

NO. _____

IN THE
Supreme Court of the United States

MICHAEL KENNETH YOUNG, a/k/a Mizzle,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

APPENDIX

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APPENDIX

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UNPUBLISHEDUNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-4823

UNITED STATES OF AMERICA,

Plaintiff – Appellant,

v.

MICHAEL KENNETH YOUNG, a/k/a Mizzle,

Defendant – Appellee.

Appeal from the United States District Court for the District of South Carolina, at Columbia. Margaret B. Seymour, Senior District Judge. (3:15-cr-00051-MBS-1)

Submitted: January 25, 2021

Decided: March 11, 2021

Before GREGORY, Chief Judge, WYNN, and HARRIS, Circuit Judges.

Reversed, vacated, and remanded with instructions by unpublished opinion. Chief Judge Gregory wrote the opinion, in which Judge Wynn and Judge Harris joined.

A. Lance Crick, Acting United States Attorney, Benjamin Neale Garner, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Columbia, South Carolina, for Appellant. W. Michael Duncan, AUSTIN & ROGERS, PA, Columbia, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

GREGORY, Chief Judge:

In 2016, a jury convicted Michael Young of three counts of being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1). Following the district court’s judgment and sentencing, Young appealed. This panel vacated one of Young’s convictions, holding that the evidence supporting this conviction was the fruit of an illegal search. We then remanded for resentencing. On remand, Young objected to his status as an armed career criminal—an objection the district court sustained. But for the reasons discussed below, we reverse the district court’s ruling and remand the case for resentencing.

I.

As we explained in *United States v. Young*, 751 F. App’x 381, 382–83 (4th Cir. 2018) (unpublished), the charges against Mr. Young arose out of four separate police encounters. During each encounter, police uncovered drugs, guns, or both. *Id.* These discoveries led to a six-count federal indictment, a jury trial, three convictions for being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g), and a within-range sentence of 235 months’ imprisonment followed by five years of supervised release.

After his judgment and sentencing, Mr. Young appealed, arguing the district court erred in denying two of his pretrial motions: a motion to sever and a motion to suppress. We affirmed two of Mr. Young’s convictions, but vacated the third, holding that the district court erred by admitting fruit of an illegal search into evidence. *Id.* at 387–88. We then remanded the case for resentencing. *Id.*

On remand, the United States Probation Office prepared a revised pre-sentence report. The report designated Mr. Young as an armed career criminal, identifying three of Mr. Young's state convictions as predicate offenses: (1) a January 26, 2005 conviction for possession with intent to distribute crack cocaine, committed on March 19, 2003; (2) a January 26, 2005 conviction for possession with intent to distribute crack cocaine, committed on March 31, 2003; and (3) a September 7, 2006 conviction for distribution of crack cocaine, committed on May 25, 2005. Ultimately, the revised PSR recommended a guideline range of 235 to 293 months' incarceration.

Mr. Young objected. Relevant here, Mr. Young argued that his two January 2005 convictions did not qualify as "serious drug offenses" under ACCA. The district court sustained the objection. It explained that, based on the South Carolina sentencing sheets, it was "unclear" whether Young was convicted of possessing cocaine with the intent to distribute it, mere possession, or something else. J.A. 152. What's more, the Government was unable to provide a transcript of the sentencing hearing. Given the ambiguity of the sentencing sheets, the court was "not inclined to rule that [Young was] an armed career criminal without the benefit of the transcripts from the sentencing hearings." *Id.* In short, the district court held that the Government could not rely upon sentencing sheets containing clerical errors as proof of Mr. Young's prior convictions.

Without the ACCA enhancement, Mr. Young's total offense level was 24, his criminal history category was VI, and his guideline range was 100–120 months' imprisonment with one to three years of supervised release. The district court sentenced Mr. Young to 120 months in prison, to be followed by three years of supervised release.

The Government timely appealed.

II.

A person convicted of violating 18 U.S.C. § 922(g) qualifies as an “armed career criminal” if she has three prior convictions for “a violent felony or a serious drug offense.” Serious drug offenses include “offense[s] under State law, involving manufacturing, distributing, or possessing with intent to distribute a controlled substance . . . for which a maximum term of imprisonment of ten years or more is prescribed by law.” 18 U.S.C. § 924(e)(2)(A)(i), (ii). When evaluating a defendant’s eligibility for an ACCA enhancement, we review a district court’s legal conclusions *de novo* and its factual findings for clear error. *United States v. Sellers*, 806 F.3d 770, 772 (4th Cir. 2015).

It is undisputed that Young’s September 2006 conviction for distribution of crack cocaine, in violation of S.C. Code Ann. § 44-53-375(B)(3) qualifies as a predicate offense. Response Br. at 5, ECF No. 25. The Government argues that the district court erred by failing to designate Young’s two January 2005 convictions as predicate offenses as well. Opening Br. at 8–14, ECF No. 12. We agree.

A.

To qualify as a “serious drug offense,” Mr. Young’s January 2005 convictions must “involv[e] . . . manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance.” 18 U.S.C. § 924(e)(2)(A)(ii). Generally, we use the categorical approach to determine whether an offense falls within the category of crimes recognized as “serious drug offenses.” *United States v. Williams*, 326 F.3d 535, 538 (4th Cir.

2003). With this approach, we focus on the elements, rather than the facts, of the prior conviction. *Mathis v. United States*, 136 S. Ct. 2243, 2248 (2016). The court simply “lines up” the elements of the defendant’s prior convictions alongside those of the generic offense and “sees if they match.” *Id.* If a prior offense has the same elements as a qualifying offense in its “generic” form, then the prior conviction stands as a predicate offense under ACCA. *Descamps v. United States*, 570 U.S. 254, 261 (2013). “[S]o too if the statute defines the crime more narrowly, because anyone convicted under that law is ‘necessarily . . . guilty of all the [generic crime’s] elements.’” *Id.* (quoting *Taylor v. United States*, 495 U.S. 575, 599 (1990)). But “if the statute sweeps more broadly than the generic crime, a conviction under that law cannot count as an ACCA predicate, even if the defendant actually committed the offense in its generic form.” *Id.*

“The comparison of elements that the categorical approach requires is straightforward when a statute sets out a single (or ‘indivisible’) set of elements to define a single crime.” *Mathis*, 136 S. Ct. at 2248. But when the statute of conviction is “divisible,” the inquiry loses some of its intuitive appeal. Divisible statutes “comprise[] multiple, alternative, versions of the crime,” *Descamps*, 570 U.S. at 262, rather than “various factual means of committing a single element,” *Mathis*, 136 S. Ct. at 2249. When a state conviction flows from a divisible statute, courts must use the “modified categorical approach” to “determine which of a statute’s alternative elements formed the basis of the defendant’s prior conviction.” *Id.*

The government may produce a limited class of documents—“*Shepard* documents”—to aid this analysis. *Id.* at 262–63. *Shepard* documents generally include the “statutory definition, charging document, written plea agreement, transcript of plea

colloquy, and any explicit factual finding by the trial judge to which the defendant assented.” *Shepard v. United States*, 544 U.S. 13, 16 (2005).

In January 2005, Mr. Young pleaded guilty to two counts of violating S.C. Code Ann. § 44-53-375(B)(3). Section 44-53-375(B) makes it is a felony to “manufacture[], distribute[], dispense[], deliver[], purchase[], . . . or possess[] with intent to distribute, dispense, or deliver methamphetamine or cocaine base.” In *United States v. Furlow*, we held that this statute was divisible. 928 F.3d 311, 319–20 (4th Cir. 2019), *vacated on other grounds by Furlow v. United States*, 140 S. Ct. 2824 (2020) (Mem). Although the Supreme Court later vacated *Furlow* on different grounds, we—in line with some of our sister circuits—hold that the unchallenged portion of an opinion containing a vacated judgment is at least persuasive authority. *See, e.g., Brown v. Kelly*, 609 F.3d 467, 476 (2d Cir. 2010) (treating a relevant decision that was vacated on other grounds as “persuasive authority”); *McKenzie v. Day*, 57 F.3d 1493, 1494 (9th Cir. 1995) (“Although the opinion was subsequently vacated, *Richmond* [v. *Lewis*, 948 F.2d 1473 (9th Cir. 1990)] remains persuasive authority”); *see also E.E.O.C. v. City of Norfolk Police Dep’t*, 45 F.3d 80, 83 (4th Cir. 1995) (assuming without deciding that “when a judgment of this Court has been vacated by the Supreme Court, the opinion containing that judgment is still entitled to some precedential value.”). For the reasons *Furlow*, 928 F.3d at 319–20 set forth, we now reaffirm that S.C. Code Ann. § 44-53-375(B)(3) is divisible.

The district court was therefore correct to apply the modified categorical approach, and in doing so, examine *Shepard* documents relating to Mr. Young’s 2005 state convictions. The Government produced Mr. Young’s charging documents and sentencing

sheets stemming from those proceedings. The sentencing sheets indicated that Mr. Young pled guilty to “PWID Crack Cocaine.” But they also contained clerical errors. For example, the sentencing sheets twice referred to Mr. Young as “Michael Nathan Young” instead of “Michael Kenneth Young.” And the sentencing sheet for one of Mr. Young’s convictions indicated that, by pleading to § 44-53-375(B)(3), Mr. Young pled to a “serious” offense, while the other did not indicate as much.* The court determined that clerical errors in Mr. Young’s sentencing sheets so compromised the documents’ integrity that they could not reliably indicate Mr. Young’s offense of conviction.

These clerical errors reflect an uncomfortable reality about the often-hurried system of pleas that makes up our criminal justice system. Still, they do not carry as much weight as the district court gave them. At sentencing, the government need only prove a defendant’s eligibility for an ACCA enhancement by a preponderance of the evidence. *United States v. Rumley*, 952 F.3d 538, 547 (4th Cir. 2020). To meet that burden here, the Government produced sentencing documents that unambiguously indicated that Mr. Young pled guilty to “PWID Crack Cocaine”; documents bearing the signatures of the prosecuting attorney, defense counsel, the sentencing judge, and Mr. Young himself. Clerical errors, standing

*Mr. Young also argues that his sentencing sheets are inconsistent because one indicated that he pled guilty to a “lesser included offense,” while the other did not. But this difference does not appear to reflect a clerical error. The indictments encompassing Mr. Young’s January 2005 conduct charged him with violating two separate statutory provisions: S.C. Code Ann. § 44-53-375(B)(3) and S.C. Code Ann. § 44-53-375(C)(3). But Mr. Young did not plead guilty to both counts as charged. Rather, he pled guilty to two counts under § 44-53-375(B)(3): one count as it was charged in the indictment and one count as a lesser included offense of § 44-53-375(C)(3).

alone, must be more pervasive than exist here to undermine this strong, contemporaneous evidence of cross-party consensus on a defendant’s offense of conviction.

We hold that the district court erred in holding that the Government could not rely upon Mr. Young’s sentencing sheets to prove Mr. Young’s 2005 offenses of conviction. These documents show by a preponderance of the evidence that the state court convicted Mr. Young of two counts of possession with intent to distribute crack cocaine, in violation of S.C. Code Ann. § 44-53-375(B)(3).

B.

Moreover, precedent compels our holding that S.C. Code Ann. § 44-53-375(B)(3) prescribed “a maximum term of imprisonment of ten years or more” for Mr. Young’s January 2005 convictions. As we have previously explained, “two important and interrelated principles” guide this inquiry. *United States v. Sellers*, 806 F.3d 770, 776 (4th Cir. 2015). First, the relevant sentence is the “maximum sentence permitted by the defendant’s offense of conviction, not the sentence the defendant actually received.” *Id.* (citing *United States v. Bercian-Flores*, 786 F.3d 309, 315–16 (4th Cir. 2015)). Second, tools designed to cabin defendants’ sentencing exposure do not alter the “maximum term of imprisonment . . . prescribed by law” unless they deprive the sentencing judge of her authority to impose “a qualifying term of imprisonment.” *Id.* (internal quotations omitted). If a judge retains her discretion to sentence a defendant to the statutory maximum, then—notwithstanding a plea agreement, *United States v. Valdovinos*, 760 F.3d 322, 328–30 (4th Cir. 2014), the Youthful Offender Act, *United States v. Williams*, 508 F.3d 724, 728–30 (4th Cir. 2007), or the high end of a guidelines range, *Bercian-Flores*, 786 F.3d at 315–16—“the statutory maximum penalty

controls the outcome of the case.” *Sellers*, 806 F.3d at 777; *but see United States v. Simmons*, 649 F.3d 237, 244 (4th Cir. 2011) (holding that when a sentencing statute “directly tie[s]” certain aggravating factors to the maximum term of imprisonment, a defendant’s sentencing exposure is limited by what aggravating factors the sentencing court actually found).

Mr. Young nonetheless argues that his January convictions did not expose him to a penalty of ten years in prison because, under his negotiated plea agreements, his maximum penalty was ninety days. Response Br. at 6–7. This argument cannot survive our decision in *Valdovinos*, 760 F.3d at 327–29. There, we held that the defendant’s negotiated plea agreement did not establish his maximum sentencing exposure because, under North Carolina law, “the sentencing judge remain[ed] free to reject the agreement.” *Id.* at 328. State law did not allow “[e]ither a defendant [] or a prosecutor [to] ‘bind the State to the dispensation of a particular sentence . . . until the trial judge has approved of the proposed sentence.’” *Id.* (quoting *State v. Marlow*, 432 S.E.2d 275, 279 (N.C. 1993)). Accordingly, the state’s sentencing statute—not the parties’ agreement—was the “final word” on the defendant’s maximum term of imprisonment. *Id.*

South Carolina, like its northern neighbor, permits its courts to reject parties’ negotiated plea agreements. *State v. Nesbitt*, 768 S.E.2d 67, 71 n.7 (S.C. 2015); *Reed v. Becka*, 511 S.E.2d 396, 401–02 (S.C. Ct. App. 1999). Mr. Young’s sentencing exposure therefore rises and falls with the text of the state’s sentencing statute. Under S.C. Code Ann. § 44-53-375(B)(3), Mr. Young faced up to thirty years in prison for his two January 2005 convictions. These convictions therefore satisfied ACCA’s sentencing-exposure requirement.

III.

Mr. Young's January 2005 convictions under S.C. Code Ann. § 44-53-375(B)(3) both qualify as "serious drug offenses." The district court erred by holding otherwise. We reverse the district court's ruling, vacate Mr. Young's sentence, and remand for resentencing consistent with this opinion.

REVERSED, VACATED, AND REMANDED WITH INSTRUCTIONS

United States District Court

District of South Carolina

UNITED STATES OF AMERICA

AMENDED JUDGMENT IN A CRIMINAL CASE

vs.

MICHAEL KENNETH YOUNG, a/k/a "Mizzle"**Date of Original Judgment:** 3/1/17*(or Date of Last Amended Judgment)*

Case Number: 3:15-51 (001 MBS)

USM Number: 28045-171

W. Michael Duncan

Defendant's Attorney

Reason for Amendment:

Correction of Sentence on Remand (18 U.S.C. 3742(f)(1) and (2))

Reduction of Sentence for Changed Circumstances (Fed.R.Crim.P. 35(b))

Correction of Sentence by Sentencing Court (Fed.R.Crim.P.35(a))

Correction of Sentence for Clerical Mistake (Fed.R.Crim.P.36)

Modification of Supervision Conditions (18 U.S.C. §3563(c) or 3583(e))

Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. §3582(c)(1))

Modification of Imposed Term of Imprisonment for Retroactive Amendment(s) to the Sentencing Guidelines (18 U.S.C. §3582(c)(2))

Direct Motion to District Court Pursuant to 28 U.S.C. §2255 or 18 U.S.C. §3559(c)(7)

Modification of Restitution Order (18 U.S.C. §3664)

THE DEFENDANT:

pleaded guilty to Count(s) on.

pleaded nolo contendere to Count(s) on which was accepted by the court.

was found guilty on Count(s) 4, 5 of the Superseding Indictment on 9/21/16 after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18:922(g)(1), 924(a)(2) & 924(e)	Please see Superseding Indictment	4/2/14	4
18:922(g)(1), 924(a)(2) & 924(e)	Please see Superseding Indictment	11/3/14	5
18:922(g)(1), 924(a)(2) & 924(e)	Please see Superseding Indictment	1/30/15	6

The defendant is sentenced as provided in pages 2 through 9 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) 1-3 of the Superseding Indictment.

Count(s) 1-5 of the Indictment; count 6 of the Superseding Indictment is are dismissed on the motion of the United States.

Forfeiture provision is hereby dismissed on motion of the United States Attorney.

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 any material changes in economic circumstances.

October 1, 2019

Date of Imposition of Judgment

/s/ Margaret B. Seymour

Signature of Judge

Margaret B. Seymour, Senior United States District Judge

Name and Title of Judge

October 8, 2019

Date

DEFENDANT: MICHAEL KENNETH YOUNG, a/k/a "Mizzle"
CASE NUMBER: 3:15-51

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of one hundred twenty (120) months as to each count 4, and 5, to run concurrently.

- The court makes the following recommendations to the Bureau of Prisons:
- 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 KENNETH YOUNG, a/k/a "Mizzle"
CASE NUMBER: 3:15-51

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years as to each count 4 and 5, to run concurrently.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall 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 the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
- The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*
- The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as the following additional conditions:

- 1) The defendant shall submit to substance abuse testing to determine if he has used a prohibited substance. He must not attempt to obstruct or tamper with the testing methods. He shall contribute to the costs of such testing not to exceed an amount determined reasonable by the court-approved "U.S. Probation Office's Sliding Scale for Services" and shall cooperate in securing any applicable third-party payment, such as insurance or Medicaid.

STANDARD CONDITIONS OF SUPERVISION

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

AO 245B (SCDC Rev. 09/11) Judgment in a Criminal Case
Sheet 4 - Criminal Monetary Penalties

DEFENDANT: MICHAEL KENNETH YOUNG, a/k/a "Mizzle"
CASE NUMBER: 3:15-51

CRIMINAL MONETARY PENALTIES

The defendant shall pay the total criminal monetary penalties under the schedule of payments on Sheet 5.

<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 200.00	\$

- The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO245C) 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.

- 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 judgment, pursuant to 18 U.S.C. §3612(f). All of the payment options on Sheet 5 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:

**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.

DEFENDANT: MICHAEL KENNETH YOUNG, a/k/a "Mizzle"
 CASE NUMBER: 3:15-51

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 \$ 200.00 due immediately, balance due

not later than _____, or

in accordance with C, D, or E, or F below: or

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

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

D Payment in equal _____ (weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (*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:

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

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

Joint and Several

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

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:

As directed in the Preliminary Order of Forfeiture, filed 1/25/17 and the said order is incorporated herein as part of this judgment.

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

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

UNITED STATES OF AMERICA) CRIMINAL NO.: 3:15-CR-00051-MBS
v.)
MICHAEL KENNETH YOUNG)
a/k/a "Mizzle")

PRELIMINARY ORDER OF FORFEITURE AS TO
MICHAEL KENNTH YOUNG

This matter is before the court on the motion of the United States for a Preliminary Order of Forfeiture as to Defendant Michael Kenneth Young (“Young”, “Defendant”), based upon the following:

1. On July 7, 2015, a multi- count Superseding Indictment was filed charging Young with drug trafficking, in violation of 21 U.S.C. § 841, and federal firearm offenses, in violation of 18 U.S.C. §§ 922(g)(1) and 924.

2. Pursuant to Fed. R. Crim. P. 32.2(a), the Indictment contained a notice of forfeiture providing that upon Young's conviction, certain properties enumerated therein, or equivalent substitute assets, would be subject to forfeiture to the United States. As specified therein, such assets include, but are not limited to the following:

A. Firearm/Ammunition:

(1) SCCY, model CPX-2, 9mm semi-automatic pistol, Serial # 060305, and a 10 round magazine of 9mm ammunition.
Asset ID: 15-DEA-611003

(2) Smith and Wesson, model Bodyguard, .380 caliber handgun, serial # ECE4046, and 6 rounds of .380 caliber ammunition.
Asset ID: 14-DEA-610995

3. On September 21, 2016, a jury found Young guilty of three counts of being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1).

4. Based upon Defendant's conviction, the court has determined that the property described above is subject to forfeiture, pursuant to 18 U.S.C. § 924(d) and 28 U.S.C. § 2461(c).

5. The court has determined that the government has established the requisite nexus between the said property subject to forfeiture and the offense for which Young has been convicted; therefore, the United States is entitled to a preliminary order of forfeiture, subject to the provisions of 21 U.S.C. § 853 governing third party rights.

Accordingly, it is hereby **ORDERED**,

1. The following property is hereby forfeited to the United States of America, along with all right, title, and interest of the Defendant, Michael Kenneth Young, in and to such property:

A. Firearm/Ammunition:

- (1) SCCY, model CPX-2, 9mm semi-automatic pistol, Serial # 060305, and a 10 round magazine of 9mm ammunition.
Asset ID: 15-DEA-611003
- (2) Smith and Wesson, model Bodyguard, .380 caliber handgun, serial # ECE4046, and 6 rounds of .380 caliber ammunition.
Asset ID: 14-DEA-610995

2. Upon entry of the criminal judgment, this order becomes final as to Young, and shall be made a part of his sentence and included in the criminal judgment.

3. The United States shall publish notice of this Order and its intent to dispose of the property in such manner as the Attorney General may direct. The United States

may also, to the extent practicable, provide written notice to any person known to have an alleged interest in the said property.

4. Upon entry of this Order, the United States Marshal's Service or their designee is authorized to seize the above-described forfeited property as directed by the United States Attorney's Office and to commence proceedings that comply with statutes governing third party rights.

5. Any person, other than the named Defendant, asserting a legal interest in the subject property may, within thirty days of the final publication of notice or receipt of notice, whichever is earlier, petition the court for a hearing without a jury to adjudicate the validity of his alleged interest in the subject property and for an amendment of the order of forfeiture, pursuant to 21 U.S.C. § 853(n)(6) and Fed. R. Crim. P. 32.2(c).

6. Any petition filed by a third party asserting an interest in the above-described property shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the subject property, the time and circumstances of the petitioner's acquisition of the right, title or interest in such property, and additional facts supporting the petitioner's claim and the relief sought.

7. After the disposition of any motion filed under Fed. R. Crim. P. 32.2(c)(1)(A) and before a hearing on the petition, discovery may be conducted in accordance with the Federal Rules of Civil Procedure upon a showing that such discovery is necessary or desirable to resolve factual issues.

8. The United States shall have clear title to the property following the court's determination of all third party interests, or, if no petitions are filed, following the expiration of the period provided in 21 U.S.C. § 853(n)(2) for the filing of third party petitions.

9. The court shall retain jurisdiction to resolve disputes which may arise and to enforce and amend this Order as necessary, pursuant to Fed. R. Crim. P. 32.2(e).

10. The Clerk, U.S. District Court, shall provide one (1) certified copy of this Order to the United States Attorney's Office.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
MARGARET B. SEYMOUR
SENIOR UNITED STATES DISTRICT JUDGE

January 25, 2017
Columbia, South Carolina

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U.S. Const. amend. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Armed Career Criminal Act (18 U.S. § 9245(e))

(1) In the case of a person who violates section 922(g) of this title and has three previous convictions by any court referred to in section 922(g)(1) of this title for a violent felony or a serious drug offense, or both, committed on occasions different from one another, such person shall be fined under this title and imprisoned not less than fifteen years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under section 922(g).

(2) As used in this subsection—

(A) the term “serious drug offense” means—

(i) an offense under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46 for which a maximum term of imprisonment of ten years or more is prescribed by law; or

(ii) an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), for which a maximum term of imprisonment of ten years or more is prescribed by law;

(B) the term “violent felony” means any crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use or carrying of a firearm, knife, or destructive device that would be punishable by imprisonment for such term if committed by an adult, that—

(i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or

- (ii) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another; and

(C) the term “conviction” includes a finding that a person has committed an act of juvenile delinquency involving a violent felony.

South Carolina Code Section 44-53-375(B)

(B) A person who manufactures, distributes, dispenses, delivers, purchases, or otherwise aids, abets, attempts, or conspires to manufacture, distribute, dispense, deliver, or purchase, or possesses with intent to distribute, dispense, or deliver methamphetamine or cocaine base, in violation of the provisions of Section 44-53-370, is guilty of a felony and, upon conviction:

- (1) for a first offense, must be sentenced to a term of imprisonment of not more than fifteen years or fined not more than twenty-five thousand dollars, or both;
- (2) for a second offense, the offender must be imprisoned for not less than five years nor more than thirty years, or fined not more than fifty thousand dollars, or both;
- (3) for a third or subsequent offense, the offender must be imprisoned for not less than ten years nor more than thirty years, or fined not more than fifty thousand dollars, or both.

Possession of one or more grams of methamphetamine or cocaine base is *prima facie* evidence of a violation of this subsection. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a first offense or second offense may have the sentence suspended and probation granted, and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a third or subsequent offense in which all prior offenses were for possession of a controlled substance pursuant to subsection (A), may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. In all other cases, the sentence must not be suspended nor probation granted.