

No.

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

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Jermaine Mitchell,

*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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**Petitioner's Appendix**

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<b>Appendix A</b> .....	1a
<i>United States v. Mitchell</i> , No. 20-10196, 2021 WL 5881662 (9th Cir. Dec. 13, 2021) (unpublished), Memorandum affirming First Step Act resentencing	
<b>Appendix B</b> .....	10a
<i>United States v. Mitchell</i> , No. 20-10196, (9th Cir. Feb. 11, 2022) (unpublished), Order denying Petition for Panel and En Banc Rehearing	
<b>Appendix C</b> .....	11a
<i>United States v. Mitchell</i> , No. 3:04-cr-00010-HDM-VPC, Dkt. 242 (D. Nev. May 21, 2020) (unpublished), Amended Judgment of Conviction	
<b>Appendix D</b> .....	19a
<i>United States v. Mitchell</i> , No. 3:04-cr-00010-HDM-VPC, Dkt. 241 (D. Nev. May 20, 2020) (unpublished), Order granting Sentence Reduction, in part	
<b>Appendix E</b> .....	24 a
<i>United States v. Mitchell</i> , No. 3:04-cr-00010-HDM-VPC, Dkt. 166 (D. Nev. Jan. 10, 2008) (unpublished), Judgment of Conviction	

## **Appendix A**

United States v. Mitchell, No. 20-10196, 2021

WL 5881662

(9th Cir. Dec. 13, 2021) (unpublished),

Memorandum affirming First Step Act resentencing

**NOT FOR PUBLICATION**

**FILED**

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

DEC 13 2021

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JERMAINE ALONZO MITCHELL,

Defendant-Appellant.

No. 20-10196

D.C. No.  
3:04-cr-00010-HDM-VPC-1

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Nevada  
Howard D. McKibben, District Judge, Presiding

Argued and Submitted October 22, 2021  
San Francisco, California

Before: MURGUIA, Chief Judge, and BERZON and BEA, Circuit Judges.

Jermaine Mitchell appeals the district court's order granting him a reduced sentence pursuant to the First Step Act of 2018 ("F.S.A."). We review the district court's sentencing decision for abuse of discretion, *see United States v. Carty*, 520 F.3d 984, 993 (9th Cir. 2008) (en banc), and we affirm.

Mitchell was convicted in 2007 of possession with intent to distribute

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

cocaine base in excess of 50 grams, in violation of federal law. Because of his prior controlled substances convictions, Mitchell received a mandatory life sentence. After Mitchell filed a motion for a reduced sentence under the F.S.A., the district court reduced his sentence from a term of life to a term of 360 months. Mitchell appeals the district court's decision not to reduce his sentence further.

Mitchell argues that he no longer qualifies as a career offender today because, due to changes in Nevada law, his prior conviction for violating Nevada Revised Statutes ("N.R.S.") § 453.337 no longer qualifies as a predicate offense for a career offender enhancement under the federal sentencing guidelines. Mitchell argues that the district court therefore should have assigned him a non-career offender guideline range and, alternatively, that the district court erroneously believed it could not consider Mitchell's purported non-career offender status as a sentencing factor under 18 U.S.C. § 3553(a).

Mitchell's assertion that, due to changes in law since his 2007 conviction, his N.R.S. § 453.337 conviction no longer qualifies as a predicate is incorrect.<sup>1</sup> In *United States v. Figueroa-Beltran (Figueroa-Beltran I)*, 892 F.3d 997 (9th Cir. 2018), this Court held that N.R.S. § 453.337 was not a categorical match with the federal Controlled Substances Act ("C.S.A.") but certified to the Nevada Supreme

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<sup>1</sup> The parties do not dispute that one of Mitchell's other prior offenses, his conviction for violating California Health and Safety Code § 11351.5, still qualifies as a career offender predicate.

Court the question whether the statute is divisible, *see id.* at 1002–04. In turn, the Nevada Supreme Court held that “the identity of a substance” listed in N.R.S. § 453.337 “is an element that must be proven to sustain a conviction under” the statute, “rather than a means of committing the offense.” *Figueroa-Beltran v. United States (Figueroa-Beltran II)*, 136 Nev. 386, 396 (2020). “In light of the guidance provided by the Nevada Supreme Court,” this Court then held “that § 453.337 is a divisible statute.” *United States v. Figueroa-Beltran (Figueroa-Beltran III)*, 995 F.3d 724, 733 (9th Cir. 2021). Mitchell is therefore incorrect to assert that N.R.S. § 453.337 is indivisible.

Mitchell argues that whether his N.R.S. § 453.337 conviction is a career offender predicate remains an open question because *Figueroa-Beltran III* did not specifically address the retroactivity of the Nevada Supreme Court’s interpretation of the statute. But “[t]he theory of a judicial interpretation of a statute is that the interpretation gives the meaning of the statute from its inception, and does not merely give an interpretation to be used from the date of the decision.” *United States v. City of Tacoma*, 332 F.3d 574, 580 (9th Cir. 2003). The Nevada Supreme Court’s and this Court’s conclusion that N.R.S. § 453.337 is divisible therefore applies to Mitchell’s Nevada conviction.

Because the Nevada statute is divisible, this Court applies the modified categorical approach to determine whether Mitchell’s N.R.S. § 453.337 conviction

was for possession of a controlled substance listed in the C.S.A., thereby qualifying as a career offender predicate. *Figueroa-Beltran III*, 995 F.3d at 733. To apply the modified categorical approach, a federal court “examine[s] judicially noticeable documents of conviction ‘to determine which statutory phrase was the basis for the conviction.’” *United States v. Martinez-Lopez*, 864 F.3d 1034, 1039 (9th Cir. 2017) (en banc) (quoting *Descamps v. United States*, 570 U.S. 254, 263 (2013)). Such judicially noticeable documents include “a limited class of materials, such as charging documents, plea agreements, and judgments of conviction.” *Figueroa-Beltran III*, 995 F.3d at 731; *see also Shepard v. United States*, 544 U.S. 13, 16 (2005).

Here, the Nevada information from Mitchell’s N.R.S. § 453.337 conviction charges that he “unlawfully and knowingly ha[d] in his possession and under his dominion and control a Schedule I controlled substance, to wit: *cocaine*.” Similarly, Mitchell’s guilty plea memorandum states that, as to the N.R.S. § 453.337 count, he “willfully, unlawfully and knowingly ha[d] in [his] possession . . . *cocaine*” with the intent to distribute. The C.S.A. lists cocaine as a Schedule II controlled substance. *See* 21 U.S.C. § 812. Mitchell’s conviction under N.R.S. § 453.337 accordingly constitutes a career offender predicate offense because he “pled or was found guilty of the elements constituting a federal” controlled substances offense. *Martinez-Lopez*, 864 F.3d at 1039.

Because, under current law, Mitchell has at least two prior felony convictions for a controlled substance offense, he still qualifies as a career offender. *See* U.S.S.G. § 4B1.1(a). Mitchell's argument that the district court erred by not considering his purported non-career offender status therefore fails.

**AFFIRMED.**

**United States Court of Appeals for the Ninth Circuit**

**Office of the Clerk**  
95 Seventh Street  
San Francisco, CA 94103

**Information Regarding Judgment and Post-Judgment Proceedings****Judgment**

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

**Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)**

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate ECF system or, if you are a pro se litigant or an attorney with an exemption from using appellate ECF, file one original motion on paper.

**Petition for Panel Rehearing (Fed. R. App. P. 40; 9th Cir. R. 40-1)****Petition for Rehearing En Banc (Fed. R. App. P. 35; 9th Cir. R. 35-1 to -3)****(1) A. Purpose (Panel Rehearing):**

- A party should seek panel rehearing only if one or more of the following grounds exist:
  - ▶ A material point of fact or law was overlooked in the decision;
  - ▶ A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
  - ▶ An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

**B. Purpose (Rehearing En Banc)**

- A party should seek en banc rehearing only if one or more of the following grounds exist:

- ▶ Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
- ▶ The proceeding involves a question of exceptional importance; or
- ▶ The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

**(2) Deadlines for Filing:**

- A petition for rehearing may be filed within 14 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- *See* Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-2.

**(3) Statement of Counsel**

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

**(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))**

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- A response, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

- The petition or response must be accompanied by a Certificate of Compliance found at Form 11, available on our website at [www.ca9.uscourts.gov](http://www.ca9.uscourts.gov) under *Forms*.
- You may file a petition electronically via the appellate ECF system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

### **Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)**

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at [www.ca9.uscourts.gov](http://www.ca9.uscourts.gov) under *Forms*.

### **Attorneys Fees**

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at [www.ca9.uscourts.gov](http://www.ca9.uscourts.gov) under *Forms* or by telephoning (415) 355-7806.

### **Petition for a Writ of Certiorari**

- Please refer to the Rules of the United States Supreme Court at [www.supremecourt.gov](http://www.supremecourt.gov)

### **Counsel Listing in Published Opinions**

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send a letter **in writing within 10 days** to:
  - ▶ Thomson Reuters; 610 Opperman Drive; PO Box 64526; Eagan, MN 55123 (Attn: Jean Green, Senior Publications Coordinator);
  - ▶ and electronically file a copy of the letter via the appellate ECF system by using “File Correspondence to Court,” or if you are an attorney exempted from using the appellate ECF system, mail the Court one copy of the letter.

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

**Form 10. Bill of Costs**

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form10instructions.pdf>

**9th Cir. Case Number(s)**

**Case Name**

The Clerk is requested to award costs to (*party name(s)*):

I swear under penalty of perjury that the copies for which costs are requested were actually and necessarily produced, and that the requested costs were actually expended.

**Signature**

**Date**

(use “s/[typed name]” to sign electronically-filed documents)

<b>COST TAXABLE</b>	<b>REQUESTED</b> (each column must be completed)			
	No. of Copies	Pages per Copy	Cost per Page	TOTAL COST
Excerpts of Record*	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
Principal Brief(s) ( <i>Opening Brief; Answering Brief; 1st, 2nd, and/or 3rd Brief on Cross-Appeal; Intervenor Brief</i> )	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
Reply Brief / Cross-Appeal Reply Brief	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
Supplemental Brief(s)	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
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			<b>TOTAL:</b> \$ <input type="text"/>	

\*Example: Calculate 4 copies of 3 volumes of excerpts of record that total 500 pages [Vol. 1 (10 pgs.) + Vol. 2 (250 pgs.) + Vol. 3 (240 pgs.)] as:

No. of Copies: 4; Pages per Copy: 500; Cost per Page: \$.10 (or actual cost IF less than \$.10);  
TOTAL:  $4 \times 500 \times \$.10 = \$200$ .

**APP 9a**

Feedback or questions about this form? Email us at [forms@ca9.uscourts.gov](mailto:forms@ca9.uscourts.gov)

## **Appendix B**

United States v. Mitchell, No. 20-10196,  
(9th Cir. Feb. 11, 2022) (unpublished),  
Order denying Petition for Panel and En Banc Rehearing

**FILED**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FEB 11 2022

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JERMAINE ALONZO MITCHELL,

Defendant-Appellant.

No. 20-10196

D.C. No.  
3:04-cr-00010-HDM-VPC-1  
District of Nevada,  
Reno

ORDER

Before: MURGUIA, Chief Judge, and BERZON and BEA, Circuit Judges.

The panel has unanimously voted to deny appellant's petition for panel rehearing. Chief Judge Murguia has voted to deny the petition for rehearing en banc, and Judge Berzon and Judge Bea so recommend.

The full court has been advised of the petition for rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for panel rehearing and the petition for rehearing en banc are DENIED.

**Appendix C**  
United States v. Mitchell,  
No. 3:04-cr-00010-HDM-VPC, Dkt. 242  
(D. Nev. May 21, 2020) (unpublished),  
Amended Judgment of Conviction

# UNITED STATES DISTRICT COURT

District of Nevada

UNITED STATES OF AMERICA

v.

JERMAINE ALONZO MITCHELL,

Date of Original Judgment: 1/10/2008

(Or Date of Last Amended Judgment)

) **AMENDED JUDGMENT IN A CRIMINAL CASE**  
)  
)  
) Case Number: 3:04-cr-00010-HDM-VPC  
) USM Number: 37902-048  
) Dennis Cameron  
) Defendant's Attorney

## THE DEFENDANT:

pleaded guilty to count(s) \_\_\_\_\_  
 pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.  
 was found guilty on count(s) ONE (1) and TWO (2) of Superseding Indictment filed 8/11/04  
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21:841(a)(1)	Possession with Intent to Distribute Cocaine Base	1/16/2004	1
21:844	Simple Possession of Marijuana	1/16/2004	2

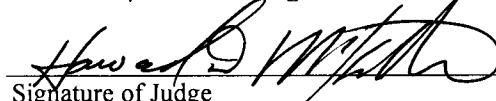
The defendant is sentenced as provided in pages 2 through \*8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) \_\_\_\_\_  
 Count(s) \_\_\_\_\_  is  are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

5/20/2020

Date of Imposition of Judgment



Signature of Judge

HOWARD D. MCKIBBEN, Senior U.S. District Judge

Name and Title of Judge

May 21, 2020

Date

DEFENDANT: MITCHELL, JERMAINE ALONZO  
CASE NUMBER: 3:04-cr-00010-HDM-VPC

## IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of **\*Three hundred sixty (360) months as to Count ONE (1); Ninety (90) days as to Count TWO; sentences of Count 1 and Count 2 shall run concurrently with each other.**

The court makes the following recommendations to the Bureau of Prisons: THAT defendant receive credit for all time served in federal custody in connection with this offense; THAT, while incarcerated, that defendant receive mental health treatment; THAT defendant be incarcerated at FCI Herlong, CA, if he qualifies for that facility, or, in the closest federal facility to the Reno, Nevada area, for visitation by family. In the event this recommendation cannot be complied with, the Court requests that the Bureau of Prisons provide a written explanation to the Court.

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 \_\_\_\_\_  
a \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

\_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: MITCHELL, JERMAINE ALONZO  
 CASE NUMBER: 3:04-cr-00010-HDM-VPC

## SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of **TEN (10) YEARS, as to Count 1, and for a term of THREE (3) YEARS, as to Count 2, to run concurrently with each other.**

### 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, not to exceed 104 tests annually.  
 The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5.  You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, or are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. You must participate in an approved program for domestic violence. *(check if applicable)*

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

DEFENDANT: MITCHELL, JERMAINE ALONZO  
CASE NUMBER: 3:04-cr-00010-HDM-VPC

## 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 nunchukus 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 User Only

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

Defendant's signature \_\_\_\_\_

Date \_\_\_\_\_

DEFENDANT: MITCHELL, JERMAINE ALONZO  
CASE NUMBER: 3:04-cr-00010-HDM-VPC

### SPECIAL CONDITIONS OF SUPERVISION

1. Possession of Illegal Controlled Substance - The defendant shall not possess illegal controlled substances.
2. Possession of Weapon - The defendant shall not possess, have under his control, or have access to any firearm, explosive device, or other dangerous weapons, as defined by federal, state, or local law.
3. Warrantless Search - The defendant shall submit to the search of his person, and any property, residence, or automobile under his control by the probation officer, or any other authorized person under the immediate and personal supervision of the probation officer without a search warrant at a reasonable time and in a reasonable manner, if the probation officer has reasonable suspicion to believe you have violated a condition or conditions of release.
4. Mental Health Counseling - The defendant shall participate in and complete a mental health treatment program, which may include out-patient counseling or residential placement, as approved and directed by the probation officer, and shall contribute to the cost of such treatment as approved and directed by the probation officer, based on the defendant's ability to pay.
5. Access to Financial Information - The defendant shall provide the probation officer access to any requested financial information, including personal income tax returns, authorization for release of credit information, and any other business financial information in which the defendant has a control or interest.
6. Denial of Federal Benefits for Drug Traffickers - 21 U.S.C. 862(a). The defendant shall be permanently ineligible for all federal benefits for LIFE.
7. Report to Probation Officer After Release from Custody - The defendant shall report in person to the probation office in the District to which the defendant is released within 72 hours of release from custody.

DEFENDANT: MITCHELL, JERMAINE ALONZO  
CASE NUMBER: 3:04-cr-00010-HDM-VPC

### CRIMINAL MONETARY PENALTIES

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

<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
<b>\$200.00</b>				
<b>Due and payable immediately.</b>				

The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Clerk, U.S. District Court Attn: Financial Officer Case No. 3:04-cr-00010-HDM-VPC 333 Las Vegas Boulevard, South Las Vegas, NV 89101			

**TOTALS**      \$ \_\_\_\_\_

— Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

— The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

— The court determined that the defendant does not have the ability to pay interest and it is ordered that:

— the interest requirement is waived for the \_\_ fine \_\_ restitution.

— the interest requirement for the \_\_ fine \_\_ restitution is modified as follows:

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

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

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

DEFENDANT: MITCHELL, JERMAINE ALONZO  
CASE NUMBER: 3:04-cr-00010-HDM-VPC

## SCHEDULE OF PAYMENTS

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

A  Lump sum payment of \$200.00 due immediately, balance due  
 not later than \_\_\_\_\_, or  
 in accordance with \_\_\_\_\_ C,  D,  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 the clerk of the court.

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

Joint and Several

Case Number			
Defendant and Co-Defendant Names ( <i>including defendant number</i> )	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate

The defendant shall pay the cost of prosecution.

The defendant shall pay the following court cost(s):

The defendant shall forfeit the defendant's interest in the following property to the United States:

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

DEFENDANT: MITCHELL, JERMAINE ALONZO  
CASE NUMBER: 3:04-cr-00010-HDM-VPCJudgment — Page 8 of 8**DENIAL OF FEDERAL BENEFITS**  
**(For Offenses Committed On or After November 18, 1988)****FOR DRUG TRAFFICKERS, PURSUANT TO 21 U.S.C. § 862(a)**

IT IS ORDERED that the defendant shall be:

ineligible for all federal benefits for a period of \_\_\_\_\_.

ineligible for the following federal benefits for a period of \_\_\_\_\_.  
(specify benefit(s))

**OR**

Having determined that this is the defendant's third or subsequent conviction for distribution of controlled substances, IT IS ORDERED that the defendant shall be permanently ineligible for all federal benefits.

**FOR DRUG POSSESSORS PURSUANT, TO 21 U.S.C. § 862(b)**

IT IS ORDERED that the defendant shall:

be ineligible for all federal benefits for a period of \_\_\_\_\_.

be ineligible for the following federal benefits for a period of \_\_\_\_\_.  
(specify benefit(s))

successfully complete a drug testing and treatment program.

perform community service, as specified in the probation and supervised release portion of this judgment.

Having determined that this is the defendant's second or subsequent conviction for possession of a controlled substance, IT IS FURTHER ORDERED that the defendant shall complete any drug treatment program and community service specified in this judgment as a requirement for the reinstatement of eligibility for federal benefits.

Pursuant to 21 U.S.C. § 862(d), this denial of federal benefits does not include any retirement, welfare, Social Security, health, disability, Veterans benefit, public housing, or other similar benefit, or any other benefit for which payments or services are required for eligibility. The clerk of court is responsible for sending a copy of this page and the first page of this judgment to:

U.S. Department of Justice, Office of Justice Programs, Washington, DC 20531

**APP 18a**

## **Appendix D**

United States v. Mitchell, No. 3:04-cr-00010-  
HDM-VPC, Dkt. 241  
(D. Nev. May 20, 2020) (unpublished),  
Order granting Sentence Reduction, in part

1  
2  
3  
4  
5 UNITED STATES DISTRICT COURT

6 DISTRICT OF NEVADA

7  
8 UNITED STATES OF AMERICA,

Case No. 3:04-cr-00010-HDM-VPC

9 v. Plaintiff,

ORDER

10 JERMAINE MITCHELL,

11 Defendant.

12 Before the court is defendant Jermaine Mitchell's motion for  
13 reduction of sentence pursuant to the First Step Act of 2018, Pub.  
14 L. No. 115-391, 132 Stat. 5194, 5194-249 (2018). (ECF No. 238).  
15 The government has responded (ECF No. 239), and Mitchell has  
16 replied (ECF No. 240).

17 Following a jury trial before Judge Reed in 2007, Mitchell  
18 was found guilty of one count of possession with intent to  
19 distribute cocaine base in excess of 50 grams in violation of 21  
20 U.S.C. § 841(b)(1)(A), and one count of simple possession of  
21 marijuana. Because Mitchell had at least two prior qualifying  
22 convictions, he was subject to an enhanced mandatory sentence of  
23 life on the cocaine conviction. 21 U.S.C. § 841(b)(1)(A) & § 851.  
24 Mitchell also qualified as a career offender under the United  
25 States Sentencing Guidelines ("Guidelines"). Mitchell's career  
26 offender range was 360 months to life.

1       At sentencing, Judge Reed sentenced Mitchell to life on the  
 2 cocaine charge, and 90 days on the marijuana charge. In doing so,  
 3 Judge Reed stated that he would not have imposed a life sentence  
 4 if he'd had a choice and that he hoped Mitchell would not spend  
 5 his life in custody. (ECF No. 238-3 at 51 & 58 (Sent. Tr. 50 &  
 6 57)).

7       In 2010, Congress enacted the Fair Sentencing Act of 2010,  
 8 Pub. L. No. 111-220, 124 Stat. 2372 (2010), which lowered the  
 9 penalties for certain cocaine base offenses. The Act was not  
 10 retroactively applicable.

11       In 2018, Congress enacted the First Step Act. The First Step  
 12 Act provides that a sentencing court "may ... impose a reduced  
 13 sentence as if sections 2 and 3 of the Fair Sentencing Act of 2010  
 14 were in effect at the time the covered offense was committed."  
 15 First Step Act of 2018, § 404(b), 132 Stat. at 5222 (citation  
 16 omitted). A "covered offense" is "a violation of a Federal criminal  
 17 statute, the statutory penalties for which were modified by section  
 18 2 or 3 of the Fair Sentencing Act of 2010, that was committed  
 19 before August 3, 2010." *Id.* § 404(a), 132 Stat. at 5222 (citation  
 20 omitted).

21       Section 3582(c)(1)(B) provides the legal basis for a sentence  
 22 reduction under the First Step Act. *United States v. Wirsing*, 943  
 23 F.3d 175, 183-85 (4th Cir. 2019). There is no specific procedure  
 24 for deciding such a motion, and the court is not required to hold  
 25 a hearing in making its decision. *United States v. Jackson*, 945  
 26 F.3d 315, 321-22 (5th Cir. 2019); *United States v. Williams*, 943  
 27 F.3d 841, 842-43 (8th Cir. 2019). Nor must the defendant appear  
 28 before the court during any hearing that is conducted. See Fed. R.

1 Crim. P. 43(b) (4) (providing that the defendant is not required to  
 2 be present for any proceeding to reduce sentence pursuant to 18  
 3 U.S.C. § 3582(c)). Further, plenary resentencing is not required.  
 4 See *United States v. Hegwood*, 934 F.3d 414, 418-19 (5th Cir.),  
 5 cert. denied, 140 S. Ct. 285 (2019) (“[I]n imposing a new  
 6 sentence, the district court places “itself in the time frame of  
 7 the original sentencing, altering the relevant legal landscape  
 8 only by the changes mandated by the 2010 Fair Sentencing Act.”).

9 The government agrees that Mitchell committed a “covered  
 10 offense” and therefore is eligible for a sentence reduction. The  
 11 parties disagree, however, on the amount of any reduction. While  
 12 Mitchell seeks a sentence of time served, the government argues  
 13 for a sentence of 360 months.

14 Mitchell’s statutory sentencing range after the Fair  
 15 Sentencing Act is ten years to life. 21 U.S.C. § 841(b)(1)(C). His  
 16 non-career offender Guidelines range today is 120 to 150 months,  
 17 based on an adjusted offense level of 26<sup>1</sup> and a criminal history  
 18 category of VI. Based on a maximum sentence of life, Mitchell’s  
 19 career offender Guidelines range is 360 months to life. U.S.S.G.  
 20 § 4B1.1(b).

21 Mitchell asserts that he no longer qualifies as a career  
 22 offender and asks the court to reconsider his designation.<sup>2</sup> The  
 23 government objects to any reconsideration of the career offender  
 24 designation and, in the alternative, argues that even if the court

25 <sup>1</sup> The quantity of cocaine base for which Mitchell was responsible results in a  
 26 base offense level of 24 today. U.S.S.G. § 2D1.1(a)(5) & (c). Mitchell was also  
 27 subject to a two-level enhancement for obstruction of justice, yielding an  
 28 adjusted offense level of 26.

<sup>2</sup> He apparently concedes, however, that at least one of his prior convictions  
 qualifies him for the enhanced sentence under § 841(b)(1)(B) and § 851.

1 were to reconsider the designation, Mitchell still qualifies as a  
2 career offender.

3 The court concludes the defendant is not entitled to plenary  
4 resentencing in these proceedings. The court will not therefore  
5 reconsider Mitchell's career offender designation in imposing a  
6 reduced sentence. See *Hegwood*, 934 F.3d at 418-19; *United States*  
7 *v. Johnson*, 2019 WL 5455723, at \*5 (E.D. Wash. Oct. 24, 2019); see  
8 also *United States v. Russo*, 2019 WL 1277507, at \*1 (D. Neb. Mar.  
9 20, 2019) ("[T]he Court cannot conclude that the First Step Act  
10 anticipates a full re-sentencing with application of laws and  
11 Guidelines that have changed since a defendant's original  
12 sentencing, other than the retroactive application of the reduced  
13 penalties for crack cocaine set out in the Fair Sentencing Act. If  
14 the Court were to engage in such a re-sentencing, applying other  
15 laws and Guidelines that have been changed since Russo's original  
16 sentencing, it would work an injustice to offenders sentenced in  
17 the past who did not have a crack cocaine conviction qualifying  
18 for sentence reduction pursuant to the Fair Sentencing Act of  
19 2010.").

20 Considering all applicable factors, including Mitchell's  
21 statutory and Guideline ranges, criminal history, and  
22 postconviction conduct and growth, as well as the 18 U.S.C. §  
23 3553(a) factors, the court concludes that a sentence at the low-  
24 end of the career offender range is appropriate. Mitchell is now  
25 48 years old. He has been incarcerated for nearly 190 months. The  
26 government does not contest Mitchell's representation that his  
27 disciplinary history has been minimal. Mitchell works as a unit  
28 orderly and has completed several courses and certificates,

1 including his GED, vocational courses, anger management, coping  
2 skills, relationships and communication, finance courses, drug  
3 education, and religious classes. The letters he has submitted in  
4 support of his motion are a testament to his growth while in  
5 prison. While Mitchell has a significant criminal history, a  
6 sentence of 360 months accounts for this fact and promotes respect  
7 for the law, provides just punishment and adequate deterrence,  
8 protects the public and avoids unwarranted sentence disparities.

9 Accordingly, the court concludes that the defendant qualifies  
10 for a sentence reduction pursuant to the First Step Act. An amended  
11 judgment of conviction that reduces the term of incarceration for  
12 Mitchell's § 841 offense from life to 360 months will be entered  
13 forthwith. All other terms of the original judgment of conviction  
14 will remain in effect.

15 IT IS SO ORDERED.

16 DATED: This 20th day of May, 2020.

17   
18 

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19 UNITED STATES DISTRICT JUDGE  
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**Appendix E**  
United States v. Mitchell,  
No. 3:04-cr-00010-HDM-VPC, Dkt. 166  
(D. Nev. Jan. 10, 2008) (unpublished),  
Judgment of Conviction

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADAUNITED STATES OF AMERICA  
vs.

## JUDGMENT IN A CRIMINAL CASE

JERMAINE ALONZO MITCHELL,

CASE NUMBER: 03:04-CR-10-ECR-VPC

USM NUMBER: 37902-048

## THE DEFENDANT:

( ) pled guilty to count \_\_\_\_\_

( ) pled nolo contendere to count(s) \_\_\_\_\_ which was accepted by the court.

(X) was found guilty on counts ONE (1) and TWO (2) of Superseding Indictment filed 8/11/04 after a plea of not guilty.

<input checked="" type="checkbox"/> FILED	RECEIVED
<input type="checkbox"/> ENTERED	<input type="checkbox"/> SERVED ON
COUNSEL/PARTIES OF RECORD	
JAN 10 2008	
CLERK US DISTRICT COURT	
DISTRICT OF NEVADA	
BY	DEPUTY

The defendant is adjudicated guilty of these offense(s):

Title & Section	Nature of Offense	Offense Ended	Count
21:841(a)(1)	Possession with Intent to Distribute Cocaine Base	Jan, 2004	1
21:844	Simple Possession of marijuana	Jan, 2004	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(s) \_\_\_\_\_ (is)(are) 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 material changes in economic circumstances.

January 4, 2008

Date of Imposition of Judgment

Edward C. Reed

Signature of Judge

EDWARD C. REED, JR., SENIOR USDJ

Name and Title of Judge

Jan 10, 2008

Date

DEFENDANT: MITCHELL, JERMAINE ALONZO  
CASE NUMBER: 03:04-CR-10-ECRJudgment - Page 2**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a mandatory total term of LIFE, without release, as to Count ONE (1), and for a total term of NINETY (90) days, as to Count Two; sentences of Count 1 and Count 2 shall run concurrently with each other.

( X ) The court makes the following recommendations to the Bureau of Prisons: THAT defendant receive credit for all time served in federal custody in connection with this offense; THAT, while incarcerated, that defendant receive mental health treatment; THAT defendant be incarcerated at FCI Herlong, CA, if he qualifies for that facility, or, in the closest federal facility to the Reno, Nevada area, for visitation by family. In the event this recommendation cannot be complied with, the Court requests that the Bureau of Prisons provide a written explanation to the Court.

( X ) The defendant is remanded to the custody of the United States Marshal.

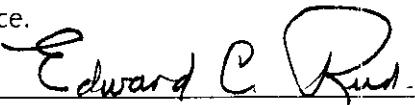
( ) The defendant shall surrender to the United States Marshal for this district:

( ) 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.

Dated this 10 day of January, 2008

  
EDWARD C. REED, JR., SENIOR USDJ

**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

AO 245B (Rev 12/03) Judgment in a Criminal Case  
Sheet 3 - Supervised ReleaseDEFENDANT: MITCHELL, JERMAINE ALONZO  
CASE NUMBER: 03:04-CR-10-ECRJudgment - Page 3**SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of TEN (10) YEARS, as to Count 1, and for a term of THREE (3) YEARS, as to Count 2, to run concurrently with each other.

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

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

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance, and shall submit to one drug test within 15 days of the commencement of supervision, and at least two periodic drug tests thereafter, not to exceed 104 drug tests annually. Revocation is mandatory for refusal to comply.

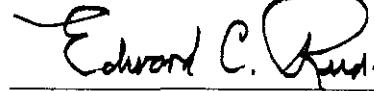
- ( ) The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse.
- ( X ) The defendant shall not possess a firearm, destructive device, or any other dangerous weapon.
- ( X ) The defendant shall cooperate in the collection of DNA as directed by the probation officer.
- ( ) The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer.
- ( ) The defendant shall participate in an approved program for domestic violence.

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

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

**SEE ADDITIONAL SPECIAL CONDITIONS OF SUPERVISED RELEASE ON PAGE 4****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 dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view 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; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

Dated this 10 day of January, 2008


EDWARD C. REED, JR., SENIOR USDJ

A 245B (Rev. 12/03) Judgment in a Criminal Case  
Sheet 3 - Supervised Release

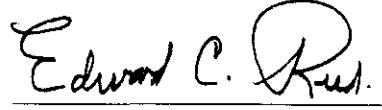
DEFENDANT: MITCHELL, JERMAINE ALONZO  
CASE NUMBER: 03:04-CR-10-ECR

Judgment - Page 4

#### SPECIAL CONDITIONS OF SUPERVISION

1. Possession of Illegal Controlled Substance - The defendant shall not possess illegal controlled substances.
2. Possession of Weapon - The defendant shall not possess, have under his control, or have access to any firearm, explosive device, or other dangerous weapons, as defined by federal, state or local law.
3. Warrantless Search - The defendant shall submit to the search of his person, and any property, residence, or automobile under his control by the probation officer, or any other authorized person under the immediate and personal supervision of the probation officer without a search warrant at a reasonable time and in a reasonable manner, if the probation officer has reasonable suspicion to believe you have violated a condition or conditions of release.
4. Mental Health Counseling - The defendant shall participate in and complete a mental health treatment program, which may include out-patient counseling or residential placement, as approved and directed by the probation officer, and shall contribute to the cost of such treatment as approved and directed by the probation officer, based on defendant's ability to pay.
5. Access to Financial Information - The defendant shall provide the probation officer access to any requested financial information, including personal income tax returns, authorization for release of credit information, and any other business financial information in which the defendant has a control or interest.
6. Denial of Federal Benefits for Drug Traffickers - 21 U.S.C. 862(a). The defendant shall be permanently ineligible for all federal benefits for LIFE.
7. Report to Probation Officer After Release from Custody - The defendant shall report in person to the probation office in the District to which the defendant is released within 72 hours of release from custody.

Dated this 10 day of January, 2008

  
EDWARD C. REED, JR., SENIOR USDJ

DEFENDANT: MITCHELL, JERMAINE ALONZO  
CASE NUMBER: 03:04-CR-10-ECRJudgment - Page 5**CRIMINAL MONETARY PENALTIES**

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

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
Totals:	\$200.00	\$	\$
	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(l), all nonfederal victims must be paid before the United States is paid.

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

Restitution amount ordered pursuant to plea agreement: \$ \_\_\_\_\_

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. §3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

the interest requirement is waived for the: ( ) fine ( ) restitution.

the interest requirement for the: ( ) fine ( ) restitution is modified as follows:

\*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.

Dated this 10 day of January, 2008
  
 EDWARD C. REED, JR., SENIOR USDJ

DEFENDANT: MITCHELL, JERMAINE ALONZO  
CASE NUMBER: 03:04-CR-10-ECR

Judgment - Page 6

## SCHEDULE OF PAYMENTS

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

A  Lump sum payment of \$ 200.00 due immediately, balance due  
 () not later than \_\_\_\_\_; or  
 () in accordance with () C, () D, or () E below; or

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

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

D  Payment in \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_  
 (e.g., months or years), to \_\_\_\_\_ (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 the clerk of the court.

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

Joint and Several

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

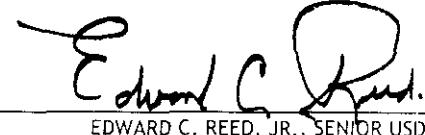
The defendant shall pay the cost of prosecution.

The defendant shall pay the following court cost(s):

The defendant shall forfeit the defendant's interest in the following property to the United States:

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

Dated this 10 day of January, 2008

  
 EDWARD C. REED, JR., SENIOR USDJ

DEFENDANT: MITCHELL, JERMAINE ALONZO

Judgment - Page 7

CASE NO.: 03:04-CR-10-ECR

**DENIAL OF FEDERAL BENEFITS**  
(For Offenses Committed On or After November 18, 1988)

**FOR DRUG TRAFFICKER PURSUANT TO 21 U.S.C. § 862**

IT IS ORDERED that the defendant shall be:

( ) ineligible for all federal benefits for a period of \_\_\_\_\_  
( ) ineligible for the following federal benefits for a period of \_\_\_\_\_  
(specify benefit(s)) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**OR**

( ) Having determined that this is the defendant's third or subsequent conviction for distribution of controlled substances, IT IS ORDERED that the defendant shall be permanently ineligible for all federal benefits.

**FOR DRUG POSSESSORS PURSUANT TO 21 U.S.C. § 862(b)**

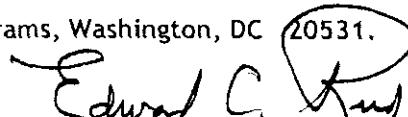
IT IS ORDERED that the defendant shall:

( ) be ineligible for all federal benefits for a period of \_\_\_\_\_  
( ) be ineligible for the following federal benefits for a period of \_\_\_\_\_  
(specify benefit(s)) \_\_\_\_\_  
\_\_\_\_\_  
( ) successfully complete a drug testing and treatment program.  
( ) perform community service, as specified in the probation and supervised release portion of this judgment.  
( ) Having determined that this is the defendant's second or subsequent conviction for possession of a controlled substance, IT IS FURTHER ORDERED that the defendant shall complete any drug treatment program and community service specified in this judgment as a requirement for the reinstatement of eligibility for federal benefits.

Pursuant to 21 U.S.C. § 862(d), this denial of federal benefits does not include any retirement, welfare, Social Security, health, disability, veterans benefit, public housing, or other similar benefit, or any other benefit for which payments or services are required for eligibility. The clerk of court is responsible for sending a copy of this page and the first page of this judgment to:

U.S. Department of Justice, Office of Justice Programs, Washington, DC 20531.

Dated this 10 day of January, 2008

  
EDWARD C. REED, JR., SENIOR USDJ