

APPENDIX A

NOT RECOMMENDED FOR PUBLICATION

No. 20-6296

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Aug 25, 2021
DEBORAH S. HUNT, Clerk

| | | |
|---------------------------|---|---------------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff-Appellee, |) | |
| |) | ON APPEAL FROM THE UNITED |
| v. |) | STATES DISTRICT COURT FOR |
| |) | THE EASTERN DISTRICT OF |
| JOSEPH D. BROWN, |) | TENNESSEE |
| |) | |
| Defendant-Appellant. |) | |

ORDER

Before: MOORE, WHITE, and THAPAR, Circuit Judges.

Joseph D. Brown appeals his criminal sentence under the Armed Career Criminal Act. The parties have waived oral argument, and this panel unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

Brown was indicted on two counts of being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1). He pleaded guilty, in accordance with a plea agreement, to one of the charges, and the government dismissed the other. The district court sentenced him to 180 months of imprisonment. In crafting Brown’s sentence, the district court determined that he qualified for an enhancement under the Armed Career Criminal Act (“ACCA”), because he had at least three prior convictions that were “violent felon[ies],” 18 U.S.C. § 924(e). On appeal, Brown argues that the district court’s ACCA finding and consequent sentence were in error because two of his predicate convictions “more properly constituted one continuous criminal episode.”

Because Brown objected to the district court’s determination that he committed two distinct offenses for purposes of the ACCA, we review that decision de novo. *See United States v. Southers*, 866 F.3d 364, 369 (6th Cir. 2017).

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A defendant convicted under § 922(g) faces a potential maximum sentence of ten years of imprisonment. *See* § 924(a)(2). The ACCA increases that sentence to a minimum of fifteen years. *See* § 924(e)(1). To qualify for the enhancement, a § 922(g) defendant must have at least three predicate convictions that were “committed on occasions different from one another.” *Id.*

Brown’s presentence report, which the district court used at his sentencing, listed his three predicate convictions: an aggravated-burglary conviction for an offense on October 24, 2015, and an aggravated-burglary conviction and a burglary of a business for offenses on October 25, 2015, all under Tennessee law. Brown concedes that one of the aggravated-burglary convictions was an ACCA predicate. He argues that his other two convictions for offenses on October 25, however, were not separate offenses and therefore that he did not have enough predicate offenses to qualify for the ACCA enhancement.

Brown explains that he was committing a burglary of a business—Chattanooga Trailer and Rental—when the business’s alarm went off. He fled the building “under the pressure of hot pursuit” from police, and “immediately stepped into a detached garage on the premises,” where police found him. Brown was convicted of aggravated burglary of the garage, but he maintains that he entered that structure “only to hide and without meaningful opportunity to reflect on an effort to avoid that second crime.” Therefore, he argues that two offenses were not in fact separate for ACCA purposes.

We have “recognized ‘at least three indicia that offenses are separate from each other,’” as reflected in these three questions: (1) “[i]s it possible to discern the point at which the first offense is completed and the subsequent point at which the second offense begins?”; (2) “[w]ould it have been possible for the offender to cease his criminal conduct after the first offense and withdraw without committing the second offense?”; and (3) “[w]ere the offenses committed in different residences or business locations?” *United States v. Wooden*, 945 F.3d 498, 504 (6th Cir. 2019) (citing *United States v. Hill*, 440 F.3d 292, 297-98 (6th Cir. 2006)), *cert. granted in part*, 141 S. Ct. 1370 (2021).

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Brown argues that he committed only one continuous offense when, after burglarizing the business, he “merely stepped into an unoccupied, detached garage of a residence to avoid detection, apprehension and arrest.” In support, he relies on an Eleventh Circuit case, *United States v. Sweeting*, 933 F.2d 962, 967-68 (11th Cir. 1991); a dissenting opinion in our decision in *United States v. Brady*, 988 F.2d 664, 670-77 (6th Cir. 1993) (en banc) (Jones, J., dissenting); and several (generally older) cases from this court, including *United States v. Thomas*, 211 F.3d 316, 318-21 (6th Cir. 2000), *rev'd on other grounds*, *United States v. King*, 853 F.3d 267, 274 (6th Cir. 2017); and *United States v. Graves*, 60 F.3d 1183, 1187 (6th Cir. 1995); as well as more recent unpublished precedent, like *United States v. Mann*, 552 F. App'x 464, 470 (6th Cir. 2014). He concludes that these cases support his contention that his two convictions were not separate offenses for ACCA purposes.

But Brown acknowledges that, to determine whether multiple offenses count as a single ACCA predicate, this court looks to the “informative standards” in the above “three basic questions.” *United States v. Jenkins*, 770 F.3d 507, 509-10 (6th Cir. 2014). And under that rubric, Brown’s two October 25 burglaries satisfy each of the indicia of separateness: it is possible to discern when he completed the first burglary and began the second; he could have ceased his criminal conduct after the first burglary and withdrawn without committing the second; and the burglaries happened in separate structures. *See Hill*, 440 F.3d at 298 (holding that a defendant who burglarized an abandoned business and then went across the street to another property and stole a motor from a boat had committed separate offenses).

Moreover, the government corrects Brown’s characterization of the second burglary as a mere attempt to flee or hide after setting off the alarm while he committed the first. According to the documents that Brown himself relies on, *see United States v. King*, 853 F.3d 267, 272 (6th Cir. 2017) (citing *Shepard v. United States*, 544 U.S. 13, 20 (2005)), police officers saw Brown “step inside a garage,” where “[a]pparently he was looking through it with a small flashlight.” That Brown’s second conviction was for burglary, rather than trespass, supports that account, given that Tennessee burglary required entry into a building “with intent to commit a felony, theft or assault.”

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Tenn. Code Ann. § 39-14-402(a)(1). Brown replies that his indictment alleged only that he entered the garage “with the intent to commit theft,” and that he was not found to have taken any items from the garage. But the fact that Brown was apprehended before he was able to steal anything while he searched the garage with a flashlight does not transform the second burglary to a continuation of the first or a mere effort to hide or flee. That Brown was not simply attempting to hide from police when he entered the garage lends even more justification for holding, in view of the three *Hill* questions, that the burglaries were separate offenses for ACCA purposes. In sum, the district court did not err in sentencing Brown under the ACCA.

Accordingly, we **AFFIRM** the district court’s judgment.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

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

Deborah S. Hunt
Clerk

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Filed: August 25, 2021

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Mr. Luke A. McLaurin
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Knoxville, TN 37902

Re: Case No. 20-6296, *USA v. Joseph Brown*
Originating Case No. 1:19-cr-00105-1

Dear Counsel,

The Court issued the enclosed Order today in this case.

Sincerely,

s/Jill E Colyer
Case Management Specialist
Direct Dial No. 513-564-7024

cc: Ms. LeAnna Wilson

Enclosure

Mandate to issue

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APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE CHATTANOOGA DIVISION

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

Case Number: 1:19-CR-00105-TRM-SKL(1)

JOSEPH D BROWN

USM#54467-074

Paul Bergmann, III
Defendant's Attorney

THE DEFENDANT:

- pleaded guilty to count(s): One of the Indictment.
- pleaded nolo contendere to count(s) which was accepted by the court.
- was found guilty on count(s) after a plea of not guilty.

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offense(s):

| Title & Section and Nature of Offense | Date Violation Concluded | Count |
|---|--------------------------|-------|
| 18 U.S.C. § 922(g)(1) and 18 U.S.C. § 924(e) Felon in Possession of a Firearm (Armed Career Criminal) | 12/09/2018 | 1 |

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984 and 18 U.S.C. 3553.

- The defendant has been found not guilty on count(s).
- All remaining count(s) as to this defendant are dismissed upon motion of the United States.

IT IS ORDERED that the defendant shall 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 shall notify the court and the United States attorney of any material change in the defendant's economic circumstances.

October 30, 2020

Date of Imposition of Judgment

/s/Travis R. McDonough

Signature of Judicial Officer

Travis R McDonough, Chief United States District Judge

Name & Title of Judicial Officer

October 30, 2020

Date

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DEFENDANT: JOSEPH D BROWN
CASE NUMBER: 1:19-CR-00105-TRM-SKL(1)

IMPRISONMENT

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

180 months as to count one.

- The court makes the following recommendations to the Bureau of Prisons: **The Court will recommend that the defendant receive 500 hours of substance abuse treatment from the Bureau of Prisons' Institution Residential Drug Abuse Treatment Program.**
- 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

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DEFENDANT: JOSEPH D BROWN
CASE NUMBER: 1:19-CR-00105-TRM-SKL(1)

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SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **five (5) years**.

MANDATORY CONDITIONS

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

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

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DEFENDANT: JOSEPH D BROWN
CASE NUMBER: 1:19-CR-00105-TRM-SKL(1)

STANDARD CONDITIONS OF SUPERVISION

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

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

U.S. Probation Office Use Only

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

Defendant's Signature _____

Date _____

DEFENDANT: JOSEPH D BROWN
CASE NUMBER: 1:19-CR-00105-TRM-SKL(1)

SPECIAL CONDITIONS OF SUPERVISION

- a) The defendant shall participate in a program of testing and/or treatment for drug and/or alcohol abuse, as directed by the probation officer, until such time as the defendant is released from the program by the probation officer.
- b) The defendant shall participate in a program of mental health treatment, as directed by the probation officer, until such time as the defendant is released from the program by the probation officer.
- c) The defendant shall waive all rights to confidentiality regarding mental health and substance abuse treatment in order to allow release of information to the supervising United States Probation Officer and to authorize open communication between the probation officer and the treatment providers.
- d) The defendant shall submit his property, house, residence, vehicle, papers, [computers (as defined in 18 U.S.C. § 1030(e)(1)), other electronic communications or data storage devices or media,] or office, to a search conducted by a United States Probation Officer or designee. Failure to submit to a search may be grounds for revocation of release. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when a reasonable suspicion exists that the defendant has violated a condition of his supervision, and the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.

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DEFENDANT: JOSEPH D BROWN
CASE NUMBER: 1:19-CR-00105-TRM-SKL(1)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments sheet of this judgment.

| | Assessment | Restitution | Fine | AVAA Assessment* | JVTA Assessment ** |
|---------------|------------|-------------|-------|------------------|--------------------|
| TOTALS | \$100.00 | \$.00 | \$.00 | \$.00 | \$.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 the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options under the Schedule of Payments sheet of this judgment may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

- The court determined that the defendant does not have the ability to pay interest and it is ordered that:
 - the interest requirement is waived for the fine restitution
 - the interest requirement for the fine restitution is modified as follows:

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

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

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

DEFENDANT: JOSEPH D BROWN
CASE NUMBER: 1:19-CR-00105-TRM-SKL(1)

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SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A Lump sum payment of \$100.00 due immediately, balance due
 not later than _____, or
 in accordance with C, D, E, or F below; or
- B Payment to begin immediately (may be combined with C, D, or F below); or
- C Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F Special instructions regarding the payment of criminal monetary penalties:

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 **U.S. District Court, 900 Georgia Avenue, Joel W. Solomon Federal Building, United States Courthouse, Chattanooga, TN, 37402**. Payments shall be in the form of a check or a money order, made payable to U.S. District Court, with a notation of the case number including defendant number.

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

- Joint and Several
See above for Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.
 Defendant shall receive credit on his restitution obligation for recovery from other defendants who contributed to the same loss that gave rise to defendant's restitution obligation.
- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

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

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APPENDIX C

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 922(g)(1):

(g) It shall be unlawful for any person--

(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

18 U.S.C. § 924(a)(2):

Whoever knowingly violates subsection (a)(6), (d), (g), (h), (i), (j), or (o) of section 922 shall be fined as provided in this title, imprisoned not more than 10 years, or both.

18 U.S.C. § 924(e):

(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).

18 U.S.C. § 3553:

(a) **Factors to be considered in imposing a sentence.**--The court shall impose a sentence sufficient, but not greater than necessary,

(b) to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider--

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

(2) the need for the sentence imposed--

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct;

(C) to protect the public from further crimes of the defendant; and

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

(3) the kinds of sentences available;

(4) the kinds of sentence and the sentencing range established for--

(A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines--

(i) issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(ii) that, except as provided in section 3742(g), are in effect on the date the defendant is sentenced; or

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

(5) any pertinent policy statement--

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

(B) that, except as provided in section 3742(g), is in effect on the date the defendant is sentenced.¹

(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

(7) the need to provide restitution to any victims of the offense.

(b) Application of guidelines in imposing a sentence.--

(1) **In general.--**Except as provided in paragraph (2), the court shall impose a sentence of the kind, and within the range, referred to in subsection (a)(4) unless the court finds that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described. In determining whether a circumstance was adequately taken into consideration, the court shall consider only the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission. In the absence of an applicable sentencing guideline, the court shall impose an appropriate sentence, having due regard for the purposes set forth in subsection (a)(2). In the absence of an applicable sentencing guideline in the case of an offense other than a petty offense, the court shall also have due regard for the relationship of the sentence imposed to sentences prescribed by guidelines applicable to similar offenses and offenders, and to the applicable policy statements of the Sentencing Commission.

(2) Child crimes and sexual offenses.--

(A) ² **Sentencing.--**In sentencing a defendant convicted of an offense under section 1201 involving a minor victim, an offense under section 1591, or an offense under chapter 71, 109A, 110, or 117, the court shall impose a sentence of the kind, and within the range, referred to in subsection (a)(4) unless--

(i) the court finds that there exists an aggravating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence greater than that described;

(ii) the court finds that there exists a mitigating circumstance of a kind or to a degree, that--

(I) has been affirmatively and specifically identified as a permissible ground of downward departure in the sentencing guidelines or policy statements issued

under section 994(a) of title 28, taking account of any amendments to such sentencing guidelines or policy statements by Congress;

(II) has not been taken into consideration by the Sentencing Commission in formulating the guidelines; and

(III) should result in a sentence different from that described; or

(iii) the court finds, on motion of the Government, that the defendant has provided substantial assistance in the investigation or prosecution of another person who has committed an offense and that this assistance established a mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence lower than that described.

In determining whether a circumstance was adequately taken into consideration, the court shall consider only the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission, together with any amendments thereto by act of Congress. In the absence of an applicable sentencing guideline, the court shall impose an appropriate sentence, having due regard for the purposes set forth in subsection (a)(2). In the absence of an applicable sentencing guideline in the case of an offense other than a petty offense, the court shall also have due regard for the relationship of the sentence imposed to sentences prescribed by guidelines applicable to similar offenses and offenders, and to the applicable policy statements of the Sentencing Commission, together with any amendments to such guidelines or policy statements by act of Congress.

(c) **Statement of reasons for imposing a sentence.**--The court, at the time of sentencing, shall state in open court the reasons for its imposition of the particular sentence, and, if the sentence--

(1) is of the kind, and within the range, described in subsection (a)(4), and that range exceeds 24 months, the reason for imposing a sentence at a particular point within the range; or

(2) is not of the kind, or is outside the range, described in subsection (a)(4), the specific reason for the imposition of a sentence different from that described, which reasons must also be stated with specificity in a statement of reasons form issued under section 994(w)(1)(B) of title 28, except to the extent that the court relies upon statements received in camera in accordance with Federal Rule of Criminal Procedure 32. In the event that the court relies upon statements received in camera in accordance with Federal Rule of Criminal Procedure 32 the court shall state that such statements were so received and that it relied upon the content of such statements.

If the court does not order restitution, or orders only partial restitution, the court shall include in the statement the reason therefor. The court shall provide a transcription or other appropriate public record of the court's statement of reasons, together with the order of judgment and commitment, to the Probation System and to the Sentencing Commission,³ and, if the sentence includes a term of imprisonment, to the Bureau of Prisons.

(d) Presentence procedure for an order of notice.--Prior to imposing an order of notice pursuant to section 3555, the court shall give notice to the defendant and the Government that it is considering imposing such an order. Upon motion of the defendant or the Government, or on its own motion, the court shall--

(1) permit the defendant and the Government to submit affidavits and written memoranda addressing matters relevant to the imposition of such an order;

(2) afford counsel an opportunity in open court to address orally the appropriateness of the imposition of such an order; and

(3) include in its statement of reasons pursuant to subsection (c) specific reasons underlying its determinations regarding the nature of such an order.

Upon motion of the defendant or the Government, or on its own motion, the court may in its discretion employ any additional procedures that it concludes will not unduly complicate or prolong the sentencing process.

(e) Limited authority to impose a sentence below a statutory minimum.--Upon motion of the Government, the court shall have the authority to impose a sentence below a level established by statute as a minimum sentence so as to reflect a defendant's substantial assistance in the investigation or prosecution of another person who has committed an offense. Such sentence shall be imposed in accordance with the guidelines and policy statements issued by the Sentencing Commission pursuant to section 994 of title 28, United States Code.

(f) Limitation on applicability of statutory minimums in certain cases.--Notwithstanding any other provision of law, in the case of an offense under section 401, 404, or 406 of the Controlled Substances Act (21 U.S.C. 841, 844, 846), section 1010 or 1013 of the Controlled Substances Import and Export Act (21 U.S.C. 960, 963), or section 70503 or 70506 of title 46, the court shall impose a sentence pursuant to guidelines promulgated by the United States Sentencing Commission under section 994 of title 28 without regard to any statutory minimum sentence, if

the court finds at sentencing, after the Government has been afforded the opportunity to make a recommendation, that--

(1) the defendant does not have--

(A) more than 4 criminal history points, excluding any criminal history points resulting from a 1-point offense, as determined under the sentencing guidelines;

(B) a prior 3-point offense, as determined under the sentencing guidelines; and

(C) a prior 2-point violent offense, as determined under the sentencing guidelines;

(2) the defendant did not use violence or credible threats of violence or possess a firearm or other dangerous weapon (or induce another participant to do so) in connection with the offense;

(3) the offense did not result in death or serious bodily injury to any person;

(4) the defendant was not an organizer, leader, manager, or supervisor of others in the offense, as determined under the sentencing guidelines and was not engaged in a continuing criminal enterprise, as defined in section 408 of the Controlled Substances Act; and

(5) not later than the time of the sentencing hearing, the defendant has truthfully provided to the Government all information and evidence the defendant has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan, but the fact that the defendant has no relevant or useful other information to provide or that the Government is already aware of the information shall not preclude a determination by the court that the defendant has complied with this requirement.

Information disclosed by a defendant under this subsection may not be used to enhance the sentence of the defendant unless the information relates to a violent offense.

(g) **Definition of violent offense.**--As used in this section, the term "violent offense" means a crime of violence, as defined in section 16, that is punishable by imprisonment.

18 U.S.C. § 3581:

(a) **In general.**--A defendant who has been found guilty of an offense may be sentenced to a term of imprisonment.

(b) **Authorized terms.**--The authorized terms of imprisonment are--

- (1) for a Class A felony, the duration of the defendant's life or any period of time;
- (2) for a Class B felony, not more than twenty-five years;
- (3) for a Class C felony, not more than twelve years;
- (4) for a Class D felony, not more than six years;
- (5) for a Class E felony, not more than three years;
- (6) for a Class A misdemeanor, not more than one year;
- (7) for a Class B misdemeanor, not more than six months;
- (8) for a Class C misdemeanor, not more than thirty days; and
- (9) for an infraction, not more than five days.

28 U.S.C. § 1254(1):

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

- (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree . . .

APPENDIX D

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IN THE CRIMINAL COURT OF TENNESSEE AT CHATTANOOGA
THE ELEVENTH JUDICIAL DISTRICT

STATE OF TENNESSEE *
 *
 Plaintiff, *
 *
 vs. * CASE NOS. 297088,
 * 297089, 297202
 JOSEPH DILLON BROWN *
 *
 Defendant. *
 *

COPY

April 19, 2017

TRANSCRIPT OF PLEA HEARING

VOLUME ONE OF ONE VOLUME

THE HONORABLE BARRY A. STEELMAN, JUDGE

APPEARANCES

FOR THE STATE OF TENNESSEE:

Jason Demastus, Esq.
Assistant District Attorney General
Third Floor
City and County Courts Building
Chattanooga, Tennessee 37402

FOR THE DEFENDANT:

Blake Murchison, Esq.
Assistant District Public Defender
720 Cherry Street
Chattanooga, Tennessee 37402

ALSO PRESENT: Anna Protano-Biggs, Director,
Mental Health Court

1 IN THE CRIMINAL COURT OF TENNESSEE AT CHATTANOOGA
2 THE ELEVENTH JUDICIAL DISTRICT
 DIVISION I

3 STATE OF TENNESSEE *
4 *
5 vs. * CASE NOS. 297088,
 * 297089, 297202
6 JOSEPH DILLON BROWN *

7 This case came on to be heard and was heard on
8 the 19th day of April 2017, before the Honorable
9 Barry A. Steelman, Judge, holding the Criminal Court
10 for Hamilton County, Tennessee, and the following
11 proceedings were had, to-wit:

12 THE COURT: I have one case written on my
13 docket for Joseph Dillon Brown, 297202?

14 MR. MURCHISON: There are actually four cases
15 on today, Your Honor.

16 THE COURT: All right.

17 MR. MURCHISON: In addition to that, there's
18 also 296134.

19 THE COURT: I've got 296134, 297088, 297089 --
20 is 297202 one that's already been arraigned?

21 THE CLERK: I was going to -- yes, sir. It
22 just got dropped off the docket, so I wrote it in.

23 THE COURT: All right. Good. Okay.

24 Mr. Brown, raise your right hand, please.

25 (Thereupon, the defendant was duly sworn.)

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2

1 THE COURT: Mr. Brown, what is your -- you're
2 obligated now to answer questions truthfully. If you
3 intentionally do otherwise, it could lead to your
4 being charged with perjury. Do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: State your name for me, please.

7 THE DEFENDANT: Joseph Dillon Brown.

8 THE COURT: And what is your birthday?

9 THE DEFENDANT: 12-28-1992.

10 THE COURT: What are the last four digits of
11 your Social?

12 THE DEFENDANT: 7013.

13 THE COURT: Did you read this petition to
14 enter into a plea of guilty and waive trial by jury?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Did your attorney read over it
17 with you and explain it to you?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Did your attorney go over the
20 charges with you that are listed here at the bottom
21 of page 1?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: You're charged with vandalism,
24 carries two to four years of possible confinement;
25 burglary of a business that carries two to four years

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3

1 of possible confinement; theft of property valued at
2 over \$500 and vandalism that each carry one to two
3 years of possible confinement; aggravated burglary,
4 which is of a habitation, that carries three to six
5 years of possible confinement; possession of a
6 firearm during a dangerous felony, two to four years
7 of possible confinement; possession of burglary tools
8 that carries up to 11 months and 29 days; theft of
9 property that carries one to two years of possible
10 confinement; another aggravated burglary that carries
11 three to six years; and theft of property, one to two
12 years.

13 Do you understand that you do not have to
14 plead guilty?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: You have a right to continue in a
17 plea of not guilty until a jury decides whether you
18 are guilty.

19 You have a right to be represented by your
20 attorney at the trial of your case.

21 You have a right to confront witnesses who may
22 testify against you so that you can see them and hear
23 them testify and have your attorney cross-examine
24 them.

25 You have a right to decide whether you wish to

1 testify or not. If you went to trial in your case
2 and you elected not to testify, then the jury would
3 be instructed that your decision is one that could
4 not be held against you.

5 If you went to trial in your case, before the
6 jury could find you guilty, the State would have the
7 burden of proving that you're guilty, and that
8 requires proof beyond a reasonable doubt.

9 If the jury determined that you were guilty,
10 you would have a right to appeal from that verdict to
11 a higher court. You would have a right to a later
12 sentencing hearing and to appeal from the sentence
13 that you received to a higher court.

14 You are innocent until proven guilty. If you
15 wanted to present evidence at your trial, you could,
16 but you're not required to because you don't have any
17 burden to prove anything.

18 Do you understand that.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: If you went to trial in your case
21 and the jury decided you were guilty, as I said, you
22 could appeal from that guilty verdict, have a
23 sentencing hearing, and appeal from the sentence
24 rendered by the Court. By pleading guilty, though,
25 with agreed sentences today, you're waiving these

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5

1 rights and the matters will be final. You
2 understand?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: By being final, what I mean is
5 judgments would go on your record for any cases that
6 you plead guilty to. Those judgments showing that
7 you were guilty today of those crimes could be used
8 against you in the future to increase your punishment
9 if you are convicted of any other crime. Do you
10 understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Also, if any of these are
13 felonies, which it appears that all of them would be,
14 those felony convictions could be used against you to
15 increase your range of punishment. They also could
16 be used against you -- well, you would be declared
17 infamous, which means you would lose rights of
18 citizenship that other citizens have, like to vote.
19 You would not be able to vote. You would not be able
20 to possess a firearm. You would not be able to seek
21 or hold public office or even to serve on jury duty.
22 Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right. Do you still wish to
25 plead guilty?

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6

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right. What is the State's
3 recommendation?

4 MR. DEMASTUS: Judge, the State's
5 recommendation, starting with -- and I want to go --
6 these are kind of out of order in the plea, but it's
7 for the purpose of having restitution toward the end
8 of his supervised time.

9 Starting with case 296134, he's going to be
10 pleading guilty to vandalism as a D felony, receive a
11 sentence of three years suspended on state supervised
12 probation, and he must complete the mental health
13 court, no contact with the victim.

14 In case 297 --

15 THE COURT: All right. Is that what you've
16 agreed to in that case, sir?

17 THE DEFENDANT: Yes, sir.

18 MR. DEMASTUS: Now, in case 297202, he'll be
19 pleading guilty to count 1, aggravated burglary, also
20 a three-year --

21 THE COURT: Which number is that?

22 MR. DEMASTUS: 297202.

23 THE CLERK: The one I've written on page 3.

24 MR. DEMASTUS: Count 1.

25 THE COURT: All right. He's going to plead

1 guilty to -- what count is aggravated burglary?
2 MR. DEMASTUS: Count 1.
3 THE COURT: All right.
4 MR. DEMASTUS: It's three years suspended on
5 state supervised probation. That is consecutive to
6 296134.
7 And count 2 of that number would be dismissed
8 as part of the plea.
9 THE COURT: All right. Is that to serve?
10 MR. DEMASTUS: That is suspended supervised
11 state probation.
12 THE COURT: Mental health court required on
13 that one?
14 MR. DEMASTUS: I think, I think it's only a
15 two-year program.
16 THE COURT: All right.
17 MR. DEMASTUS: So we've only put it on the
18 first case.
19 THE COURT: Okay. Is that what you've agreed
20 to in that case, sir?
21 THE DEFENDANT: Yes, sir.
22 THE COURT: All right.
23 MR. DEMASTUS: In case number 297089, count 1,
24 also aggravated burglary, he'll be pleading guilty
25 and have a three-year suspended sentence, also on

1 state supervised probation. That is consecutive to
2 297202. He will forfeit a weapon found on him at
3 that time.

4 Counts 2, 3 and 4 will be dismissed as part of
5 the plea.

6 THE COURT: Is that what you've agreed to
7 there, sir?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Counts 2, 3 and 4 --

10 MR. DEMASTUS: Dismissed.

11 THE COURT: -- are dismissed? Okay.

12 MR. DEMASTUS: And in case 297088, burglary of
13 a business, he'll be pleading guilty to that, receive
14 a sentence of three years, also suspended to state
15 supervised probation. That will be consecutive to
16 297089, with \$1,150 restitution at \$40 a month
17 through the probation office.

18 THE COURT: How much restitution?

19 MR. DEMASTUS: \$1,150 at 40 per month.

20 THE COURT: All right. And that's going to be
21 suspended to state supervised?

22 MR. DEMASTUS: That's correct, Judge.

23 THE COURT: All right. Do you understand
24 that, Mr. Brown?

25 THE DEFENDANT: Yes, sir.

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9

1 THE COURT: Is that what you've agreed to?
2 THE DEFENDANT: Yes, sir.
3 THE COURT: All right. Are you entering into
4 these plea agreements freely and voluntarily?
5 THE DEFENDANT: Yes, sir.
6 THE COURT: Has anyone forced you or coerced
7 you?
8 THE DEFENDANT: No, sir.
9 THE COURT: Are you satisfied with Mr.
10 Murchison's representation?
11 THE DEFENDANT: Yes, sir.
12 THE COURT: Is there anything you think he
13 could have done or should have done for you that he's
14 not done?
15 THE DEFENDANT: No, sir.
16 THE COURT: Mr. Murchison, did you receive
17 discovery in these cases?
18 MR. MURCHISON: Yes, sir.
19 THE COURT: Did your attorney talk to you
20 about the evidence that the State would use against
21 you in trial?
22 THE DEFENDANT: Yes, sir.
23 THE COURT: And did he talk to you also about
24 the advantages and disadvantages of pleading guilty
25 versus going to trial?

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10

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right. What is the factual
3 basis for these pleas?

4 MR. DEMASTUS: Starting with 296134, had that
5 matter gone to trial, the facts would have shown on
6 or about May the 3rd of 2015, officers with the
7 Hamilton County Sheriff's Department responded to
8 7308 Greenwood Road in Harrison, Hamilton County,
9 Tennessee, to make a vandalism report.

10 At that time, the victim who reported advised
11 that his vehicle had been vandalized with graffiti.
12 The officers observed graffiti on one -- on scene on
13 one side of the vehicle, observed that red marks had
14 been made on a white paint job with different symbols
15 and wording on the vehicle, particularly showing
16 letters A and B were spray-painted on the vehicle at
17 that point in time.

18 Ultimately, the symbols were believed to be
19 relative to the Aryan Brotherhood, based on that
20 information. And then basically, during the course
21 of their investigation, the victims made a subsequent
22 call, I think, to advise that they had obtained
23 information about Mr. Brown being the individual who
24 had spray-painted the car. Apparently, Mr. Brown had
25 boasted to another witness, who officers were able to

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11

1 meet with, and ultimately advised that he was able to
2 identify Mr. Brown as the individual, based on his
3 admissions about what had been done to the vehicle.
4 As a result, Mr. Brown was charged accordingly with
5 vandalism of the car.

6 In case number 297202, had that matter gone to
7 trial, the facts would have shown on or about October
8 24th of 2015, officers with the Hamilton County
9 Sheriff's Department were dispatched to 6542
10 Lakeshore Parkway on a burglary.

11 They spoke with the victim, who reported an
12 unknown suspect entered his residence through a rear
13 door and had taken items from the top of his table.
14 Apparently a pistol had also been taken from the
15 location.

16 And ultimately, during the course of the
17 investigation, officers were able to respond to a
18 burglary very shortly thereafter wherein they caught
19 Mr. Brown, who was in possession of the gun that had
20 been taken from that location, thus connecting him to
21 that particular burglary, and he was charged
22 accordingly in 297202.

23 In case number 297089, in that regard,
24 officers were called, Chattanooga Police Department,
25 on or about that same date, 10-25-15. Ultimately,

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12

1 they responded to 2730 Shepherd View Drive, saw the
2 defendant inside a -- step inside a garage at that
3 location. Apparently he was looking through it with
4 a small flashlight.

5 At that time, they found the pistol previously
6 discussed. It was a 9-millimeter Beretta tucked in
7 the small of his back. He apparently had some
8 ammunition but it was from a different gun. It would
9 not have fit the same gun at that point in time.

10 Ultimately, they also found a black billfold
11 related to some of the victim's information and
12 identification, as well as a set of keys, a VCR tape,
13 and some loose change.

14 Based on their observations regarding that
15 garage and of the other items taken from the previous
16 burglary, he was charged accordingly in 297089.

17 And lastly, in 297088, had that matter gone to
18 trial, the facts would have shown that on or about
19 the same date, 10-25 of 2015, officers with the
20 Chattanooga Police Department responded to the
21 burglar alarm of a business as well. The business
22 was fenced and could not be checked immediately, but
23 while on scene, the officers responded and found Mr.
24 Joseph Brown inside the garage of the subsequent --
25 of the previous case.

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1 At that point in time, he was taken into
2 custody and found to be in possession of some of the
3 items that were later discovered had been taken from
4 the trailer and rental location where the alarm had
5 gone off.

6 The owner of the business responded and
7 confirmed that two of the vehicles on their lot had
8 been broken into as a result, and that certain
9 specific items, including a tire valve tool and a
10 magazine with .380 -- or .32 ammunition, which was
11 found on the defendant at the garage, as well as a
12 set of keys, which were found in Mr. Brown's
13 possession, had been taken from that particular
14 business, thus connecting him to that business
15 burglary.

16 As a result, Mr. Brown was charged accordingly
17 in 297088 as well.

18 Any other facts, although not necessary, I
19 think would be stipulated by the defense at this
20 time.

21 Likewise, I would not, I think, that as a
22 result of the mental health court process, I believe
23 that Mr. Brown did receive a diagnosis that was
24 sufficient for them to accept him in the program, and
25 certainly, based on the manner in which all these

1 seem to have happened, the State feels it's
2 appropriate to send him to mental health court.

3 THE COURT: All right. Mr. Brown, did you
4 read this probation order?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Did your attorney read over it
7 with you and explain it to you?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Okay. Do you understand it?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: You understand that these
12 conditions set out in the order will be required of
13 you if you wish to remain on supervised probation?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. Do you also understand
16 that a condition of your supervised probation is that
17 you comply with mental health court?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right. And the Court is
20 ordering that you be released from the jail on
21 Tuesday, April 25th, at 10 a.m., to the custody of
22 Joanne Brown.

23 MR. MURCHISON: And she is present in the
24 courtroom today, Your Honor.

25 THE COURT: Okay. Now, today's the 19th, so
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1 we'll probably need to order some form of split
2 confinement, do we not?

3 MR. MURCHISON: If that's what's necessary for
4 us to do.

5 MR. DEMASTUS: I don't know how we've done
6 that in the past. I could not remember, Judge, how
7 we'd accomplished that before.

8 THE COURT: Well, you know, if I've got an
9 order that says he's not to be released until April
10 25th but his sentences are suspended as of today,
11 then that conflicts and people don't know what to do.

12 MR. DEMASTUS: My proposition was that we
13 enter the plea on that day, but I don't --

14 THE COURT: Well, we've already entered the
15 plea on this date.

16 MR. DEMASTUS: Yeah, that's done.

17 THE COURT: Yeah. I don't want to do it
18 again.

19 MS. PROTANO-BIGGS: It's typically the
20 judgment is modified to reflect the release date.

21 THE COURT: How is it modified?

22 MS. PROTANO-BIGGS: So sometimes on some of
23 the judgments, they put in them where, like,
24 "suspended after serving to"; and then on some of
25 them, they've actually calculated the day.

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16

1 THE COURT: All right. "Suspended after
2 serving to" would be -- I think that would be a split
3 confinement, so he's agreeing as part of this plea
4 that he won't be released until April 25th?

5 MR. MURCHISON: That's correct, Your Honor.

6 THE COURT: Okay. All right. I'll just make
7 a note in here that he's suspended after split
8 confinement. He'll get jail credit anyway for the
9 time that he's been in custody.

10 All right. I'll just make a note that he's
11 suspended after split confinement to April 25th.
12 Okay?

13 MS. PROTANO-BIGGS: Thank you, Judge.

14 THE COURT: Okay.

15 MR. MURCHISON: Thank you, Your Honor.

16 THE COURT: All right. And then -- is that
17 what you've agreed to, Mr. Brown, in all of your
18 cases?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Okay. I do find a factual basis
21 for your plea, and I think your plea is knowing and
22 voluntary.

23 Do you have any questions about what you're
24 doing?

25 THE DEFENDANT: No, sir.

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17

1 THE COURT: Think you understand what you're
2 doing and what the plea means?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right then. What is your plea
5 to vandalism in 296134, guilty or not guilty?

6 THE DEFENDANT: Guilty.

7 THE COURT: The Court accepts your plea,
8 sentences you to three years in the Department of
9 Corrections as a Range I offender, to be suspended
10 after a period of split confinement, which will cease
11 on April 25th of 2017. Thereafter, you'll be on
12 state supervised probation. You're to have no
13 contact with the victim and you're to comply with
14 mental health court as a condition of your probation.

15 On 297088, count 1, burglary, a D felony, is
16 your plea guilty or not guilty?

17 THE DEFENDANT: Guilty.

18 THE COURT: The Court accepts your plea of
19 guilty, sentences you to three years in the
20 Department of Corrections as a Range I offender.
21 That sentence is consecutive to 297089. That
22 sentence will be suspended to state supervised
23 probation after a split confinement which will cease
24 on April 25th, 2017; thereafter, state supervised
25 probation; and you'll be responsible for paying

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1 \$1,150 at \$40 a week, and that is your restitution
2 obligation.

3 MR. MURCHISON: I believe that's per month,
4 Your Honor.

5 THE COURT: Did I say "per week"?

6 MR. MURCHISON: Yes, sir.

7 THE COURT: Per month, that's correct.

8 MR. MURCHISON: Thank you.

9 THE COURT: All right. And then 297202, count
10 1, aggravated burglary, is your plea to that guilty
11 or not guilty?

12 THE DEFENDANT: Guilty.

13 THE COURT: Okay. The Court accepts your plea
14 of guilty, sentences you to three years in the
15 Department of Corrections as a Range I offender, with
16 that sentence consecutive to 296134. The sentence
17 will be suspended to supervised state probation after
18 a period of split confinement ending on April 25th.
19 Count 2 is dismissed.

20 297089, what is your plea to aggravated
21 burglary in count 1?

22 THE DEFENDANT: Guilty.

23 THE COURT: The Court accepts your plea of
24 guilty, sentences you to three years in the
25 Department of Corrections as a Range I offender, with

1 that sentence suspended after split confinement
2 ending on April 25th of 2017, the Court orders state
3 supervised probation. That sentence is consecutive
4 to 297202.

5 You are to forfeit the weapon. The Court
6 orders such.

7 And counts 2, 3 and 4 are dismissed.

8 MR. MURCHISON: Your Honor, being that Mr.
9 Brown has been in custody a significant period of
10 time leading up to this and required appointed
11 counsel, we'd ask if the Court would waive court
12 costs?

13 THE COURT: Sustained.

14 MR. MURCHISON: Thank you, Your Honor.

15 THE COURT: All right.

16 MS. PROTANO-BIGGS: Judge, if we could
17 transfer him to the May 1 mental health court docket?

18 THE CLERK: This is a condition of probation?
19 How do I --

20 MS. PROTANO-BIGGS: Right.

21 THE COURT: No, it's a condition of probation.

22 MS. PROTANO-BIGGS: Show it as a condition of
23 probation to mental health court.

24 THE COURT: All right. Do you need the clerk
25 to note that he's being put in Division III on May 1?

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THE CLERK: I'll take care of it, Judge.

THE COURT: Okay. All right.

MS. PROTANO-BIGGS: Thank you, Judge.

END OF REQUESTED PROCEEDINGS.

1 REPORTER'S CERTIFICATE

2 I, the undersigned Abigail M. Pearce, Official
3 Court Reporter for the Eleventh Judicial District of
4 the State of Tennessee, do hereby certify that the
5 foregoing is a true, accurate and complete
6 transcript, to the best of my knowledge and ability,
7 of all the proceedings had and evidence introduced in
8 the trial of the captioned cause, relative to appeal,
9 in the Criminal Court for Hamilton County, Tennessee,
10 on the 19th day of April 2017.

11 I do further certify that I am neither of kin,
12 counsel nor interest to any party hereto.

13
14 Sept. 27, 2020

15
16 Abigail M. Pearce

17
18 Abigail M. Pearce, RPR, RMR,
19 LCR #793
20 Official Court Reporter
21 State of Tennessee
22
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