

APPENDIX A

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 20-10673

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

FRANK H. BYNES, JR.,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Georgia
D.C. Docket No. 4:18-cr-00153-LGW-CLR-1

Before JILL PRYOR, BRANCH, and LAGOA, Circuit Judges.

PER CURIAM:

George Asinc, appointed counsel for Frank Bynes, Jr., in this direct criminal appeal, has moved to withdraw from further representation of the appellant and filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967). Our independent review of the entire record reveals that counsel's assessment of the relative merit of the appeal is correct. Because independent examination of the entire record reveals no arguable issues of merit, counsel's motion to withdraw is **GRANTED**, and Bynes's convictions and sentences are **AFFIRMED**.

APPENDIX B

GAS 245B (Rev. 06/18) Judgment in a Criminal Case
DC Custody TSR

FILED

U.S. DISTRICT COURT
BRUNSWICK DIV.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

2020 FEB 19 AM 11:08

UNITED STATES OF AMERICA

v.

Frank H. Bynes, Jr.

JUDGMENT IN A CRIMINAL CASE

CLERK Casbell
SO. DIST. OF GA.Case Number: 4:18CR00153-1USM Number: 22607-021George R. Asinc
Defendant's Attorney

THE DEFENDANT:

- ☐ pleaded guilty to Counts _____
- ☐ pleaded nolo contendere to Count(s) _____ which was accepted by the court.
- ☒ was found guilty on Counts 1s, 2s, 3s, 4s, 5s, 6s, 7s, 8s, 9s, 10s, 12s, 13s, 14s, 15s, 16s, and 17s after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

| Title & Section | Nature of Offense | Offense Ended | Count |
|--------------------------|--|----------------|-------|
| 21 U.S.C. § 841(a)(1), | Unlawful dispensation of controlled substances | March 24, 2017 | 1s |
| 21 U.S.C. § 841(b)(1)(C) | | | |

See Page Two for additional counts

The defendant is sentenced as provided in pages 2 through 9 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.☒ The defendant has been found not guilty on Count 11s.

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.

February 14, 2020

Date of Imposition of Judgment

Signature of Judge

LISA GODBEY WOOD
UNITED STATES DISTRICT JUDGE

Name and Title of Judge

Date

February 19, 2020

DEFENDANT: Frank H. Bynes, Jr
CASE NUMBER: 4:18CR00153-1

ADDITIONAL COUNTS OF CONVICTION

| <u>Title & Section</u> | <u>Nature of Offense</u> | <u>Offense Ended</u> | <u>Count</u> |
|--|--|----------------------|--------------|
| 21 U.S.C. § 841(a)(1), 21 U.S.C. § 841(b)(1)(C) | Unlawful dispensation of controlled substances | August 17, 2015 | 2s |
| 21 U.S.C. § 841(a)(1); 21 U.S.C. § 841(b)(1)(C) | Unlawful dispensation of controlled substances | August 29, 2017 | 3s |
| 21 U.S.C. § 841(a)(1), 21 U.S.C. § 841(b)(1)(C) | Unlawful dispensation of controlled substances | January 18, 2017 | 4s |
| 21 U.S.C. § 841(a)(1), 21 U.S.C. § 841(b)(1)(C) | Unlawful dispensation of controlled substances | April 21, 2016 | 5s |
| 21 U.S.C. § 841(a)(1), 21 U.S.C. § 841(b)(1)(C) | Unlawful dispensation of controlled substances | June 1, 2017 | 6s |
| 21 U.S.C. § 841(a)(1), 21 U.S.C. § 841(b)(1)(C) | Unlawful dispensation of controlled substances | June 8, 2017 | 7s |
| 21 U.S.C. § 841(a)(1), 21 U.S.C. § 841(b)(1)(C) | Unlawful dispensation of controlled substances | June 12, 2017 | 8s |
| 21 U.S.C. § 841(a)(1), 21 U.S.C. § 841(b)(1)(C) | Unlawful dispensation of controlled substances | June 16, 2017 | 9s |
| 21 U.S.C. § 841(a)(1), 21 U.S.C. § 841(b)(1)(C) | Unlawful dispensation of controlled substances | May 24, 2017 | 10s |
| 21 U.S.C. § 841(a)(1), 21 U.S.C. § 841(b)(1)(C) | Unlawful dispensation of controlled substances | September 7, 2017 | 12s |
| 21 U.S.C. § 841(a)(1), 21 U.S.C. § 841(b)(1)(C) | Unlawful dispensation of controlled substances | May 20, 2016 | 13s |
| 21 U.S.C. § 841(a)(1), 21 U.S.C. § 841(b)(1)(C) | Unlawful dispensation of controlled substances | December 27, 2016 | 14s |
| 18 U.S.C. § 1347 | Health care fraud | August 17, 2015 | 15s |
| 18 U.S.C. § 1347 | Health care fraud | June 1, 2017 | 16s |
| 18 U.S.C. § 1347 | Health care fraud | June 12, 2017 | 17s |

DEFENDANT: Frank H. Bynes, Jr.
CASE NUMBER: 4:18CR00153-1

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: 240 months. This sentence consists terms of 240 months as to each of Counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, and 14, and terms of 120 months as to each of Counts 15, 16, and 17, all to be served concurrently to produce a total term of 240 months.

- ☒ The Court makes the following recommendations to the Bureau of Prisons:
Designation to a Bureau of Prisons facility in Jesup, Georgia, or Estill, South Carolina, is recommended so that the defendant may be close to his Georgia family.
- ☒ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district:
- ☐ at _____ ☐ a.m. ☐ p.m. on _____
- ☐ as notified by the United States Marshal.
- ☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
- ☐ before 2 p.m. on _____
- ☐ as notified by the United States Marshal.
- ☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____

DEPUTY UNITED STATES MARSHAL

DEFENDANT: Frank H Bynes Jr
CASE NUMBER: 4:18CR00153-1

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of: 3 years as to each of Counts 1s, 2s, 3s, 4s, 5s, 6s, 7s, 8s, 9s, 10s, 12s, 13s, 14s, 15s, 16s, and 17s, to be served concurrently.

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 1 drug test within 15 days of release from imprisonment and at least 2 periodic drug tests thereafter, as determined by the court.
☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(Check, if applicable.)*
4. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
5. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*
6. ☐ You must participate in an approved program for domestic violence. *(Check, if applicable.)*
7. ☒ You must make restitution in accordance with 18 §§ U.S.C. 2248, 2259, 2264, 2327, 3663, 3663A, and 3664. *(Check, if applicable.)*
8. You must pay the assessment imposed in accordance with 18 § U.S.C. 3013.

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: Frank H. Bynes, Jr.
CASE NUMBER: 4:18CR00153-1

STANDARD CONDITIONS OF SUPERVISION

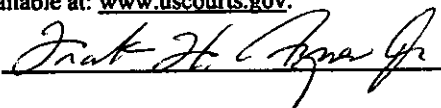
As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report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

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

U.S. Probation Office Use Only

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

Defendant's Signature



Date

5/7/2022

DEFENDANT: Frank H. Bynes, Jr.
CASE NUMBER: 4:18CR00153-1

SPECIAL CONDITIONS OF SUPERVISION

1. You must pay the financial penalty in accordance with the Schedule of Payments sheet of this judgment. You must also notify the court of any changes in economic circumstances that might affect the ability to pay this financial penalty.
2. You must submit your person, property, house, residence, office, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), other electronic communications or data storage devices or media, to a search conducted by a United States probation officer. Failure to submit to a search may be grounds for revocation of release. You must warn any other occupants that the premises may be subject to searches pursuant to this condition. The probation officer may conduct a search under this condition only when reasonable suspicion exists that you have violated a condition of supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.

DEFENDANT: Frank H. Bynes, Jr
CASE NUMBER: 4:18CR00153-1**CRIMINAL MONETARY PENALTIES**

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

| | <u>Assessment</u> | <u>JVTA Assessment *</u> | <u>Fine</u> | <u>Restitution</u> |
|---------------|-------------------|--------------------------|-------------|----------------------|
| TOTALS | \$1,600 | | | \$ 615,145.06 |

☐ 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> |
|----------------------|---------------------|----------------------------|-------------------------------|
| Medicaid | | \$383,335.66 | 1 |
| Medicare | | \$218,270.07 | 1 |
| Tricare | | \$13,539.33 | 1 |

TOTALS _____ **\$615,145.06**

☐ 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 the schedule of payments 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:

* 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: Frank H. Bynes, Jr.
CASE NUMBER: 4:18CR00153-1

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 \$1,600 due immediately, balance due
☐ not later than _____, or
☒ in accordance ☐ 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:
Pursuant to 18 U.S.C. § 3664(f)(3)(B), nominal payments of either quarterly installments of a minimum of \$25 if working non-UNICOR or a minimum of 50 percent of monthly earnings if working UNICOR shall be made. Upon release from imprisonment and while on supervised release, nominal payments of a minimum of \$100 per month shall be made. Payments are to be made payable to the Clerk, United States District Court, for disbursement to the victims.

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
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) JVT Assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

DEFENDANT: Frank H. Bynes, Jr.
CASE NUMBER: 4:18CR00153-1

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 5 years
- ☐ 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, 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 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

APPENDIX C

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

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

May 27, 2022

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 20-10673-GG
Case Style: USA v. Frank Bynes, Jr.
District Court Docket No: 4:18-cr-00153-LGW-CLR-1

The enclosed order has been entered on petition(s) for rehearing.

See Rule 41, Federal Rules of Appellate Procedure, and Eleventh Circuit Rule 41-1 for information regarding issuance and stay of mandate.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Joseph Caruso, GG/lt
Phone #: (404) 335-6177

REHG-1 Ltr Order Petition Rehearing

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-10673-GG

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

FRANK H. BYNES, JR.,

Defendant - Appellant.

Appeal from the United States District Court
for the Southern District of Georgia

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: JILL PRYOR, BRANCH, and LAGOA, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 35) The Petition for Panel Rehearing is also denied. (FRAP 40)

ORD-46