, in
23 *Chadwell*, demonstrates that when the enhancement is properly
24 applied, the gun has to be in pretty close proximity. In
25 that case, the facts were that the defendant was actually

1 selling drugs out of the car and going back and forth
2 between the car and -- to make the drug sales.

3 THE COURT: I thought this was the case where he's
4 selling drugs out of his kitchen?

5 MS. SAVO: Mr. Hector was selling drugs out of his
6 kitchen; *Chadwell* was not.

7 THE COURT: I'm sorry. Go ahead.

8 MS. SAVO: And so the distinction is that, in
9 *Chadwell*, the drugs and the gun are in the car together and
10 the defendant is selling drugs, going back and forth to the
11 car, to get the drugs to make the sales. In this case, the
12 gun was found in a separate room --

13 THE COURT: Let me ask you, as I recall, wasn't
14 this sort of a studio apartment?

15 MS. SAVO: There were actually two distinct rooms.
16 The kitchen was a separate room. There was a door frame.
17 When you come into -- you enter the apartment, there is what
18 is essentially a living room and a bedroom or a single room.
19 But there was an entirely separate kitchen area. And you
20 have to enter into the kitchen area through a door frame.
21 And there's also a completely separate bathroom area. So
22 it's not an open-plan studio apartment.

23 THE COURT: So there's a kitchen area?

24 MS. SAVO: Yes.

25 THE COURT: And there's a room that sort of

1 doubles as a living room and bedroom?

2 MS. SAVO: Correct.

3 The couch where the gun was located ostensibly is
4 against the wall; that is the wall to the kitchen. I didn't
5 bring the photos with me, but the bottom line is the gun
6 was, in fact, in a separate -- in a separate room from the
7 drugs and the money.

8 And there's been no evidence that's been adduced,
9 either at trial or otherwise, that the gun was, in any way,
10 connected to the sales that happened in this case. There's
11 no evidence that the CI saw the gun or that anybody else --
12 or of the existence of the gun. So I think that the facts
13 in this case distinguish it from *Chadwell* and the other
14 cases in the circuit where the Court has upheld the
15 application of the enhancement.

16 Although, the government didn't bother to cite to
17 any case law when it sought the enhancement, just decided
18 that it was okay, upon the plain language of the Guidelines
19 it was entitled to the enhancement, and I don't think the
20 case law supports their interpretation.

21 THE COURT: Does the government wish to be heard?

22 MR. MAUSNER: Yes, Your Honor.

23 With respect to the case law cited, the government
24 would note that both *Bruten*, *Polanco*, the cases cited by
25 defense upheld application of the enhancement. In *Polanco*

1 specifically, which I believe the case Ms. Savo was
2 discussing, the defendant was dealing drugs outside of his
3 car and was going back and forth to his car in which the gun
4 was located.

5 And the court -- the Ninth Circuit found that that
6 was a sufficient connection between the firearm and the
7 drugs in order to apply the enhancement.

8 Further, a case the Ninth Circuit decided in 2007
9 involving the same defendant, *United States v. Albert Lamont*
10 *Hector*, and the citation is 474 F.3d 1150. The
11 Ninth Circuit found application of Section 924(c) and
12 sufficient evidence of possessing a gun found in the couch
13 of the defendant's apartment when the drugs were being dealt
14 from the same kitchen window.

15 So the Ninth Circuit case law is fairly clear,
16 generally, and with respect to this particular defendant,
17 that possession of the gun in the apartment and,
18 specifically, possession of the gun underneath the couch in
19 the room.

20 And the Ninth Circuit specifically said that
21 because the gun was found in the path that the defendant was
22 taking in order to deal drugs, there was a sufficient nexus
23 between the felony in that case, as well as in this case,
24 being drug distribution and the firearm.

25 Further, the evidence in this case and that was

1 presented at trial shows that the defendant likely had the
2 firearm on him while dealing drugs at the window.

3 If the court recalls, the testimony at trial was
4 that when the Los Angeles Police Department announced
5 itself, the officers heard moving around in the apartment,
6 the shuffling of feet. And as they walked in, the defendant
7 was reaching under the couch where the gun was found.

8 Now, either the defendant was reaching for the gun
9 or the defendant had the gun on him and was attempting to
10 hide the gun.

11 Further, if the court recalls, Count 6 of the
12 indictment involves the possession by defendant of a
13 different firearm outside of his house, which goes to show
14 that the defendant often does carry a firearm with him.

15 So by a preponderance of the evidence, I think the
16 evidence at trial shows that the defendant did, in fact,
17 either possess that firearm on his body while he was dealing
18 drugs or had the gun in a position and in a location in his
19 small studio apartment where the gun was accessible for him
20 to access it in furtherance of the drug crime.

21 Therefore, the government believes, by a
22 preponderance of the evidence, the standard has been met for
23 application of the enhancement.

24 THE COURT: Do you agree that a preponderance of
25 the evidence is the standard in this case?

1 MS. SAVO: That appears to be what the case law
2 says. I mean, in my mind, the jury rejected 924(c), and I
3 don't think that for purposes of sentencing, unfortunately,
4 the court is necessarily bound by the jury's conclusions,
5 but I do think it should inform the court's analysis.

6 And my recollection of the testimony was that the
7 officers thought that the sound of the shuffling of feet was
8 evidence that Mr. Hector was going to try to destroy drug
9 evidence, which is why they forced entry into the apartment.

10 THE COURT: Yeah, I'm not too persuaded that what
11 they found is evidence that he may have had a gun. I do
12 recall the testimony, though, that when he was -- when they
13 broke through the door, his hand was reaching toward the
14 cushion where the gun ultimately was located.

15 What was the citation of the previous case
16 involving Mr. Hector?

17 MR. MAUSNER: It is 474 F.3d 1150. Ninth Circuit
18 in 2007.

19 THE COURT: 474 F.3d?

20 MR. MAUSNER: 1150.

21 And that case involved a 924(c) charge.

22 THE COURT: In the same apartment?

23 MR. MAUSNER: I'm not sure if it was the same
24 apartment. However, there was testimony at trial in this
25 case that defendant stated to the LAPD officers that he had

1 lived in the apartment, I believe, for 20 years.

2 Based on that statement, it appears that it could
3 be the same apartment. However, I'm not sure, Your Honor.

4 MR. MAUSNER: Your Honor, I can give the specific
5 pin cite. It's at 1157 to -58 where the apartment itself is
6 discussed.

7 THE COURT: Right.

8 (Pause in the proceedings.)

9 THE COURT: All right. As I recall, this gun was
10 loaded?

11 MS. SAVO: I believe that's correct.

12 THE COURT: And I think what led the police to the
13 defendant's house was that they had observed him selling
14 drugs on more than one occasion out of that same apartment.
15 And on the day -- as I recall, the day of the search, the
16 defendant not only sold drugs to the informant, but it was
17 somebody else who showed up or was in the vicinity of the
18 apartment, from which one could conclude that there was also
19 another sale going on.

20 MR. MAUSNER: Yes, Your Honor. The testimony was
21 that it was two different instances of an individual walking
22 up to the window, reaching in with the hand, reaching back
23 down to put the item in her mouth and then walking away from
24 the window.

25 THE COURT: In this case, the firearm was loaded

1 and wedged between the couch cushions. On two separate
2 occasions, the defendant was observed selling narcotics out
3 of his studio apartment. A search of the apartment after he
4 sold drugs to an informant turned up cash, suggesting that
5 the defendant was depositing his drug proceeds in his
6 apartment. Although the defendant was not always within
7 arm's reach of the gun, nevertheless, he was selling
8 narcotics in the vicinity of his couch and thus could have
9 availed himself of his gun at any time.

10 The presence of the gun in the defendant's
11 apartment potentially emboldened him to undertake his
12 illicit drugs sales, since it afforded him a ready means of
13 compelling payment or of defending the cash or drugs stored
14 in the apartment. The examination of the record leads the
15 court to conclude the government adduced sufficient evidence
16 to prove by a preponderance of the evidence or, in this
17 case, by clear and convincing evidence, that the defendant
18 possessed the handgun in connection with his felonious drug
19 sales within the meaning of Section 2K2.1(b)(6)(B) of the
20 Guidelines and, therefore, the Court is going to apply the
21 enhancement.

22 All right. I believe the government also argued
23 for the enhancement for obstruction of justice.

24 I'll hear from the government.

25 MR. MAUSNER: Yes, Your Honor. The -- reading

1 from Docket Entry No. 45, which was a short brief filed by
2 the government, titled "Notice Re Witness Safety." At least
3 two jail calls, that were obtained by the government during
4 the course of trial, showed the defendant, on more than one
5 occasion and in conversations with more than one person,
6 urging individuals from the neighborhood to attend his trial
7 on the day that the confidential informant was scheduled to
8 testify.

9 On October 13th, 2016, the defendant said, quote,
10 "When my trial date comes, you tell people. You let people
11 know when my trial date comes so they can come to court to
12 see whoever this individual is who's walking around in the
13 community with a freaking camera on."

14 And the next day, October 14, 2016, the defendant
15 stated, "When I tell you the trial date, I want him and
16 Rambo to come to trial because they're going to have whoever
17 this confidential informant guy is who's walking around with
18 a camera, they're going to have him in court testifying
19 against me. So we'll need everybody to be there."

20 It's the government's position that these
21 statements are encouraging individuals to attend trial not
22 for the purpose of just observing, but for the purpose of
23 specifically observing and intimidating the confidential
24 informant during his testimony.

25 The actions of the defendant led this court to

1 consider closing the courtroom during testimony, and marshal
2 service protection was specifically requested and was given
3 to the informant during the course of trial.

4 The government believes that under 3C1.1 and under
5 Comment No. 4, which is examples of cover conduct, the very
6 first example given by the Sentencing Comission is
7 "threatening, intimidating or otherwise unlawfully
8 influencing a co-defendant, witness, or juror directly or
9 indirectly or attempting to do so."

10 The government believes that the defendant's
11 conduct here is an attempt to intimidate the witness against
12 him and, therefore, Application Note of obstruction of
13 justice enhancement under 3C1.1 applies.

14 THE COURT: Although troubling, I don't believe
15 that the government has sustained its burden of proving that
16 the defendant willfully obstructed or attempted to obstruct
17 or impede the administration of justice.

18 So I'm going to sustain the objection to that
19 enhancement.

20 Have the defendant and both counsel read the
21 Presentence Report and the First and Second Addendums?

22 MS. SAVO: Yes.

23 MR. MAUSNER: Yes, Your Honor.

24 THE COURT: And has the Probation Office correctly
25 analyzed and applied the Guidelines in this case, assuming

1 that the possessing the firearm enhancement applies?

2 MS. SAVO: Yes.

3 MR. MAUSNER: Yes, Your Honor.

4 THE COURT: Do you wish to be heard?

5 MS. SAVO: Just briefly, Your Honor. I think that
6 notwithstanding that the -- after *Booker* and what we've
7 learned over time from the commission itself and its studies
8 of recidivism and its studies of mandatory minimum sentences
9 and the current state of social science research, we still
10 continue to think that incredibly lengthy periods of
11 incarceration somehow achieve something for the community
12 other than ensuring further recidivism.

13 I'm not sure why we persist in believing that
14 lengthy terms of incarceration achieve much at all. I
15 recognize that Mr. Hector is a recidivist, and he has been
16 selling crack cocaine in the community for a long time. And
17 because of that, I think some incremental increase in the
18 length of sentence is necessary, which is why I joined the
19 probation officer's recommendation of 92 months, because
20 seven years is three years more than the four-year term that
21 Judge Pregerson imposed after the last conviction.

22 This is not someone who has a history of engaging
23 in violent crime, although the possession of drugs has that
24 potential. He's never robbed anybody. He hasn't
25 burglarized any homes. And the overall quantity of crack

1 cocaine that he's distributed over the years are incredibly
2 small quantities, every time they're small rock quantities.
3 He's a street-level dealer.

4 For someone who's 51 years old, I think that the
5 sentence that the government is seeking is excessive, and
6 it's not going to achieve the deterrent effect that I think
7 they think it will. I think we need to have a significant
8 sentence. I think seven years is actually quite a long
9 sentence.

10 I think we throw around numbers in the federal
11 system and forget how long they really are. We talk about
12 10 years, 15 years, 20 years all the time as if it's
13 nothing. They hand out 15 years, 10 years like it's candy
14 around here. I think seven years is actually a very
15 significant sentence, and he will do 85 percent of it. And
16 I think that is more than adequate at this point, given all
17 of the circumstances and the age that he will be upon
18 release, to ensure that he's adequately punished for the
19 conduct. And the likelihood of recidivism in his 60s is
20 significantly less.

21 THE COURT: Does the government wish to be heard?

22 MR. MAUSNER: Yes, Your Honor.

23 With respect to the characterization of
24 defendant's prior history as nonviolent, the government
25 would just point to PSR Paragraph 61 that shows at least one

1 instance in the defendant's prior history that does show
2 violence. It's a felon-in-possession of a firearm
3 conviction resulting from an incident which the defendant
4 pointed a gun at an elderly female victim, threatened to
5 kill her and struck her in the stomach.

6 Further, the government would note that
7 defendant's Criminal History Category is a Criminal History
8 Category V, but six of his prior felony convictions did not
9 earn criminal history points. So his criminal history, the
10 government believes, is understated.

11 Further, with respect to the argument that I
12 believe defense is asking for a downward variance or
13 departure from what would be the Guidelines Range, not
14 including the obstruction of justice enhancement, which is
15 130 to 162 months, the government stands by its prior
16 recommendation of 151 months, which would be close to the
17 mid-point range of the Sentencing Guidelines range.

18 The Section 3553 factors warrant a serious
19 punishment.

20 And, further, to avoid sentencing disparities, the
21 government believes that a sentence within the range helps
22 to avoid sentencing disparities, punishes the defendant's
23 conduct and shows the seriousness of his conduct and deters
24 future conduct by this defendant as well as others.

25 Unless the court has any specific further

1 questions, the government would submit on the papers.

2 THE COURT: Does the defendant wish to be heard?

3 MS. SAVO: Yes.

4 THE DEFENDANT: Yes, Your Honor. Thank you for
5 hearing me.

6 I would first like to apologize to Amber. I would
7 like to apologize because, Boo, I am sorry for subjecting
8 you to this; I am sorry for subjecting myself to this; and
9 I'm sorry I will not be there for your graduation next
10 month.

11 I am also sorry, Boo, that I exposed you to this,
12 coming into a courtroom and have to deal with this. I am
13 truly ashamed of myself, Boo, and I am sorry.

14 I would also like to apologize to my dad who is --
15 he couldn't be here today. He's 81 years old. And I would
16 like to apologize to him.

17 I would also like to apologize to auntie and to
18 Malajah for not being there for her birthday party next
19 week.

20 I am so ashamed of myself, Your Honor. I am
21 ashamed of standing here before all of you, because I made a
22 stupid mistake. I got selfish, and I got arrogant, and I
23 thought that I could make a quick buck by doing something
24 that I know I had no business doing.

25 You know, it's shameful that after all this

1 history that I've had dealing with these stupid drugs that
2 I've affiliated myself with it once again trying to make a
3 quick buck. I used an excuse of trying to fix my car. And
4 not only did I lose my car, but I lost my apartment and
5 ultimately lost my freedom.

6 I would also like to express gratitude to you,
7 Amber, for everything that you do. For enduring this, for
8 writing me letters, and for sticking in my corner.

9 I would like to express gratitude to Uncle Ray and
10 to my counselor for fighting this as diligently as she
11 could.

12 Your Honor, I -- my girl, Amber, she has
13 enlightened me to the fact that you were appointed to the
14 bench here in 2002 by President Bush, so you've heard all
15 the stories. I don't have one for you. I apologize. I
16 dropped the ball. I made a foolish mistake, and I
17 sacrificed not only my freedom, but her freedom. The
18 freedom of this little girl that I've been raising, and the
19 trust of Uncle Ray and my dad. And for that, I am truly
20 sorry. And I'm embarrassed.

21 And I'm ashamed of myself to be standing here in
22 front of you again in a courtroom. I thought that I would
23 never have to do this again, but out of greed and stupidity,
24 I find myself standing here once again fighting for my life.

25 I would like to express to you gratitude for

1 treating me fair. Every proceeding that I came into your
2 courtroom, you've been fair. And I work in the culinary as
3 an OM chef, and I serve officers there. They refer to you,
4 with all due respect, sir, as "No Mercy, Percy." And with
5 all due respect, you've been very fair, and I appreciate you
6 for that. I thank you, and I understand that you have a job
7 to do. But please take into account, sir, that I am older
8 and that I have learned my lesson. This is a horrible way
9 to live. And I've been exposed to so much uncertainty being
10 here in jail.

11 There is no excuse. I took -- I wanted to get up
12 here and say that, okay, I've never burglarized anybody.
13 I've never robbed anybody, but I was a thief. I stoled from
14 myself. I stoled from Amber. I stoled from Malajah. You
15 know, everytime I went to that window, I stole something.
16 And I stole my own freedom. And for that again, I will say,
17 I am totally embarrassed and ashamed of myself.

18 Once again, I want to express gratitude for your
19 fairness.

20 And to the U.S. Attorney, I'm human. Look at me.
21 I'm human. Thank you.

22 THE COURT: All right. Thank you.

23 The court adopts the factual findings, the
24 guidelines application set forth in the Presentence Report,
25 finds that the Advisory Guidelines establish a total offense

1 level of 28, a Criminal History Category of V, which results
2 in an Advisory Sentencing Guideline range of 130 to 162
3 months of incarceration.

4 Does either counsel wish to be heard on the
5 mathematical calculation of the guidelines?

6 MR. MAUSNER: No, Your Honor.

7 MS. SAVO: No.

8 THE COURT: This defendant was found guilty by a
9 jury of distribution of cocaine base, possession with the
10 intent to distribute cocaine base in the form of crack
11 cocaine, and felon-in-possession of a firearm and
12 ammunition. Unfortunately, this defendant has a long
13 history of dealing in narcotics.

14 Recidivism and the defendant's lack of respect for
15 the law are concerns. In aggravation, defendant has
16 numerous priors, including felony drug convictions. And,
17 unfortunately, he has been undeterred by the previous
18 punishment approaches undertaken by various courts up until
19 now.

20 I've considered the various sentences that are
21 available to the court. The court finds that the offenses
22 of convictions are serious. The drugs that the defendant
23 chose to traffic in are insidious, and the defendant has
24 ignored the serious consequences of trafficking in those
25 drugs. He, unfortunately, was willing to profit off the

1 misery of people who are hopelessly addicted to those drugs
2 and at the expense of the communities who have to live with
3 the fallout and the consequences.

4 And that fallout, you know, I understand that it
5 involves your family members, but it involves everybody who
6 has to live in that community. The violence, the crime, the
7 unemployment, the broken families, the gang warfare, the
8 moral decay. I'm sure, just like me, you know somebody who
9 has been victimized by the consequences of drug trafficking,
10 and I'm sure you realize that people are literally forced to
11 live behind bars in their own homes for fear that they're
12 going to be hit by some bullet by some crazed drug addict or
13 gang banger seeking to protect his turf or his product. You
14 can't even walk -- your own kids can't walk to school now.

15 And, quite frankly, I've been up here too long.
16 I've seen lives like yours who have been ruined by these
17 drugs. It's -- I'm speechless, quite frankly.

18 So the court has no choice except to impose a
19 sentence that will reflect the seriousness of this conduct,
20 that will protect the public and deter this defendant from
21 further crimes.

22 Having considered the statutory sentencing
23 factors, the court believes that 130-month term of
24 imprisonment, followed by a three-year term of supervised
25 release, a mandatory special assessment of \$300 reflects the

1 seriousness of the offense, will promote respect for the
2 law, and provides for just punishment, protects the public,
3 will deter this defendant, and is sufficient but not greater
4 than necessary to achieve the statutory goals of sentencing.

5 Does either party have any objections that were
6 not previously addressed?

7 MS. SAVO: No.

8 MR. MAUSNER: No, Your Honor.

9 THE COURT: Any legal reason why sentence should
10 not now be imposed?

11 MR. MAUSNER: No, Your Honor.

12 MS. SAVO: No.

13 THE COURT: It's ordered that the defendant shall
14 pay to the United States a special assessment of \$300, which
15 is due immediately. Any unpaid balance shall be due during
16 the period of imprisonment at a rate of not less than 25 per
17 quarter, and pursuant to the Bureau of Prisons' Inmate
18 Financial Responsibility Program.

19 Pursuant to Section 5E1.2, all fines are waived as
20 the court finds that the defendant has established that he's
21 unable to pay and is not likely to become able to pay any
22 fine.

23 Pursuant to Title 21, United States Code, Section
24 862(a)(1)(C), the defendant, having been convicted of a
25 third or subsequent drug distribution offense, is

1 permanently ineligible for federal benefits.

2 Pursuant to the Sentencing Reform Act, it is the
3 judgment of the court that the defendant is hereby committed
4 on Counts 2, 3, and 5, to the custody of the Bureau of
5 Prisons for a term of 130 months. This term consists of 130
6 months on each of Counts 2, 3, and 5 of the indictment, to
7 be served concurrently.

8 Upon release from imprisonment, the defendant is
9 to be placed on supervised release for a term of three
10 years. This term consists of three years on each of Counts
11 2, 3, and 5 of the indictment, all such terms to run
12 concurrently under the terms and conditions previously
13 announced by the court.

14 Does anyone need to have the court repeat the
15 terms of supervised release?

16 MS. SAVO: No, Your Honor.

17 MR. MAUSNER: No, Your Honor.

18 THE COURT: All right. Sir, you have the right to
19 appeal from the judgment and sentence within 14 days from
20 today's date. Failure to appeal within that 14-day period
21 shall constitute a waiver of your right to appeal.

22 You are also advised that you are entitled to have
23 assistance of counsel in taking an appeal, and if you're
24 unable to afford a lawyer, one will be provided to you.

25 If you're unable to afford the filing fee, the

1 Clerk of the Court will be directed to accept the Notice of
2 Appeal without such a fee.

3 The defendant is hereby remanded to the custody of
4 the United States Marshal to await designation by the Bureau
5 of Prisons.

6 Is there anything else?

7 MS. SAVO: Yes, Your Honor. Could the court
8 please recommend to the Bureau of Prisons a Southern
9 California placement.

10 THE COURT: Yes, I will do that.

11 MS. SAVO: Thank you.

12 THE COURT: Anything else?

13 MR. MAUSNER: No.

14 THE COURT: All right. Thanks very much. Good
15 luck.

16 MR. MAUSNER: Thank you, Your Honor.

17 MS. SAVO: Thank you, Your Honor.

18 *(Thereupon, at 9:37 a.m., proceedings adjourned)*

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5 ***CERTIFICATE***

6
7 *I hereby certify that pursuant to Section 753,*
8 *Title 28, United States Code, the foregoing is a true and*
9 *correct transcript of the stenographically reported*
10 *proceedings held in the above-entitled matter and that the*
11 *transcript format is in conformance with the regulations of*
12 *the Judicial Conference of the United States.*

13
14 **Date: February 13, 2017**

15
16 ***Lisa M. Gonzalez***

17 */s/* _____
18 ***Lisa M. Gonzalez, U.S. Court Reporter***
19 ***CSR No. 5920***