

No.

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**In The Supreme Court Of The United States**

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Darryl Williams,

*Petitioner,*

v.

United States of America,

*Respondent.*

On Petition for a Writ of Certiorari to the  
United States Court of Appeals for the Ninth Circuit

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## **Appendix A**

*United States v. Williams*, No. 21-16121, Dkt. 5

(9th Cir. Dec. 20, 2021) (unpublished)

Order denying COA

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

DEC 20 2021

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

DARRYL WILLIAMS,

Defendant-Appellant.

No. 21-16121

D.C. Nos. 3:20-cv-00316-HDM

3:99-cr-00161-HDM-RAM-2

District of Nevada,  
Reno

ORDER

Before: CLIFTON and BENNETT, Circuit Judges.

The request for a certificate of appealability (Docket Entry No. 2) is denied because appellant has not shown that “jurists of reason would find it debatable whether the [section 2255 motion] states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also* 28 U.S.C. § 2253(c)(2); *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012); *United States v. Blackstone*, 903 F.3d 1020, 1022-23 (9th Cir. 2018), *cert. denied*, 139 S. Ct. 2762 (2019).

Any pending motions are denied as moot.

**DENIED.**



## **Appendix B**

*United States v. Williams*, No. 3:99-cr-00161-HDM-RAM, Dkt. 61  
(D. Nev. May 5, 2021) (unpublished)

Judgment denying motion to vacate under 28 U.S.C. § 2255

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

v.

DARRYL WILLIAMS,

Defendant.

JUDGMENT IN A CIVIL CASE

Case Number: **3:99-CR-00161-HDM-RAM**

Related Case Number: 3:20-CV-00316-HDM

\_\_\_ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

\_\_\_ **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

X **Decision by Court.** This action came for consideration before the Court. The issues have been considered and a decision has been rendered.

**IT IS ORDERED AND ADJUDGED that the Government's Motion to Dismiss (ECF No. 54) is granted, and the Defendant's Motion filed pursuant to 28 U.S.C. § 2255 (ECF No. 40) is hereby dismissed.**

**It is further ordered that the Defendant is denied a certificate of appealability, as jurists of reason would not find the Court's dismissal of the motion as untimely pursuant to binding circuit law to be debatable or wrong.**

**It is further ordered that judgment is entered in accordance with this Court's Order (ECF No. 60).**

Date: 5/5/2021



CLERK OF COURT

A handwritten signature in black ink, appearing to read "Dea K. King", is written over a horizontal line.

Signature of Clerk or Deputy Clerk

## **Appendix C**

*United States v. Williams*, No. 3:99-cr-00161-HDM-RAM, 2021 WL 1792071 (D. Nev. May 5, 2021) (unpublished)

Order denying motion to vacate under 28 U.S.C. § 2255 and denying  
COA



KeyCite Blue Flag – Appeal Notification

Appeal Filed by USA v. DARRYL WILLIAMS, 9th Cir., July 2, 2021

2021 WL 1792071

Only the Westlaw citation is currently available.  
United States District Court, D. Nevada.

UNITED STATES of America, Plaintiff,

v.

Darryl WILLIAMS, Defendant.

Case No. 3:99-cr-00161-HDM-  
RAM, Case No. 3:20-cv-00316-HDM

|

Signed 05/05/2021

#### ORDER

HOWARD D. McKIBBEN, UNITED STATES DISTRICT  
JUDGE

\*1 The defendant has filed a motion to vacate, correct, or set aside sentence pursuant to 28 U.S.C. § 2255 (ECF No. 40). The government has moved to dismiss. (ECF No. 54). The defendant has opposed (ECF No. 56), and the government has replied (ECF No. 57).

The defendant was charged in this action with one count of possession of a firearm by a prohibited person in violation of 18 U.S.C. § 922(g)(1) and § 924(a)(2) and one count of bank robbery in violation of 18 U.S.C. § 2113(a). (ECF No. 1). Following his entry of a plea to bank robbery, the defendant was sentenced to 165 months in prison. Because the defendant had two prior crimes of violence and his instant offense was also a crime of violence, (PSR ¶ 27), his sentence was based, in part, on his designation as a career criminal. At the time the defendant was sentenced, the Guidelines were mandatory. Judgment of conviction was entered on November 21, 2001, and the defendant did not appeal. (ECF No. 29).

On May 28, 2020, the defendant filed the instant § 2255 motion. In it, he asserts that his sentence is invalid following the U.S. Supreme Court's decision in *United States v. Davis*, 139 S. Ct. 2319 (2019). The government argues that the defendant's motion is untimely and moves to dismiss.

Section 2255(f) requires that a motion for relief be filed within one year of the latest of:

- (1) the date on which the judgment of conviction becomes final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

28 U.S.C. § 2255(f).

The defendant filed his motion well more than a year after his judgment of conviction became final – nearly two decades later, in fact. The defendant asserts that his motion is nevertheless timely because it was filed within one year of the Supreme Court recognizing in *Davis* the new right he asserts. *Id.* § 2255(f)(3).

In *Davis*, the Supreme Court held that the residual clause of the definition of a “crime of violence” in 18 U.S.C. § 924(c)(3)(B) is unconstitutionally vague. 139 S. Ct. at 2336. The defendant, who was not convicted of a § 924(c) offense, asserts that *Davis* also renders a similar residual clause in the Guidelines definition of crime of violence unconstitutionally vague and that his sentence entered pursuant to those provisions is therefore unlawful.

The defendant's argument is foreclosed by *United States v. Blackstone*, which binds this court and compels dismissal of the instant petition as untimely. 903 F.3d 1020 (9th Cir. 2018). In *Blackstone*, the defendant asserted that the residual clause of the definition of crime of violence in the then-mandatory Guidelines was unconstitutionally vague following the Supreme Court's decision in *Johnson v. United States*, 576 U.S. 591 (2015). In *Johnson*, the Court had held that the residual clause of the definition of violent felony in 18 U.S.C. § 924(e)(2) was unconstitutionally vague. The Ninth Circuit held that *Johnson* did not recognize the right that *Blackstone* asserted and thus his motion, filed more than

a year after his judgment of conviction became final, was not timely. *United States v. Blackstone*, 903 F.3d 1020, 1023, 1025-28 (9th Cir. 2018) (“The Supreme Court has not yet recognized the right asserted by Blackstone. The Supreme Court has not held that the mandatory Sentencing Guidelines are subject to this vagueness challenge.”).

\*2 The defendant argues that *Blackstone* is clearly irreconcilable with *Davis* and thus is no longer good law. But nothing in *Davis* abrogates the holding relevant to this case, and the Ninth Circuit has repeatedly rejected this same assertion raised by other defendants. *See, e.g., United States v. Saenz*, 833 Fed. App'x 697 (9th Cir. Jan. 19, 2021) (unpublished disposition); *United States v. Gray*, 808 Fed. App'x 540, 541 (9th Cir. June 10, 2020) (unpublished disposition), *cert. denied*, 141 S. Ct. 1251 (2021). *Davis*, like *Johnson*, did not recognize the right the defendant asserts here, and thus the motion cannot be considered timely under 28 U.S.C. § 2255(f)(3).

In accordance with the foregoing, IT IS THEREFORE ORDERED that the government's motion to dismiss (ECF No. 54) is GRANTED, and the defendant's motion filed pursuant to 28 U.S.C. § 2255 (ECF No. 40) is hereby DISMISSED.

IT IS FURTHER ORDERED that the defendant is DENIED a certificate of appealability, as jurists of reason would not find the court's dismissal of the motion as untimely pursuant to binding circuit law to be debatable or wrong.

IT IS SO ORDERED.

#### All Citations

Slip Copy, 2021 WL 1792071

## **Appendix D**

*United States v. Williams*, No. 3:99-cr-00161-HDM-RAM, Dkt. 29  
(D. Nev. Nov. 21, 2001) (unpublished)

Judgment in a Criminal Case

AO 245b (Rev. 9/00) Judgment in a Criminal Case  
Sheet 1UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

FILED

2001 NOV 21 AM 10:35

LANCE S. WILSON  
CLERKUNITED STATES OF AMERICA  
vs.  
DARRYL WILLIAMSJUDGMENT IN A CRIMINAL CASE  
(For Offenses Committed On or After November 1, 1987)

CASE NUMBER: CR-N-99-161-DWH(RAM)

Vito de la Cruz

DEFENDANT'S ATTORNEY

## THE DEFENDANT:

☒ pled guilty to count 2 of the Indictment filed December 15, 1999☐ pled nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.☐ was found guilty on count(s) \_\_\_\_\_  
after a plea of not guilty.

TITLE & SECTION	NATURE OF OFFENSE	DATE OFFENSE CONCLUDED	COUNT NUMBER(S)
18 U.S.C. 2113(a)	Bank Robbery	December 2, 1999	2

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

☐ The defendant has been found not guilty on count(s) \_\_\_\_\_  
☒ Count one is dismissed on the 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 United States attorney of any material change in the defendant's economic circumstances.

Defendant's Soc.Sec.No.: 571-11-3881Defendant's Date of Birth: 03/17/66Defendant's USM No.: 86344-011Defendant's Residence Address:  
In Custody

Defendant's Mailing Address:

November 19, 2001

Date of Imposition of Judgment

Signature of Judicial Officer

DAVID W. HAGEN  
U.S. DISTRICT JUDGE  
Name and Title of Judicial OfficerNOV 21 2001

Date

U.S. DISTRICT COURT  
DISTRICT OF NEVADA  
ENTERED & SERVED

NOV 26 2001

CLERK, U.S. DISTRICT COURT

BY [Signature] DEPUTY

AO 245B (Rev. 9/00) Judgment in a Criminal Case  
Sheet 2 - Imprisonment

DEFENDANT: DARRYL WILLIAMS  
CASE NUMBER: CR-N-99-161-DWH(RAM)

Judgment - Page 2 of 7

### 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 SIXTY FIVE (165) MONTHS

- ( ☒ ) The court makes the following recommendations to the Bureau of Prisons:  
Incarceration FCI where defendant can develop his skills in cabinetry; Lompoc or institution close to Bay Area.
- ( ☒ ) 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 of 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: DARRYL WILLIAMS  
CASE NUMBER: CR-N-99-161-DWH(RAM)Judgment - Page 3 of 7

## SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of THREE (3) YEARS

The defendant shall 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 illegally possess a controlled substance.

*For offenses committed on or after September 13, 1994:*

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.

- ( ) The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse.
- ( ☒ ) The defendant shall not possess a firearm, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the additional conditions on the attached page.

## 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 and shall submit a truthful and complete written report within the first five days of each month;
- 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 dependants 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 of 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;
- 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 (Rev. 9/00) Judgment in a Criminal Case  
Sheet 3 - Continued 2 - Supervised Release

DEFENDANT: DARRYL WILLIAMS  
CASE NUMBER: CR-N-99-161-DWH(RAM)

Judgment - Page 4 of 7

### SPECIAL CONDITIONS OF SUPERVISION

1. Possession of Weapon - The defendant shall not possess, have under his/her control, or have access to any firearm, explosive device, or other dangerous weapons, as defined by federal, state or local law.
2. Warrantless Search - The defendant shall submit to the search of his/her person, and any property, residence, or automobile under his/her control by the probation officer, or any other authorized person under the immediate and personal supervision of the probation officer without a search warrant to ensure compliance with all conditions of release.
3. Substance Abuse Treatment - The defendant shall participate in and complete a substance abuse treatment program, which may include drug testing, out-patient counseling, or residential placement, as approved and directed by the probation officer.
4. Alcohol/Drug Addiction Treatment - The defendant shall participate in and complete a substance abuse or alcohol treatment program, which may include drug testing, outpatient counseling, detoxification, or residential placement, as approved and directed by the probation officer.
5. Alcohol Abstinence - Defendant shall refrain from the use and possession of beer, wine, liquor and other forms of intoxicants.
6. Restitution Obligation - The defendant shall make restitution to California Federal Bank in the amount of THIRTEEN THOUSAND ONE HUNDRED TWELVE DOLLARS (\$13,211.00). Restitution shall be paid at a rate of fifty percent (50%) of any wages earned while incarcerated, to be followed by payments of no less than ten percent (10%) of gross wages, subject to adjustment based on the ability to pay, pursuant to a payment schedule to be determined by the probation officer.

AO 245B (Rev 9/00) Judgment in a Criminal Case  
 Sheet 5 - Part A - Criminal Monetary Penalties

DEFENDANT: DARRYL WILLIAMS  
 CASE NUMBER: CR-N-99-161-DWH(RAM)

Judgment - Page 5 of 7

### CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 5, Part B.

	<u>ASSESSMENT</u>	<u>FINE</u>	<u>RESTITUTION</u>
Totals:	\$100.00	\$	\$13,112.00
	Due and payable immediately.		

- ( ) On motion by the Government, IT IS ORDERED that the special assessment imposed by the Court is remitted.
- ( ) The determination of restitution is deferred until \_\_\_\_\_. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.
- ( ) The defendant shall 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 in full prior to the United States receiving payment.

<u>Name of Payee</u>	<u>*Total Amount of Loss</u>	<u>Amount of Restitution Ordered</u>	<u>Priority Order or Percentage of Payment</u>
Office of the Clerk U.S. District Court Attn: Financial Officer Case No. CR-N-99-161-DWH(RAM) 333 Las Vegas Boulevard, South Las Vegas, NV 89101	\$13,112.00	\$13,112.00	
<b>TOTALS</b>	<b>\$ 13,112.00</b>	<b>\$ 13,112.00</b>	

- ( ) If applicable, restitution amount ordered pursuant to plea agreement ..... \$ \_\_\_\_\_
- ( ) The defendant shall pay interest on any fine or restitution of more than \$2,500, unless the fine or restitution 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, Part B 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 and/or ( ) restitution.
- ( ) The interest requirement for the ( ) fine and/or ( ) restitution is modified as follows:

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

AO 245B (Rev. 9/00) Judgment in a Criminal Case  
Sheet 6, Part A - Statement of Reasons

DEFENDANT: DARRYL WILLIAMS  
CASE NUMBER: CR-N-99-161-DWH(RAM)

Judgment - Page 6 of 7

### STATEMENT OF REASONS

( ☒ ) The court adopts the factual findings and guideline application in the presentence report.

OR

( ☐ ) The court adopts the factual findings and guideline application in the presentence report except (see attachment, if necessary):

#### Guideline Range Determined by the Court:

Total Offense Level: 29

Criminal History Category: VI

Imprisonment Range: 151 to 188 months

Supervised Release Range: 2 to 3 years

Fine Range: \$ 15,000.00 to \$ 150,000.00

( ☒ ) Fine waived or below the guideline range because of inability to pay.

Total Amount of Restitution: \$ 13,211.00

- ( ☐ ) Discretionary Restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweighs the need to provide restitution to any victims, pursuant to 18 U.S.C. § 3663(a)(B)d(ii).
- ( ☐ ) Restitution pursuant to the mandatory victim restitution provisions is not ordered in this title 18 property offense because the number of identifiable victims is so large as to make restitution impracticable, pursuant to 18 U.S.C. § 3663A(c)(3)(A).
- ( ☐ ) Restitution pursuant to the mandatory victim restitution provisions is not ordered in this title 18 property offense because determining complex issues of fact and related to the cause of amount of the victim's losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim is outweighed by the burden on the sentencing process, pursuant to 18 U.S.C. § 3663A(c)(3)(B).
- ( ☐ ) For offenses committed on or after September 13, 1994 but before April 23, 1996 that require the total amount of loss to be stated, pursuant to Chapters 109A, 110, 110A, and 113A of Title 18, restitution is not ordered because the economic circumstances of the defendant do not allow for the payment of any amount of a restitution order, and do not allow for the payment of any or some portion of a restitution order in the foreseeable future under any reasonable schedule of payments.
- ( ☐ ) Partial restitution is ordered, pursuant to 18 U.S.C. § 3553(c), for the following reason(s):

AO 245B (Rev. 9/00) Judgment in a Criminal Case  
Sheet 6, Part B - Statement of Reasons

DEFENDANT: DARRYL WILLIAMS  
CASE NUMBER: CR-N-99-161-DWH(RAM)

Judgment - Page 7 of 7

### STATEMENT OF REASONS

- ☐ The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by the application of the guidelines.

OR

- ☒ The sentence is within the guideline range, that range exceeds 24 months, and the sentence is imposed for the following reason(s): (See Reporter's Transcript)

OR

- ☐ The sentence departs from the guideline range: (See Reporter's Transcript)
- ☐ upon motion of the Government, as a result of defendant's substantial assistance, or
- ☐ for the following specific reason(s):

## **Appendix E**

*United States v. Williams*, No. 3:99-cr-00161-HDM-RAM, Dkt. 30  
(D. Nev. Nov. 19, 2001) (unpublished)

Sentencing Transcript

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
vs.  
  
DARRYL WILLIAMS,  
  
Defendant.

Docket No. CR-N-99-161  
DWH (RAM)  
  
Reno, Nevada  
November 19, 2001  
11:30 a.m.

U.S. DISTRICT COURT  
DISTRICT OF NEVADA  
FILED  
DEC 13 2001  
CLERK, U.S. DISTRICT COURT  
BY  
DEPUTY

SENTENCING  
BEFORE THE HONORABLE DAVID W. HAGEN,  
U.S. DISTRICT JUDGE

APPEARANCES:

FOR PLAINTIFF:

RON RACHOW  
Assistant  
United States  
Attorney

FOR DEFENDANT:

VITO de la CRUZ  
Attorney at Law

COURT REPORTER:

Michelle Blazer  
Bonanza Reporting  
1111 Forest Street  
Reno, NV 89509

ORIGINAL

1 RENO, NEVADA, MONDAY, NOVEMBER 19, 2001

2 11:30 o'clock a.m.

3 oOo

4 THE CLERK: Case number CR-N-99-161 DWH  
5 (RAM). United States of America versus Darryl  
6 Williams. Defendant is present represented by Vito de  
7 la Cruz.

8 Appearing on behalf of the government,  
9 Ron Rachow.

10 THE COURT: Good morning.

11 MR. RACHOW: Morning, your Honor.

12 MR. De la CRUZ: Morning, your Honor.

13 THE COURT: The matter before the court  
14 is pronouncement of judgment and imposition of  
15 sentence. I have studied and considered the  
16 pre-sentence report.

17 Mr. De la Cruz, have you and Mr. Williams  
18 done so?

19 MR. DE LA CRUZ: Yes, your Honor.

20 THE COURT: You consider the report to be  
21 factually accurate?

22 MR. DE LA CRUZ: Other than the material  
23 we have raised in the memorandum, your Honor, which  
24 is --

25 THE COURT: You mean with respect to



1 whether the defendant, in addition to saying that he  
2 was going to monitor with some radio or other, that if  
3 they tripped the automatic alarm he would shoot them?

4 MR. DE LA CRUZ: Yes, your Honor, but as  
5 I mentioned in my sentencing memorandum, the point is  
6 somewhat moot because of the -- excuse me, of the  
7 application of the career offender provisions.

8 THE COURT: Yes. I understand that as  
9 well. All right.

10 Does the government believe the report is  
11 factually accurate?

12 MR. RACHOW: Government does, your Honor.

13 THE COURT: All right. I resolved the  
14 difference between the probation office and the  
15 defendant with respect to the statements made by the  
16 defendant, especially since they were made to two  
17 tellers in favor of the probation office.

18 Does the defendant agree with the  
19 analysis under the guidelines and the guideline  
20 applications and criminal history calculations?

21 MR. DE LA CRUZ: Your Honor, we submitted  
22 those issues, I believe that they are correctly stated  
23 in the pre-sentence report.

24 THE COURT: Does the government?

25 MR. RACHOW: Yes, your Honor.

1           THE COURT: In that case I adopt and find  
2 in accordance with the factual findings and the  
3 guideline application in the pre-sentence report  
4 paragraphs 1 to 29 and paragraphs 37 to 81. I find  
5 the offense level to be level 29.

6           I adopt and find the criminal history  
7 points as calculated in the -- in paragraphs 30 to 36  
8 and those points are arabic 12, and therefore the  
9 criminal history category is Roman VI. And for this  
10 offense level and criminal history category, the  
11 sentencing range is from 151 to 188 months. The  
12 possible fine is 15,000 to \$150,000 and the range of  
13 supervised release is from two to three years.

14           And now, Mr. De la Cruz, would you please  
15 speak in mitigation?

16           MR. DE LA CRUZ: Thank you, your Honor.  
17 Your Honor, Mr. Williams presents a puzzling picture,  
18 your Honor, simply because he is a very bright and  
19 intelligent man and a very sensitive and loving man  
20 according to the letter that was submitted to the  
21 court and signed by various members of his family.

22           He apparently has had a long history of  
23 being, even though the word is somewhat overused, in a  
24 somewhat dysfunctional setting as the probation report  
25 indicates and which is also corroborated by the letter

1 by Ms. Williams which was signed off by various  
2 members of Mr. Williams' family.

3 He was abandoned at a young age by his  
4 father, and his mother then sort of spiraled off into  
5 a depression and alcoholic state and was -- excuse me,  
6 I have been somewhat ill. Excuse me.

7 THE COURT: All right.

8 MR. DE LA CRUZ: His mother was not able  
9 to completely care for him all of the time, for him  
10 and his brother.

11 In addition, Mr. Williams grew up in  
12 Oakland and his descriptions of his upbringing at the  
13 time indicate that it was a very rough existence and  
14 upbringing.

15 He is, however, fortunate to have still  
16 the support of many of his family members, two of whom  
17 are in the courtroom today, your Honor, Ms. Kathy  
18 Cheatham and Ms. Litsi Levine, his great aunt.

19 Mr. Williams indicates the last time he  
20 was incarcerated he did everything he could to engage  
21 in programs of rehabilitation and that he believed he  
22 was on his way to being able to conquer some of his  
23 old demons. He clearly acknowledges having committed  
24 a very serious additional mistake.

25 I will indicate to the court that Mr.

1 Williams right now is before this court simply because  
2 he wanted to get this matter over and done with. He  
3 wanted, from the very beginning, wanted to accept  
4 responsibility for this bank robbery. He has been in  
5 state custody since he was arrested almost two years  
6 ago, and it was through our efforts and Mr. Williams'  
7 insistence that Mr. Rachow and the U.S. Attorney's  
8 office, even though they didn't have to, brought this  
9 matter into Federal Court for resolution.

10 He now is facing a fairly substantial  
11 sentencing range of 151 to 188 months. I understand  
12 the probation officer makes a recommendation of 186  
13 months. I think -- I think that, and I would submit  
14 to the court that that recommendation is excessive for  
15 several reasons.

16 One, the application of the career  
17 offender guidelines essentially served to almost  
18 double the sentence that he would otherwise have been  
19 exposed to from his prior -- because of his prior  
20 convictions.

21 His prior convictions were centered  
22 around a six month period in 1991 when he committed  
23 both State and Federal crimes and was convicted of  
24 that and sentenced to lengthy periods of incarceration  
25 then.

1           But now because of the application of the  
2 career offender guidelines his exposure here has  
3 increased, like I said in my sentencing memorandum, to  
4 almost double what his original range would have been.

5           Number two, I don't think the probation  
6 officer took into account, excuse me, one, the least  
7 of the sentence that not only is applicable here but  
8 in addition, two additional sentences that Mr.  
9 Williams is facing as the pre-sentence report  
10 reflects, that he is still pending a state robbery  
11 charge for which he faces a considerable amount of  
12 time in which could be imposed consecutively to this  
13 sentence.

14           In addition, he is facing a supervised  
15 release warrant out of the bay area, Northern District  
16 of California, I believe it's Northern District,  
17 perhaps it is the Eastern District, it's in Oakland,  
18 Eastern District, I believe. Either way, --

19           THE COURT: Northern District if it's in  
20 Oakland.

21           MR. DE LA CRUZ: That's correct, your  
22 Honor, I'm sorry. But I attempted to get the  
23 supervised release matter transferred here so that we  
24 could resolve all of his pending cases as neatly and  
25 at one time as possible. Mr. Williams again just

1 wants to get this done, serve his time.

2 THE COURT: Let me interrupt you please,  
3 if I may. You mentioned in your sentencing memorandum  
4 that you attempted to get that transfer of that, --

5 MR. DE LA CRUZ: That's correct.

6 THE COURT: -- that violation, and you  
7 were unsuccessful. Was it just a flat out refusal, or  
8 what is the status of that?

9 MR. DE LA CRUZ: It was a flat out  
10 refusal, your Honor. I talked to Ms. Devina, I  
11 believe she is pronounced Pergika, who is the  
12 Assistant U.S. Attorney handling this case in Oakland,  
13 and left a message with the U.S. Probation Office in  
14 Oakland as well.

15 The Assistant U.S. Attorney indicated  
16 that they wanted to keep the case primarily because  
17 they believe they could get -- they can, the  
18 government could get a better sentence out of the  
19 supervised release violation there.

20 Although I didn't cross-examine her about  
21 the meaning of her words, I think it meant -- I think  
22 what they intend to do is to try to get a consecutive  
23 term from the judge who previously sentenced Mr.  
24 Williams on that supervised release violation.

25 Ms. Pergika did indicate she had



1 contacted Mr. Rachow, and after conferring she had  
2 made the determination that she was going to keep the  
3 case in Oakland.

4 So I think that that is -- that's  
5 something that the court can consider, the amount of  
6 time that could be imposed consecutively for the  
7 supervised release, and generally there is a policy  
8 statement in the guidelines that directs the court to  
9 consider the imposition of consecutive time to be the  
10 range that I indicated in the pre-sentence report, or  
11 it could be up to two years under the statute,  
12 consecutively.

13 Thus, Mr. Williams still is facing  
14 additional periods of time both in the State of Nevada  
15 and for the supervised release violation. I think the  
16 court can consider that in adjusting and imposing a  
17 term within this range here. Considering that fact  
18 and considering the fact that Mr. Williams has  
19 consistently wanted to get this over with and accept  
20 his responsibility and clean this case up, all of  
21 those three factors mitigate to a sentence towards the  
22 low end of the range, your Honor, and that's what we  
23 have asked that the court impose, that being 151  
24 months.

25 THE COURT: Well, I don't -- I think I am

1 being asked to speculate about what another judge is  
2 going to do and I am not sure that I can really do  
3 that. Is there -- do you have a date for the -- for  
4 the revocation hearing in the --

5 MR. DE LA CRUZ: No. There is an  
6 outstanding Federal Supervised Release Warrant and a  
7 hold on Mr. Williams out of the Northern District.  
8 Mr. Williams is scheduled to enter a plea, I believe,  
9 next Monday on his state case.

10 THE COURT: Next Friday.

11 MR. DE LA CRUZ: I'm sorry, next Friday.

12 THE COURT: All right.

13 MR. DE LA CRUZ: All in all, your Honor,  
14 I believe that a sentence at the low end of this  
15 range, a substantial range as it is, would serve the  
16 interests articulated in the 3553 of Title 18, in that  
17 a sentence of 151 months would serve to effectuate the  
18 interests of the deterrence as well as provide just  
19 punishment for this offense here. And it is lengthy.  
20 It is double almost what he would ordinarily have  
21 faced had it not been his concession that the career  
22 offender guidelines would apply.

23 And that's all I have.

24 THE COURT: All right, thank you.

25 Mr. Williams, this is your opportunity to



1 tell me anything you want me to hear in respect to  
2 your sentence.

3 THE BAILIFF: Stay seated.

4 THE DEFENDANT: All right. Yes, your  
5 Honor, first and foremost I would like to apologize to  
6 the State of Nevada as well as to the Cal Federal Bank  
7 that I did rob, and excuse me, I'm kind of tied up  
8 anyway, but I -- I know I have done bad before and I  
9 have made another grave mistake in my life, and you  
10 know, I have diligently tried to capture my emotions  
11 when I was incarcerated the first time. I have been  
12 through a lot of different trauma in my life. That's  
13 no excuse for my atrocities that I have caused on  
14 other people, but for the most part I have tried to do  
15 everything that I could to maintain stability.

16 I went to school, I graduated from school  
17 while I was incarcerated, I -- I got apprenticeship in  
18 cabinetry, and I have never worked, and I made  
19 diligent changes to do something better for my life,  
20 but you know, things, when I got home, I was  
21 excessively incarcerated and it messed up my marriage  
22 and, you know, it's some of the things that affected  
23 me, and like I said, still not an excuse for the  
24 atrocities that I caused towards the State of Nevada  
25 as well as the staff at the Cal Federal Bank, and like

1 I say, I sincerely apologize for my actions, and I  
2 understand that I have to go back to jail for some  
3 lengthy time, and you know, I just would ask for your  
4 mercy on the situation, your Honor.

5 THE COURT: All right. Thank you. Mr.  
6 Rachow?

7 MR. RACHOW: Your Honor, the defendant is  
8 a career criminal because of what's done. He's  
9 committed crimes of violence, that's how he got there.  
10 He's released from prison and he's on supervision and  
11 he is out committing crimes of violence.

12 Now it appears his cry for mercy is give  
13 me a sentence at the bottom because I committed so  
14 many crimes that I still have to pay the punishment  
15 for, wouldn't be fair to give me what I have earned,  
16 forget the other crimes that are pending, forget the  
17 supervised release revocation because the guidelines  
18 say any sentence should run consecutive anyway.

19 Look at what he's done. He cannot  
20 control himself. He presents a clear and present  
21 danger to the public whenever he is on the street.  
22 He's been unsupervisable. He was caught with a weapon  
23 when he was arrested this time, he made threats during  
24 the bank robbery.

25 He is at the point now where he's been

1 through two psychological examinations if I read the  
2 report right, they say he is really okay, it's just he  
3 cannot control himself for whatever reason.

4 He is such a danger that the government  
5 believes that he needs to be incarcerated toward the  
6 top end of the guidelines as recommended.

7 His history is what it is, but he is just  
8 too dangerous to be out on the street right now, and  
9 he needs to be confined as long as possible at this  
10 point to protect the public. Thank you.

11 THE COURT: All right, thank you.

12 Is there any reason, legal or just, that  
13 sentence should not now be pronounced?

14 MR. DE LA CRUZ: No, your Honor.

15 THE COURT: All right. Pursuant to the  
16 Sentencing Reform Act of 1984, Mr. Williams faces a  
17 sentencing range of 151 months to 188 months, I do  
18 adopt and find in accordance with the sentencing  
19 justifications set forth by the probation office at  
20 paragraphs 82 to 83 with this limiting observation:  
21 As has been discussed here, Mr. Williams has been  
22 found to be a career criminal. If he were not a  
23 career criminal his offense level adjusted would be 25  
24 because -- before the reduction for acceptance of  
25 responsibility, and with the career criminal

1 determination his offense level is adjusted at 32,  
2 that's seven levels higher.

3 In order to get to the adjusted offense  
4 level 25, a two level increase was granted for the  
5 threat of harm to the tellers at the bank, and so that  
6 was taken into account at the time of the  
7 establishment of his offense level.

8 It would seem to me that if I took it  
9 into account a second time in determining where on the  
10 range Mr. Williams would go, I would be, in effect,  
11 double counting with respect to that aspect, and so I  
12 see no reason other than to sentence Mr. Williams at  
13 mid-range, and for that reason the sentence will be  
14 confinement with the Bureau Of Prisons for 165 months.

15 Following the completion of your  
16 sentence, Mr. Williams, you will be on supervised  
17 release for a period of three years.

18 While you are confined you will be  
19 required to pay restitution of \$13,112, and in  
20 addition to that immediately due and payable on  
21 account of convictions, a special assessment of \$100.

22 The restitution will be paid while you  
23 are confined at the rate of no less than 50 percent of  
24 any earned income while you are confined, and after  
25 you are released, of no less than 10 percent of any

1 income earned after your release from prison.

2 While you are on supervised release you  
3 will be subject to the 15 standard conditions of  
4 supervision that are set forth in the guidelines.  
5 They will also be set forth in your judgment of  
6 conviction.

7 In addition to those particular  
8 conditions there are mandatory conditions that are  
9 imposed. The first is that you shall not commit  
10 another Federal, State or local crime during the term  
11 of supervision. The second is you are not to possess  
12 illegal controlled substances. Revocation of  
13 supervision would be mandatory if you did. And the  
14 third is you are to submit to mandatory drug testing  
15 as directed by the probation officer. Revocation of  
16 supervision would be mandatory if you refuse to  
17 comply.

18 In addition to those, there are special  
19 conditions that have been requested by the probation  
20 office, and they are imposed.

21 The first is you are not to possess, have  
22 under your control, or have access to any firearm,  
23 explosive device, or other dangerous weapons as  
24 defined by Federal, State or local law.

25 The second, you shall submit to the



1 search of your person, property or automobile under  
2 your control by the probation officer or any other  
3 authorized person under the immediate and personal  
4 supervision of the probation officer without a search  
5 warrant to ensure compliance with all conditions of  
6 release.

7 The third is that you shall participate  
8 in and successfully complete a substance abuse  
9 treatment program which will include drug testing,  
10 outpatient counseling, residential placement as  
11 approved and directed by the probation officer.

12 The fourth, you shall refrain from the  
13 use and possession of beer, wine, liquor and other  
14 forms of intoxicants.

15 The fifth, you shall submit to drug  
16 testing as the probation officer directs.

17 And finally, the sixth, you shall report  
18 in person to the probation office in the district to  
19 which you are released from the confinement with the  
20 Bureau Of Prisons within 72 hours of that release.

21 Now while you are confined it is my  
22 recommendation that you be placed in an institution of  
23 the Bureau Of Prisons where you can take advantage of  
24 your skills and cabinetry. The Prison Industries in  
25 the Federal system have some very excellent programs,

1 and I recommend to the designating officer of the  
2 Bureau Of Prisons that he or she take into account  
3 your abilities in cabinetry in determining where to  
4 designate you.

5 Beyond that, do you have any  
6 recommendation, Mr. De la Cruz, for designation?

7 MR. DE LA CRUZ: Yes, your Honor, Lompoc  
8 Federal Institution in Lompoc.

9 THE COURT: All right. I do recommend  
10 Lompoc, but I also recommend, as I said, the Bureau Of  
11 Prisons should take into account the development of  
12 Mr. Williams' skills.

13 Now, this is the day that you were  
14 sentenced, and in your plea you waived any right to  
15 appeal any sentence except a sentence that was an  
16 upward departure outside the range established by the  
17 sentencing guidelines. I didn't do that, so in my  
18 judgment there isn't anything for you to appeal, but  
19 to the extent you feel there is something to appeal,  
20 it's my obligation to tell you that today is your day  
21 of sentencing and therefore you've got ten days from  
22 today --

23 THE DEFENDANT: Okay.

24 THE COURT: -- in which to file a written  
25 notice of appeal with the clerk of this court. Mr. De

1 La Cruz will make you more familiar with that.

2 Is there anything further?

3 MR. RACHOW: Your Honor, the court didn't  
4 impose a fine; did it?

5 THE COURT: I did not impose a fine, I  
6 missed that, I'm sorry.

7 Because of the heavy restitution that has  
8 been imposed upon the defendant, a fine is waived.

9 MR. DE LA CRUZ: Your Honor, the only  
10 other thing I would suggest with respect to the  
11 recommendation for placement at Lompoc is his  
12 statement on the record that recommendation is for  
13 purposes of permitting Mr. Williams' family access to,  
14 and visits to him. They all live in the bay area in  
15 California, that would be the closest facility  
16 available.

17 THE COURT: Tracy is closer than Lompoc.

18 MR. DE LA CRUZ: I am not sure that  
19 that --

20 THE COURT: Is available?

21 MR. DE LA CRUZ: Yeah.

22 THE COURT: Okay, all right. The closest  
23 possible facility to the bay area as to accommodate  
24 Mr. Williams' family for visitation purposes.

25 MR. DE LA CRUZ: Thank you, your Honor.



1 THE COURT: Thank you very much. We are  
2 adjourned.

3  
4  
5  
6  
7 STATE OF NEVADA )  
8 ) ss.  
COUNTY OF WASHOE )

9  
10 I, MICHELLE BLAZER, a Certified Court  
Reporter in and for the State of Nevada, do hereby  
11 certify:

12 That I was personally present for the  
purpose of acting as Certified Court Reporter in the  
13 matter entitled herein;

14 That said transcript which appears  
hereinbefore was taken in verbatim stenotype notes by  
me and thereafter transcribed into typewriting as  
15 herein appears to the best of my knowledge, skill and  
ability and is a true record thereof.  
16

17   
18 MICHELLE BLAZER, CCR #469 (NV) CSR #3361  
BONANZA REPORTING - RENO

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20  
21  
22  
23  
24  
25

## **Appendix F**

*United States v. Williams*, No. 3:99-cr-00161-HDM-RAM, Dkt. 25  
(D. Nev. Aug. 15, 2001) (unpublished)

Plea Agreement



FILED  
2001 AUG 15 PM 5:31  
U.S. Department of Justice

LANCE S. WILSON  
CLERK

United States Attorney  
District of Nevada

*[Signature]*  
DEPUTY

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August 2, 2001

MEMORANDUM OF PLEA NEGOTIATIONS

TO: Honorable David Warner Hagen  
United States District Judge

FROM: Ronald C. Rachow *RCR*  
Asst. United States Attorney

SUBJECT: U.S. v. Darryl Williams  
CR-N-99-161-DWH (RAM)

I. PLEA NEGOTIATION

The defendant, DARRYL WILLIAMS, is charged in a two count indictment filed December 15, 1999, with the offenses of Possession of a Firearm by a Prohibited Person in violation of Title 18, United States Code, Sections 922(g)(1) and 924(a)(2) (Count 1), and Bank Robbery, in violation of Title 18, United States Code, Section 2113(a) (Count 2). The Government and the defendant have agreed to the following:

1. The defendant will plead guilty as charged to Count 2 of the Indictment. The Government will dismiss Count 1 at the time of sentencing but the parties agree and stipulate that the Court may consider this Count as relevant conduct in determining an appropriate sentence.

2. The parties agree that the Base Offense Level for the offense set forth in Count 2 of the Indictment, Bank Robbery, is a Level 20 and must be increased by 2 levels because money was taken from a financial institution, and an additional 1 level because more than \$10,000 was taken, pursuant to Guideline section 2B3.1.

*I*

*25*

August 2, 2001

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3. The Government agrees to not oppose the defendant's request for a reduction of 2 levels for Acceptance of Responsibility under U.S.S.G. § 3E1.1(a) as long as the defendant continues to clearly demonstrate his acceptance of responsibility in all further criminal proceedings. The Parties agree that the United State Attorney's Office is not bound by the United States Probation Office's decision as to whether the defendant has accepted responsibility and it is understood that the United States Attorney's Office will make its own independent evaluation of this adjustment to the offense level.

4. The parties agree that the Offense Level and the possible Criminal History Category are based upon information concerning this offense and the defendant as it is known at the present time and could change based upon the investigation by the United States Probation Office and the findings of the District Court at the time of sentencing. The parties have made no stipulation or agreement about the defendant's Criminal History Category but believe it will be a least a Category IV. The defendant understands the possible range of sentences applicable in his case depends on the Court's determination of his Criminal History category. The defendant further understands that because bank robbery is a violent crime and his two prior robbery convictions will qualify him as a career offender under Guideline § 4B1.1, the Offense Level will therefore be increased to a level 32, Criminal History Category VI.

5. The Government agrees not to seek an upward departure at sentencing. The parties have made no agreement concerning an appropriate fine or restitution.

6. The defendant is aware that his sentence will be imposed in accordance with the Federal Sentencing Guidelines and Policy Statements. The defendant is aware that the Court has jurisdiction and authority to impose any sentence within the statutory maximum set for the offense to which the defendant pleads guilty.

7. The defendant is also aware that Title 18, United States Code, § 3742 gives the defendant a right to appeal the sentence to be imposed and that other federal laws give the defendant rights to appeal other aspects of his conviction. In exchange for the concessions made by the United States in the instant plea agreement, the defendant knowingly and expressly waives his right to appeal any sentence to be imposed that is within the applicable Sentencing Guideline range, further waives his right to appeal the manner in which that sentence was

August 2, 2001  
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determined on the grounds set forth in Title 18, United States Code, § 3742, and further waives his right to appeal any other aspect of his conviction or sentence. The defendant reserves only the right to appeal any sentence imposed to the extent, but only to the extent, that the sentence is an upward departure and outside the range established by the applicable Sentencing Guidelines.

## II. PENALTY:

### Statutory:

Title 18, United State Code, § 2113(a) provides for a penalty of imprisonment for not more than 20 years.

Title 18, United States Code, § 3571(b)(3), provides that a fine of not more than \$250,000.00 may be imposed in addition to any term of imprisonment.

### Sentencing Guidelines:

Pursuant to Title 18, United States Code, § 3551, et seq., and the Sentencing Reform Act of 1984, and the Sentencing Guidelines, the possible range of sentence for the offense of Bank Robbery as a career offender runs from 151 months to 188 months imprisonment for an offense level 29 with a Criminal History of Category VI and from 210 to 262 months for an offense level 32 with a Criminal History Category VI.

A federal prison sentence can no longer be shortened by early release on parole, because parole has been abolished. However, under U.S.S.G. § 5D1.1, a term of Supervised Release following a term of imprisonment is required when the term of imprisonment is more than 1 year. Under Title 18, United States Code, § 3559(a)(3), the offenses charged are Class C felonies and, therefore, pursuant to U.S.S.G. § 5D1.2(b)(2), a term of Supervised Release of at least 2 years, but not more than 3 years, must be ordered.

Under U.S.S.G. § 5E1.2(c), a fine may be imposed depending upon the Court's finding of the appropriate Offense Level, which may range from a minimum of \$15,000.00 to a maximum of \$175,000.00. However, U.S.S.G. § 5E1.2(e) allows the Court to waive any fine, impose a lesser fine or an alternative sanction, such as community service, if a defendant establishes he does not have the ability to pay a fine.

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Under Title 18, United States Code, § § 3663 and 3663A, and U.S.S.G. § 5E1.1, restitution is mandatory.

A mandatory special assessment under Title 18, United States Code, § 3013, and U.S.S.G. § 5E1.3 of \$100.00 for each count of conviction must be imposed.

**III. ESSENTIAL ELEMENTS OF THE OFFENSE:**

Before a verdict of guilty may be reached, the Government would have to prove the essential elements of the offense beyond a reasonable doubt as follows:

Count 1

First: The defendant knowingly possessed a firearm;

Second: The firearm had been shipped or transported from one state to another; and

Third: At the time the defendant possessed the firearm, the defendant had been convicted of a crime punishable by more than one year imprisonment.

Count 2

First: The defendant took money belonging to the bank named in the Indictment;

Second: The defendant used force and violence, or intimidation in doing so; and,

Third: The deposits of the bank were then insured by the Federal Deposit Insurance Corporation.

**IV. FACTUAL STIPULATION RELEVANT TO SENTENCING:**

On or about December 13, 1999, the defendant discovered in possession of a .22 caliber ROHM pistol which had been shipped in interstate commerce. The defendant was in a stopped vehicle and held the pistol to his head for several hours before surrendering



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to police. Prior to December 13, 1999, the defendant had been convicted of at least one offense punishable by more than 1 year in prison and therefore was a prohibited person who could not lawfully possess a firearm.

DW On December 2, 1999, the California Federal Bank office located at 595 Booth Street, Reno, Nevada, was robbed at about 1:45pm. The defendant entered the bank and approached Loretta Erikson and Starr Hutchinson who were working as bank tellers. The defendant showed Erikson a scanner and said he would know if she set off an alarm ~~and would shoot her~~. He demanded money from her and after getting that money, made a further demand on Hutchinson and took money from her. The tellers' drawers were counted down after the robber left and the loss determined to be \$13,112.00 which was insured by the Federal Deposit Insurance Corporation.

**V. STATEMENT OF THE DEFENDANT:**

I, DARRYL WILLIAMS, hereby acknowledge that I have thoroughly read and reviewed this memorandum with my attorney and agree that this memorandum completely and accurately states the facts supporting my plea of guilty and the negotiations between myself, my attorney, and the United States Attorney's Office. I have discussed the contents of this memorandum with my attorney and he has explained it to my satisfaction.

I have explained the facts and circumstances surrounding this case completely to my attorney and have been advised of what legal courses of action I might take. These discussions have included what might happen if I go to trial, what evidence the Government has against me, and the possible defenses, if any, I may have to these criminal charges.

My attorney has not promised me anything not mentioned in this plea memorandum and, in particular, my attorney has not promised that I will get any specific sentence. I understand that any discussions with my attorney about the possible sentence I might receive from the Court are just predictions and not binding on the Court. I know I cannot withdraw my guilty plea because my attorney's sentencing predictions turn out to be wrong.

My attorney has also explained to me my Constitutional Rights, including my right to a jury trial, to confront my accusers, to call witnesses on my own behalf, and my right to remain silent. My attorney has further explained to me that I

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have to waive these rights, that is, give them up, in order to have my guilty plea accepted by the Court.

I understand that the United States Attorney's Office will fully inform the Court and the United States Probation Office of the nature, scope, and extent of my conduct regarding the facts and circumstances of the charges against me, and any and all related matters in aggravation or mitigation concerning the issue of my sentencing.

I know if the Government is making a non-binding recommendation as to what type of sentence I should receive, the Court does not have to follow that recommendation. I also understand that I cannot withdraw my guilty plea because the Court decides to not follow the non-binding sentencing recommendation of the Government.

I further understand that the matter of sentencing is entirely up to the Court. Any stipulations or agreements between myself, my attorney, and the United States Attorney's Office are not binding upon the Court. I know the Court will decide my sentence based upon the facts of this case, my personal background, and the Sentencing Guidelines. I fully understand that my sentence could be anywhere within the range set forth in Section II of this memorandum.

Finally, I understand that the decision to plead guilty or go to trial is mine alone. As stated above, I have discussed this case fully with my attorney and received legal advice about what is the best course of action that I should take. My decision after receiving this advice is to plead guilty under this agreement.

Darryl Williams  
DARRYL WILLIAMS

8-13-01  
Date

Vito de la Cruz  
VITO de la CRUZ, Esq.  
Counsel for defendant

8-13-01  
Date



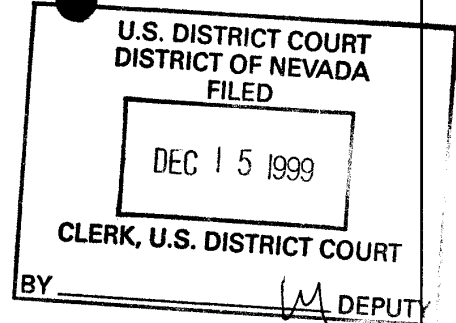
## **Appendix G**

*United States v. Williams*, No. 3:99-cr-00161-HDM-RAM, Dkt. 1 (D. Nev. Dec. 15, 1999) (unpublished)

Indictment

KATHRYN E. LANDRETH  
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Attorneys for Plaintiff



UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED STATES OF AMERICA,  
Plaintiff,

v.

DARRYL WILLIAMS,  
Defendant.

CR-N-99-0161-DWH-RAM

INDICTMENT FOR VIOLATION OF  
TITLE 18, UNITED STATES CODE,  
SECTION 922(g)(1) and 924 (a)(2) –  
Possession of a Firearm by a Prohibited  
Person (Count One)

INDICTMENT FOR VIOLATION OF  
TITLE 18, UNITED STATES CODE,  
SECTION 2113(a) - Bank Robbery  
(Count Two)

THE GRAND JURY CHARGES THAT:

COUNT ONE

Possession of a Firearm by a Prohibited Person

On or about December 13, 1999, in the District of Nevada, the defendant, DARRYL WILLIAMS, having been convicted of a crime punishable by imprisonment for a term exceeding one year, did knowingly possess in and affecting commerce, a firearm, to wit: a 22 caliber ROHM revolver, which had been shipped and transported in interstate and foreign commerce, all in violation of Title 18, United States Code, Section 922 (g)(1) and 924 (a)(2).

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**COUNT TWO**  
**Bank Robbery**

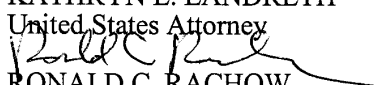
On or about December 2, 1999, in the District of Nevada, DARRYL WILLIAMS, defendant herein, by force, violence, and intimidation, did take from the person and the presence of another, namely, Loretta Erikson and Starr Hutchinson, bank tellers, money belonging to and in the care, custody, control, management, and possession of the California Federal Bank Branch Office located at 595 Booth Street, Reno, Nevada, a bank whose deposits were then insured by the Federal Deposit Insurance Corporation; all in violation of 18, U.S.C. §2113(a).

Dated this 15 day of December, 1999.

A TRUE BILL:

  
FOREPERSON

KATHRYN E. LANDRETH  
United States Attorney

  
RONALD C. RACHOW  
Assistant United States Attorney