

APPENDIX

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APPENDIX A

RECOMMENDED FOR PUBLICATION

Pursuant to Sixth Circuit I.O.P. 32.1(b)

File Name: 22a0242p.06

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

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

LEE JONES,
Defendant-Appellant.

No. 21-3636

Appeal from the United States District Court for the
Northern District of Ohio at Youngstown.
No. 4:20-cr-00750-1—Dan A. Polster, District Judge.

Argued: November 1, 2022

Decided and Filed: November 16, 2022

Before: McKEAGUE, THAPAR, and READLER,
Circuit Judges.

COUNSEL

ARGUED: Jack Millman, JONES DAY, New York,
New York, for Appellant. Rebecca C. Lutzko,
UNITED STATES ATTORNEY'S OFFICE,
Cleveland, Ohio, for Appellee.

ON BRIEF: Jack Millman, JONES DAY, New York, New York, for Appellant. Rebecca C. Lutzko, UNITED STATES ATTORNEY'S OFFICE, Cleveland, Ohio, for Appellee.

OPINION

THAPAR, Circuit Judge. Lee Jones pled guilty to being a felon in possession of a firearm, but the district court did not ensure that his plea was knowing and voluntary. Thus, we vacate Jones's sentence.

I.

The police pulled Jones over for a traffic violation. What began as a routine traffic stop soon spiraled out of control. Ignoring the officers' repeated demands that he step out of the car, Jones rolled up his window, sped off, crashed the car, and then ran until the police arrested him. The police seized an AR-15 and a handgun from the wrecked car. Jones was charged as a felon in possession of a firearm. *See* 18 U.S.C. § 922(g)(1). He pled guilty without a plea agreement.

Jones appeals because of how the district court explained the Sentencing Guidelines at the change-of-plea hearing. First, the district court informed Jones of the maximum statutory penalties he faced. Jones immediately claimed he "didn't understand" because he "thought [his] guideline was something different." R. 28, Pg. ID 135. But the court hadn't discussed the Sentencing Guidelines yet, just the statutory maximums. Eventually, the court did reach the Guidelines. The court asked Jones if he had discussed the Guidelines with his lawyer. Jones said he had. The government claimed the Guidelines called for 21 to 27 months' imprisonment. Jones's lawyer argued

the correct range was 12 to 18 months. The district court said it would have to decide between the parties' proposals. At the time, no one recognized the problem with this statement. Without a plea agreement that specified the sentencing range, the court was not bound by the parties' Guidelines calculations. See Fed. R. Crim. P. 11(c)(1)(C). But Jones was unaware of that possibility. At the end of the hearing, the court informed Jones that the Probation Office would prepare a presentence investigation report ("PSR"), which the court would "use at sentencing." R. 28, Pg. ID 146.

When the PSR recommended 46 to 57 months' imprisonment, Jones was understandably confused. He hadn't realized the district court could sentence him to more time than the government originally requested. He claimed that if he had known, he would have fought the charge or taken a plea deal. The court recognized that if it hadn't told Jones it could sentence him above the government's recommendation, it should have. So the court informed Jones that even though it was rather late in the proceedings, he could move to withdraw his guilty plea. But the court warned it might deny the motion, and if it did, Jones would lose credit he received for accepting responsibility and pleading guilty. All the while, the government remained silent. When the government finally did speak, it asked for a sentence of 57 months—much more than the 21-to-27-month range it referenced at the change-of-plea hearing. Ultimately, Jones went through with his guilty plea, and the court sentenced him to 57 months' imprisonment.

II.

Federal Rule of Criminal Procedure 11 ensures that defendants' guilty pleas are knowing and voluntary. *See United States v. Catchings*, 708 F.3d 710, 716 (6th Cir. 2013). The government concedes Jones's plea did not meet this standard. We agree. The district court should have warned Jones that it would decide his sentence irrespective of the parties' Guidelines calculations. *See* Fed. R. Crim. P. 11(b)(1)(M); *cf. United States v. Austin*, 830 F. App'x 460, 464 (6th Cir. 2020) (holding there was no Rule 11 violation because the court said it would independently decide the sentence, despite the parties' recommendations). That leaves the question of remedy.

Jones argues the error makes him eligible for resentencing to no greater than 27 months' imprisonment—the maximum the government referenced at the change-of-plea hearing. His opening brief clearly and cogently explained why he believed he was entitled to that remedy. The government responded with a single sentence asserting he was not entitled to that remedy, without citation or any explanation, in the conclusion of its brief. It later supplemented that sentence with a Rule 28(j) letter advising us of a decision issued four years ago. This is an obvious forfeiture. The government failed to develop any argument against Jones's proposed remedy. But the government's error doesn't automatically entitle the defendant to whatever *remedy* he seeks. As the Supreme Court has explained, courts have an independent obligation to get the law right in criminal cases. *Young v. United States*, 315 U.S. 257, 258–59 (1942). In *Young*, the government confessed error, but the Supreme Court

accepted that confession only after independently reviewing the alleged errors. *Id.* at 259–61. The Court warned that “the proper administration of the criminal law cannot be left merely to the stipulation of parties.” *Id.* at 259 (citations omitted). *Young* is about a stipulation, but it applies just as forcefully to forfeiture. For example, a court could not sentence a defendant to less than the statutory minimum just because the government failed to object. In short, the government’s forfeiture does not allow the court to order a remedy that is contrary to law.¹

Of course, not every forfeiture would result in a remedy that is contrary to law, but here it would. Jones asks us to cap the sentencing court’s discretion at 27 months. But there’s only one way a defendant can cap the district court’s sentence: a binding plea agreement. *See* Fed. R. Crim. P. 11(c)(1)(C). And Jones didn’t obtain one, so we have no basis for limiting the district court’s sentencing discretion.

The Federal Rules of Criminal Procedure provide an elaborate process before the district court accepts a binding plea agreement. In most cases, district courts should review the PSR first. *See* Fed. R. Crim. P. 11(c)(3)(A); *United States v. Cota-Luna*, 891 F.3d 639, 647 (6th Cir. 2018). After performing that

¹ In some cases, the law won’t be clear. Courts facing difficult legal questions with uncertain answers need not attempt to figure it all out themselves without the parties’ assistance. *See Brenay v. Schartow*, 709 F. App’x 331, 337 (6th Cir. 2017) (“[I]t is not for the court to search the record and construct arguments. Parties must do that for themselves.” (citation omitted)). In those situations, courts can appropriately hold the government to its forfeiture.

review, district courts can even reject pleas outright. *Cota-Luna*, 891 F.3d at 651 (Kethledge, J., concurring in the judgment). That’s because the court must ensure the sentence serves the public interest and satisfies the statutory sentencing factors. *See* 18 U.S.C. § 3553(a). The remedy Jones requests would short-circuit that whole process. It would deprive the district court of sentencing discretion without the coordinate procedural protections the plea process usually affords. In effect, Jones asks us to impose a binding plea agreement—even though he didn’t obtain one—just because the district court erred. That’s not a remedy a court, charged with the proper administration of the criminal law, can award.

So what remedy is available? Because Jones’s plea was unknowing in violation of Rule 11, he may “plead anew.” *McCarthy v. United States*, 394 U.S. 459, 472 (1969), *superseded on other grounds by rule*, Fed. R. Crim. P. 11(h); *United States v. Tunning*, 69 F.3d 107, 115 (6th Cir. 1995) (discussing the available remedies for Rule 11 violations). Thus, the proper remedy is to vacate Jones’s plea and remand for him to plead anew.

Jones resists this conclusion. He argues that even though “precedent does not *compel*” us to order resentencing, we should in this case. Reply Br. 9. But Jones’s argument invokes our habeas jurisprudence, where we possess “broad discretion in crafting remedies for constitutional errors.” *Ruelas v. Wolfenbarger*, 580 F.3d 403, 410 (6th Cir. 2009) (cleaned up). For example, in a habeas case we ordered a state prisoner to be resentenced without vacating his guilty plea. *See Hart v. Marion Corr. Inst.*, 927 F.2d 256, 259 (6th Cir. 1991). That makes sense. Because of federalism and comity, we grant the

least disruptive remedies possible to redress constitutional violations in state courts. But Jones entered his plea in federal court, where Rule 11 applies. And *McCarthy* prescribes the remedy for this Rule 11 violation: The defendant may “plead anew.” 394 U.S. at 472. So Jones’s appeal to our habeas caselaw falls flat.

Jones also relies on our unpublished opinion in *United States v. Smagola*, 390 F. App’x 438 (6th Cir. 2010). True, *Smagola* ordered resentencing rather than vacating a federal defendant’s plea. *Id.* at 444. But *Smagola* is unpublished and unpersuasive. It ignores the distinction between guilty pleas entered in state and federal court. Because *Smagola* is unpublished and disregards this important principle of federalism, we need not follow it.

In short, the proper remedy for an unknowing plea entered in violation of Rule 11 is allowing the defendant to plead anew. If the government had argued that here, that’s the remedy we would order. But because the government forfeited any objection to Jones’s proposed remedy, we grant the closest remedy the law permits. We can’t strip the district court of its sentencing discretion absent a binding plea agreement. But we can give the district court the option of resentencing Jones to no more than 27 months or allowing him to plead anew. In making that decision, the district court may consider any of the relevant sentencing factors, including post-sentencing rehabilitation. *See Pepper v. United States*, 562 U.S. 476, 490–91 (2011). This choice preserves the district court’s discretion and comports with the Supreme Court’s decision in *McCarthy*.

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* * *

We vacate the district court's sentence and remand for further proceedings consistent with this opinion.

APPENDIX B

No. 21-3636

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

UNITED STATES OF)	FILED Jan 11, 2023 DEBORAH S. HUNT, Clerk
AMERICA,)	
Plaintiff-Appellee,)	
v.)	
LEE JONES,)	
Defendant-Appellant.)	O R D E R

BEFORE: McKEAGUE, THAPAR, and
READLER, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

APPENDIX C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

-----	x	
UNITED STATES	:	
OF AMERICA,	:	
Plaintiff,	:	Case No. 4:20-cr-00750
	:	Cleveland, Ohio
v.	:	
	:	Thursday, February 4, 2021
LEE JONES,	:	12:50 p.m.
	:	
Defendant.	:	
-----	x	

TRANSCRIPT OF CHANGE OF PLEA
PROCEEDINGS BEFORE THE HONORABLE
DAN AARON POLSTER SENIOR UNITED STATES
DISTRICT COURT JUDGE

Court Reporter: Donnalee Cotone, RMR, CRR, CRC
Realtime Systems Administrator
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Proceedings recorded by mechanical stenography,
transcript produced by computer-aided transcription.

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AFTERNOON SESSION,
THURSDAY, FEBRUARY 4, 2021
(Proceedings commenced at 12:50 p.m.)

- - -

THE COURT: Okay. Our next matter is case 4:20-cr-750, *United States v. Lee Jones*.

Mr. Jones is here with Mr. El-Kamhawy; Ms. Makridis for the Government.

We're here for a change of plea hearing.

Mr. Jones, I just want to make sure you do consent to have this hearing done by Zoom because of the pandemic.

Is that correct?

THE DEFENDANT: Yes, sir.

THE COURT: All right. And it's my understanding that Mr. Jones is prepared to withdraw his previously entered plea of not guilty and to enter a guilty plea to being a felon in possession without a plea agreement; is that correct?

THE DEFENDANT: Yes, sir.

MR. EL-KAMHAWY: That is correct, Your Honor.

THE COURT: Okay. All right. Mr. Jones, I need to have a conversation with you, and I have to place you under oath.

So if you can raise your right hand, please.

(Defendant sworn.)

THE COURT: Okay. You can put your hand down.

All right. Mr. Jones, how old are you, please?

THE DEFENDANT: 36.

THE COURT: And how far did you get in school?

THE DEFENDANT: High school diploma.

THE COURT: Okay. I take it you don't have any difficulty reading or understanding English?

THE DEFENDANT: No, sir.

THE COURT: In the last 12 months, have you been treated for any mental or psychiatric condition?

THE DEFENDANT: No.

THE COURT: Are you today under the influence of any drugs or alcohol or medication that might affect your ability to understand what's going on?

THE DEFENDANT: No, sir.

THE COURT: Do either counsel know of any reason why Mr. Jones is not competent to enter a guilty plea today?

MS. MAKRIDIS: No, Your Honor.

MR. EL-KAMHAWY: No, Your Honor.

THE COURT: All right. Mr. Jones, you understand you're proposing to plead guilty to being a felon in possession of a firearm and ammunition.

The maximum penalty is ten years in prison, \$250,000 fine, three years supervised release, and a \$100 special assessment.

And supervised release is a period after any prison sentence. The main condition is not committing any new crime. There might be drug testing or other conditions, and if you violate a condition of supervised release, you come back to me for a hearing.

Do you understand that?

THE DEFENDANT: No. I didn't understand that one, Your Honor.

THE COURT: Well —

THE DEFENDANT: I thought my guideline was something different.

THE COURT: No. We're not even at the guidelines. I mean, you get —

THE DEFENDANT: Oh.

THE COURT: Any prison sentence is going to be followed by a period of supervised release. It could be up to three years, and that — you're going to be under — the main condition of supervised release is not committing any new crime.

But if you violate a condition, you can be sent back to prison.

Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. Have you discussed your decision to — oh, and also, in the event you're not a

United States citizen, a conviction on this crime would likely result in your being removed from the country.

Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: And there's also a forfeiture count that you're going to forfeit, give up your title to this semiautomatic rifle referred to in the indictment.

Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. Have you discussed your decision to plead guilty carefully with Mr. El-Kamhawy?

THE DEFENDANT: Yes, sir.

THE COURT: And did you have a chance to ask him any questions that you might have had?

THE DEFENDANT: Yes, sir.

THE COURT: Without giving me any details of those discussions, did you discuss generally with him what the Government's evidence would be if this case were to go to trial.

THE DEFENDANT: I'm not sure. Did I?

THE COURT: Well, did you or didn't you?

Mr. El-Kamhawy, did you go over the discovery, what the Government's evidence would be with Mr. Jones?

MR. EL-KAMHAWY: Yes, Your Honor.

THE COURT: All right. Mr. Jones, do you

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remember that?

THE DEFENDANT: Is that the motion?

THE COURT: What?

Did you go over — did you discuss with your lawyer what the Government's evidence against you was going to be?

THE DEFENDANT: Yes, sir.

THE COURT: Obviously, they found you with a gun. All right?

THE DEFENDANT: Yes, sir.

THE COURT: And the gun traveled in interstate commerce.

THE DEFENDANT: Yes, sir.

THE COURT: All right. And did you discuss with your lawyer what, if any, challenges or defenses you might have to the Government's evidence, again, if the case were to go to trial?

THE DEFENDANT: Yes, sir.

THE COURT: And are you satisfied with your lawyer's representation of you?

THE DEFENDANT: Yes.

THE COURT: Now, has anyone threatened you or pressured you in any way to get you to come in here today and plead guilty?

THE DEFENDANT: No.

THE COURT: Put another way, are you here

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voluntarily because after talking it over with your lawyer and maybe some family members, you've decided this is the best thing to do under the circumstances?

THE DEFENDANT: Yes, sir.

THE COURT: All right. I covered the maximum penalties with you.

Have you discussed with Mr. El-Kamhawy the federal advisory sentencing guidelines and how they are likely to work in your case?

THE DEFENDANT: Yes, sir.

THE COURT: All right. Ms. Makridis, Mr. El-Kamhawy, do you have a sense of Mr. Jones's advisory range?

MS. MAKRIDIS: Yes, Your Honor.

Mr. El-Kamhawy and I are not in agreement as to what the sentencing range would be. But it would be the Government's position that Mr. Jones would be an 18, a base offense Level 18. He would receive three points for acceptance of responsibility, which would bring him to a 15. He's in a Criminal History Category II. So his range would be 21 to 27 months.

THE COURT: All right. Mr. El-Kamhawy, what do you think it would be?

MR. EL-KAMHAWY: Your Honor, we have a base Level 14 for the felon in possession. For the acceptance of

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responsibility, we're expecting, with the Government's motion, to receive three levels reduction, which will bring it down to 11.

THE COURT: All right. Well, if you start at a 14, you can't get the third level off. It's only two.

I mean, you think he starts at a 14?

MR. EL-KAMHAWY: I think he starts with a 14, Your Honor, yes.

THE COURT: Well, then, you can only get the third level off if he's 16 or above. So if it's 14, it's just 14 minus two is 12.

And you agree — you think Mr. Jones is a Category II, criminal history —

MR. EL-KAMHAWY: That is correct, Your Honor.

THE COURT: All right. Well, Mr. Jones, I'll have to decide whether you start at an 18 or a 14.

The parties seem to agree that you're a Criminal History Category II.

A 15/II is 21 to 27 months.

A 12/II is 12 to 18 months.

Okay. Do you see how that works?

THE DEFENDANT: Yes, sir.

THE COURT: All right. And, again, there is no parole. So if you get 12 months or 18 months or 21 months or whatever, that's what you have to serve.

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Obviously, you get any credit for any time you've been in custody in this case.

Do you have any questions how that works?

THE DEFENDANT: No, sir.

THE COURT: Okay. Let's see.

Sir, do you understand as you appear before me today you are presumed not guilty of this crime?

You're entitled to a trial. At that trial, you would not have to prove your innocence. It's the other way around; the Government would have to prove that you're guilty.

And Ms. Makridis would need to do that through the sworn testimony of witnesses and admissible documents and physical evidence tending to show that you were guilty.

Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: And the trial would be in front of a jury unless both you and the Government waive jury, in which case it would be to me, the Court. But either way, judge or jury, the burden of proof is always on the Government. It's never on you. And it's always the very high standard of beyond a reasonable doubt.

Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: And, of course, you're entitled to

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a lawyer at every single step of your trial, and if you could not afford one, I'd give you a lawyer at Government expense.

Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: And your lawyer, Mr. El-Kamhawy, would be able to challenge, confront, cross-examine, all of the Government's evidence at trial.

Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Now, at the end of the Government's case, you would have the right, but not the burden, the right to put on a defense, and that means that you could call witnesses and introduce

documents tending to show that you were not guilty of this crime.

Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: And if there was someone you wanted to call as a witness and that person didn't want to come to court voluntarily, Mr. El-Kamhawy would get a subpoena.

A subpoena is a written command to someone to show up at a specific time to be a witness. And if someone you had subpoenaed did not show up, I would direct one of our deputy marshals to go out and find that person and bring him or her

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into court so you could have your defense.

Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: At the end of the Government's — oh, I'm sorry.

Yeah. At the end of the Government's case, you would have the right, but not the obligation, to testify, and if you wanted to testify, you would get on the witness stand, and I'd give you an oath, and you would answer Ms. Makridis's questions — well, actually, first Mr. El-Kamhawy's questions and then Ms. Makridis's questions.

Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: And if you chose not to testify, nobody could say a single word about the fact that you had chosen not to testify at your trial.

Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: If I accept your guilty plea this afternoon, we won't have any of that, no trial, witnesses, documents. You will be found guilty. We'll come back in a few months for sentencing, and you won't be able to say, "Gee, I made a mistake. I want a trial."

Do you understand that?

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THE DEFENDANT: Yes, sir.

THE COURT: All right. Ms. Makridis, Mr. El-Kamhawy, before I get the factual basis, do either of you feel I have neglected to cover something with Mr. Jones that I need to cover?

MS. MAKRIDIS: Your Honor, I just wanted to clarify for purposes of the record that there were two firearms that need to be forfeited in the case.

I believe the Court read into the record the one semiautomatic rifle. But there's also a pistol. Other than that, Your Honor, there's a pistol.

THE COURT: Oh, right. I read it too fast.

You'd be forfeiting or giving up the semiautomatic and the pistol.

Do you understand that, Mr. Jones?

THE DEFENDANT: Yes, sir.

MR. EL-KAMHAWY: Your Honor.

THE COURT: Yes.

MR. EL-KAMHAWY: For the record, Mr. Jones has no interest in any one of those firearms. They're

not registered to him. They're registered to another individual.

THE COURT: Okay. Thank you.

All right. Then lastly, Mr. Jones, I'm going to ask Ms. Makridis to place on the record the evidence she

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believes she could prove beyond a reasonable doubt at your trial.

Listen carefully, because when she's done, I'm going to ask you if that's what you did.

Okay. Ms. Makridis.

MS. MAKRIDIS: Thank you, Your Honor.

On or about August 1st of 2020 in the Northern District of Ohio, Eastern Division, the defendant, Lee Jones, knowing that he had been previously convicted of a crime punishable by imprisonment for a term exceeding one year, that being felon in possession of a firearm, on or about March 28th of 2013, in Case Number 4:10-cr-487, in the United States District Court for the Northern District of Ohio, knowingly possessed in and affecting interstate commerce firearms: a Smith & Wesson, Model M&P-15, 5.56 caliber semiautomatic rifle, bearing serial number TP03778, and a Canik, Model TP-9SFX, 9-millimeter caliber pistol, bearing Serial Number 20BC22804, said firearms — and having been shipped and transported in interstate commerce.

On August 1st of 2020, law enforcement stopped Mr. Jones for a traffic violation. Upon approaching the vehicle, law enforcement observed a firearm behind the driver's seat and ordered Mr. Jones out of the vehicle.

Jones refused to exit his car and drove off commencing a vehicle pursuit with officers. Due to Jones's excessive

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speed, he lost control of his vehicle and slammed into a curb. Jones continued driving until his car became disabled from the damage. Jones then fled on foot and was apprehended nearby.

Law enforcement recovered two firearms from the vehicle. Those firearms had been manufactured outside of the State of Ohio, and, therefore, had been shipped and transported in interstate commerce prior to Mr. Jones's possession.

Thank you, Your Honor.

THE COURT: Okay. Thank you, Ms. Makridis.

All right. Mr. Jones, I think I asked you this at the outset, but I just want to make sure that you do consent to have this change of plea hearing done by Zoom because of the pandemic; is that right?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. All right. Is everything — what Ms. Makridis said in the factual basis, is that true and accurate?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. Based on everything I've said and what Ms. Makridis has said and what Mr. El-Kamhawy has said, how do you plead to this charge of being a felon in possession?

THE DEFENDANT: Guilty, Your Honor.

THE COURT: I accept that plea. I find you guilty. We're referring this to the probation department for a presentence report.

The officer is going to interview you, research your employment, education, family, financial background, obviously, your prior criminal record, talk to the Government, get its version. The officer will then prepare a draft of the report. You should go over that carefully with your lawyer. If you feel there are any errors, make those known.

The Government has the same opportunity.

The officer will then prepare a draft — a final version of the report. That's what I'll use at sentencing.

If there are any unresolved objections, I'll need to decide those then.

Ms. King, when should we do the sentencing?

DEPUTY CLERK: Your Honor, the sentencing will be held on June 1st at 10:45 a.m.

THE COURT: Okay. June 1st, at 10:45.

And the defendant stays detained.

Okay. Anything further from the Government or the defendant?

MS. MAKRIDIS: No, Your Honor. Thank you.

MR. EL-KAMHAWY: No, Your Honor. Thank you.

THE COURT: All right. Thank you.

We are adjourned.

Everyone, stay safe. Thank you.

THE DEFENDANT: Can I speak with my lawyer before —

DEPUTY CLERK: Sure.

THE COURT: Yes. Ms. King will put you in a breakout room.

DEPUTY CLERK: I can put you into a breakout room.

MS. MAKRIDIS: Thank you.

DEPUTY CLERK: Hold on one second, please.
Just give me one second, Mr. Jones.

THE DEFENDANT: Yes, ma'am.

- - -

(Proceedings adjourned at 1:06 p.m.)

C E R T I F I C A T E

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

<u>/s/ Donnalee Cotone</u>	<u>25th of May, 2021</u>
DONNALEE COTONE,	DATE
RMR, CRR, CRC	
Realtime Systems Administrator	

APPENDIX D

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES)	
OF AMERICA,)	Case No. 4:20-cr-750-DAP
Plaintiff,)	Cleveland, Ohio
vs.)	Tuesday, July 6, 2021
)	11:10 a.m.
LEE JONES,)	SENTENCING HEARING
Defendant.)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DAN A. POLSTER,
SENIOR UNITED STATES DISTRICT JUDGE

APPEARANCES:

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(Appearances continued on Page 2)

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Proceedings reported by machine shorthand;
transcript produced by computer-aided transcription.

Page 2

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Also present:

Kristin Merrill
Kimberly Wessel
United States Pretrial and Probation

* * * * *

CLEVELAND, OHIO;
TUESDAY, JULY 6, 2021; 11:10 A.M.

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P R O C E E D I N G S

THE COURT: All right. Good morning. Please be seated.

(Brief pause in proceedings).

THE COURT: Our first matter is case 20-cr-750, United States vs. Lee Jones.

Mr. Jones is here with Mr. El-Kamhawy.

Ms. Makridis for the government.

We are here, or were supposed to be here for sentencing. I had a telephone conference with counsel last week and I pointed out that Mr. Jones, in the final Pre-Sentence Report, there is a statement — Paragraph 20, Adjustment For Acceptance of Responsibility. I always read this carefully as we have Ms. Merrill and Ms. Wessel for Probation. Toward the top of Page 6 this is what you said, at least this is what Ms. Merrill wrote, and you read the report, so, “There was break-in through our side door so my wife purchased firearms. I told my wife to keep them out of the house or take them to my mother’s house, but my mother did not want them in her house. My wife was driving my vehicle and I was driving her vehicle. She tried to put the seats down so the guns weren’t visible. I did not know they were in there. The officer pulled me over for driving left of center.”

So, the charge is that you knowingly possessed two firearms on or about August the 1st of 2020 and that you were a prior — had a previous felony conviction. All right? So the government would have to prove knowing possession of these firearms on or about August 1st, 2020. They don't have to prove exactly that date, but on or about. But I'm reading this version as you say you didn't know those guns were in the car on August the 1st, 2020.

All right. Ms. Merrill, I think you should have alerted everyone right then and there that Mr. Jones appeared to be denying guilt. All right? So that's a problem.

So, Mr. Jones, you need to do two things: Give a statement that is consistent with your plea, or move to withdraw your plea. I can't sentence someone who's telling me they're not guilty.

Now, if you — if you're telling me you knew the guns were in your house on or about August the 1st, 2020, well, that's fine, that's consistent with guilt, and that could be gleaned from what you're saying but it's not clear. So are you — are you going to say — are you saying you knew the guns — these two guns were in your house on or about August the 1st, 2020? Is that what you're saying?

THE DEFENDANT: I have no recognition of saying —

THE COURT: I can't hear you. Yes or no? Are you saying you knew the guns were in your house?

THE DEFENDANT: Yes, Your Honor.

THE COURT: All right. On or about August the 1st of 2020?

THE DEFENDANT: Yes.

THE COURT: All right. Well, I want the report amended to reflect that, that Mr. Jones explicitly acknowledges that he knew the two guns were in his house — were in his house on or about August the 1st of 2020.

(Brief pause in proceedings).

THE COURT: All right. It would have been a lot simpler if you had complied with the Court's instructions and provided that, sir.

All right. Have you received a copy of the report?

THE DEFENDANT: I have multiple copies. I got

—

THE COURT: I'm sorry, what?

THE DEFENDANT: I got about three of them, Your Honor.

THE COURT: Well, the report dated — it says, "Date report revised, June 22nd, 2021." Have you received that report?

THE DEFENDANT: 4-20-21?

THE COURT: Prepared April 20th. It says, "Date report revised, June 22nd, 2021." Have you received that?

Mr. El-Kamhawy, can you help your client? Has he — have you gone over the —

THE DEFENDANT: The PSR, correct.

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THE COURT: — the June 22nd report with him?

MR. EL-KAMHAWY: Yes, I did.

THE COURT: All right. Mr. Jones, is that — should be a simple yes or no.

THE DEFENDANT: I have three of them, though.

THE COURT: Well. . .

THE DEFENDANT: That's what I'm trying to say. I have three reports.

THE COURT: Well, Mr. El-Kamhawy, will you pull out the last one, the one that says June 22nd on it and — so I can ask your client if he's gone over it with you? (Brief pause in proceedings).

THE DEFENDANT: Yes. We had a conversation about this one.

THE COURT: All right. Have you read it and have you had a chance to discuss it fully with your lawyer?

THE DEFENDANT: Yes. We had some — it was a — saying that this one — I got three of them.

THE COURT: All right. I'm just asking you about this one, sir.

THE DEFENDANT: Correct, but this ain't the one that I pled to. That's the — what I'm trying to state.

THE COURT: You didn't have it when you pled, sir.

THE DEFENDANT: Yes.

THE COURT: It hadn't been written.

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THE DEFENDANT: Yes, it has. I have it right — I got it right here. I had got, like, 10 enhancement points on it and I objected to them and I got it back and now I got another one.

THE COURT: Have you gone over the report dated June 22nd? This is the last time I'm going to ask the question.

THE DEFENDANT: Yes, I went over it.

THE COURT: If the answer is no, you go back to jail I don't care for how long.

THE DEFENDANT: Yes, I went over it with my lawyer.

THE COURT: All right. Now I want you to listen carefully and answer these questions. I'm not going to do this — keep going this way. All right?

All right. There are some objections. All right? There seems — starting with the — with the starting point. All right? The PSR calculates the starting point as. . . 20, all right, because both of these guns had magazines capable of holding 15 rounds or more — or more than 15 rounds. All right? There's no dispute that both guns had magazines containing 15 or more rounds.

Is that right, Mr. El-Kamhawy?

MR. EL-KAMHAWY: There is no dispute, Your Honor.

THE COURT: All right. So I'm determining that's the starting point. I looked at my notes when — the change of

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plea hearing, there was no Plea Agreement then. The government has advised me that you had a chance for a Plea Agreement. You chose to reject the Plea Agreement where this would have been nailed down, or could have been nailed down. You chose to plead open. So at the change of plea hearing I asked both

counsel. Ms. Makridis said she thought it would be an 18. Mr. El-Kamhawwy said he thought it would be a 14, but, again, you know, this was just a prediction. It turns out it's a 20. Everyone agrees it's a 20, and I find that that's the correct starting point. It's a little higher than the 18 Ms. Makridis predicted, but, again, that was just a prediction and you had a chance to have this nailed down. If there was a Plea Agreement that had Offense Level 18, I would hold the government to it but not let you withdraw, but there wasn't, so 20 is right.

There's a two-level enhancement for obstruction of justice. I think there's an objection. I'm overruling the objection. Clearly you put officers at risk by speeding off, and you nearly ran over them. This is set out in the PSR. The conduct's not disputed. Regardless of what your intent is, your conduct in recklessly speeding away and driving right toward those officers put their lives in danger. And you did apologize for it, but that doesn't undo the conduct. So that's a 22.

Now that you have clearly accepted responsibility, you get credit for two levels for acceptance of responsibility

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along with the third level off for a timely guilty plea, so that's a 19.

Now, there seems to be an objection to your criminal history, but I think it's computed correctly.

But Mr. El-Kamhawwy, you may argue that — that the Offense Level — the Criminal History Category overstates Mr. Jones' danger to the community, but do you have a specific objection to the computation that

gives him 7 points plus 2? Because he clearly was on probation or release from a prior state conviction at the time of the offense is 9 points, and that's a IV. Do you have any objection to that — to the calculation?

MR. EL-KAMHAWY: No, Your Honor.

THE COURT: All right. So it's a 9, Category IV.

MR. EL-KAMHAWY: Your Honor, if I may have a minute.

THE COURT: That's an advisory range of 46 to 57 months.

(Attorney-client discussion).

MR. EL-KAMHAWY: Your Honor, if I may?

THE COURT: All right, yes.

MR. EL-KAMHAWY: There was an additional objection to the 2002 case. My client just wants it to be noted it was objected to on the record.

THE COURT: What is the objection?

THE DEFENDANT: It was 19 years ago.

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MR. EL-KAMHAWY: It's . . .

THE COURT: Well, there's no points — well, I — the — he's objecting to it being counted? The problem is that, you know, he got 5 years custody, resentenced after appeal to 4 years custody. He was released in 2007, and Ms. Merrill count — it counts because it's within 15 years of the crime? Is that why it counts?

PROBATION OFFICER: Yes, Your Honor, because he was released within 15 years.

THE COURT: All right. It counts because 2007 is within 15 years of 2020. It's 13-point-something years, so it counts. So what is the objection?

MR. EL-KAMHAWY: Your Honor, the — I — I perfectly hear what the Probation Department says and the — what you say from the bench. We still maintain that it was originally in 2002 at the request of my client.

THE COURT: Well, there's no dispute. You were arrested in 2002. You were sentenced in 2003. Okay? It counts because your release date is within 15 years of your commission of this crime. Okay? I mean, you can object all you — fine. Your objection's noted. You don't like the guidelines. All right? But you're not allowed to object to the guidelines, so it counts. 46 to 57 months is the advisory range. So I'll — there is, of course, no Plea Agreement so each side is free to make any argument it wishes. So I'll hear

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first from the defense. So Mr. El-Kamhawy.

MR. EL-KAMHAWY: Thank you, Your Honor.

Your Honor, my client is 36 years old. We respectfully would ask the Court to consider his history in terms of specifically those — the 2002 case. It took place when he was very, very young. I'm arguing towards the Court considering leniency and based on the date of that conviction being very, very old.

Since his release, Judge, from jail, the last time, my client actually participated in work. He became a guardian to two minors whom he cared for and who were residing with him and were in his care.

Judge, the circumstances of this case are kind of bizarre to — to be blunt with it.

My client knows perfectly what he went to jail for the last time and he was like hell trying to avoid —

THE COURT: That was felon in possession.

MR. EL-KAMHAWY: Correct.

THE COURT: Specifically, he got 51 months in this court. Sentenced in 2013.

MR. EL-KAMHAWY: So he exactly knows what — that he should not be anywhere around the guns. In fact, it is my understanding that the altercation that my client got into with his wife is when he discovered that the guns were purchased and he left the house because he didn't want to be around those

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guns that day. It's just — it's just very, very, very un— I mean, he did not want to be around the guns at no — at no shape, way or form he wanted to be there. It's just bizarre interaction with the circumstances that this — this is just — this has just happened.

As to the stop on that day, Judge, my client was driving a car which had BLM license plates on it and as it acknowledged in all the police reports and in the PSI report, that my client stuck his hands out. It was in a dark alley, and he stuck his hands out of the car immediately when the police approached him. When the — and it was a dark place, and when they — when he saw that the officers are drawing guns, he basically was scared for his life and tried to get to the — according to the thought that was in his head, he was trying to get to somewhere where it's lit when there was enough light.

Judge, 35-year-old man driving irrationally — erratically, I mean, he's been driving all his life. I mean, on the empty street he's actually losing control of the car from the fear.

We would respectfully ask the Court to consider all that when you impose the sentence on him because he's been a productive member of society. He's been taking care of two kids, and he has been doing the best he can.

His mother is here, Your Honor. If you would allow

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Ms. Charlotte Bell to talk on his behalf, and my client would like to make a statement at the closing.

Thank you, Judge.

THE COURT: All right. I'll certainly hear from Ms. Bell.

Ms. Bell, if you want to come and — you can take your mask off, ma'am, and just speak at the podium, please.

MS. BELL: Good morning.

THE COURT: Good morning.

MS. BELL: I just wanted to say that my son, he had changed his life so much. He's not that young boy no more. He's a man now. He take care of two kids. He done got married. He take care of me. I'm sick. I have a breathing problem. I have — I just had a — I just had heart surgery in 2013. I'm just — I'm just real sick. This is the only son that I got, and I know he going to get some kind of time, I just don't want him to get all that time for something that he was trying to do right. He was trying to make it home. And he wasn't — he's not a bad person. He done changed so

much. He got a job. He take care of his family. And I've been helping her to help take care of the kids the best that I can because I'm sick myself, and I just want you to just have leniency for my son and give him another chance. Everybody deserve another chance and that's all I'm asking, Your Honor.

Thank you. I can't talk no more.

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THE COURT: That's very much, Ms. . . .

MR. EL-KAMHAWY: Thank you, Your Honor. Mr. Jones would like to make a statement.

THE COURT: All right. Yes, Mr. Jones.

THE DEFENDANT: Thank you, Your Honor.

I just want to say, you know, I've been doing pretty okay with my life. You know, I ain't had the best life growing up, but, you know, I managed. Got into a lot of trouble since growing up, made some bad decisions in my life, but I ain't never set out to harm nobody in my life. I never been in a real situation to where, you know, I harmed someone or put somebody at harm's way and attempted to do it, you know, and — and I came home from my last — doing my last time and, you know, I realized, I settled down, I got married, you know, I took upon taking care of my sister kids. I had a great job working with New Leaf Residential, you know, taking care of the elderly, taking them out in the community, you know, inviting them into my home. I was there for — that was my last job, my current job that I just had. And, you know, at a time when I did change my plea, you know, I thought me and you had a conversation of a agreement to where, you know, you said you would decide whether I'm at a

14 or a 18 and, you know, I didn't understand that, okay, if a — my PSI come back and it says something different that it could put me in a badder situation because in all actuality I would have took the deal,

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you know, if I knew — if that was going to come back to haunt me like that, you know, but at the same time, I just didn't want to take the deal because the guns wasn't stolen, you know. I know my wife had these legally owned by her but at the same time, you know, when I talked to you —

THE COURT: The government has never charged that you possessed stolen firearms.

THE DEFENDANT: No. They enhanced me, 2 points. That's where you said —

THE COURT: The enhancement is not because the guns were stolen, sir.

THE DEFENDANT: That's what —

THE COURT: The enhancement is for you —

THE DEFENDANT: That's what you —

THE COURT: — that's where you sped away, you nearly ran over the officers.

THE DEFENDANT: Correct, but it gave me 2 points for that too. It was 2 — it was 14 and it went from 2 to 4. 2 points for reckless endangerment, 2 points for stolen firearms.

THE COURT: Well, there's no enhancement for stolen firearm, is there, Ms. Makridis?

MS. MAKRIDIS: No, Your Honor.

THE COURT: All right. So I don't know what —

THE DEFENDANT: That's — that's —

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THE COURT: That's not in the report.

THE DEFENDANT: That's in this report. I got three reports.

THE COURT: It's not in the final report, sir.

THE DEFENDANT: Okay. So the final report, no, it's not in there, correct, but when I had the conversation with you with the change of plea date, that's when it came about. You said you going to decide whether I was at a 14 or a 18. We agreed on —

THE COURT: I said I'll decide where you are. I didn't know. All right? The government thought you would have been — start at 18 and your lawyer thought it would be a 14.

THE DEFENDANT: Right.

THE COURT: Again, no Plea Agreement. Had — you could have entered into a Plea Agreement and it would have had an agreed-upon guidelines computation or — at something.

THE DEFENDANT: But it was just like a lot of mis- — misguidance into it because if I knew it was then, I would have went through with my Suppression Hearing, I would have had a — tried to have a chance to fight it, but since I'm, like, okay, he said I'm going to decide if I'm at a 14 or 18, I agreed to it and I changed my plea of guilty so that was where I came into play at trying to see, okay, I'm looking at from 12 to 27.

THE COURT: But, sir, this isn't the time — I've gone through the guidelines. If you're telling me your plea wasn't

knowing and voluntary, you should have filed a Motion to Withdraw your Guilty Plea.

THE DEFENDANT: Because at the time my lawyer —

THE COURT: It's awfully late now but you can still do it. You can still file the motion. Now, whether I'll grant it or not, I don't know.

THE DEFENDANT: So if I'm filing a Motion to Withdraw my plea, what it — how — what's the difference between me just saying I'm not accepting a plea?

THE COURT: Sir, you have pled guilty.

THE DEFENDANT: Correct.

THE COURT: You have told me you're guilty.

THE DEFENDANT: Right.

THE COURT: You told me when you changed your plea. You just told me now that you're guilty.

THE DEFENDANT: Right.

THE COURT: You told me specifically you knew on or about April the — August —

THE DEFENDANT: 1st —

THE COURT: — 2020 that you possessed two guns.

THE DEFENDANT: Correct.

THE COURT: Okay. Now, if you want to move to withdraw your plea, again, it's not very timely, but you have a right to file that motion. I'm sure the government will oppose it. I can have a hearing. If I grant it, you get a trial at

some point. Who knows when? You know, sometime next year I'll have trimester to try you. Okay? If I deny it, we'll sentence you. You'll at that point lose the 2 points for acceptance and the third point off for timely guilty plea because — at that point, but you'll be guilty and I'll sentence you. You'll start at a higher level. That's up to you. I mean, if you — you have a right to file a Motion to Withdraw your plea if you say it was unknowing or not voluntary.

THE DEFENDANT: Okay, Your Honor. Well, I just want to apologize for the courts.

THE COURT: Is that — so you — all right. I just — making the record that you have a right to file that, so. . .

THE DEFENDANT: No, Your Honor, I won't be doing that. I'll go through with the sentencing.

THE COURT: All right.

THE DEFENDANT: And thank you for letting me speak.

THE COURT: Well, is there anything else — you have a right to speak. You're welcome, but you have a constitutional right to speak. So is there anything else you'd like to say?

THE DEFENDANT: No. I was just — it's just the same thing because, you know, I thought we had a understanding at the change of plea and it just — it just confused me. That's all. Through the whole process, you know, I thought we had a stand where we was like, okay, I'm going to decide whether you get this or you get that.

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THE COURT: Well, but I didn't know, and I told you I didn't know and wouldn't know until I saw the report.

THE DEFENDANT: Right, so that's —

THE COURT: You had the option to nail it down in the Plea Agreement with a specific guidelines computation.

THE DEFENDANT: Right, so that's where the prosecution came in at and I'm thinking she — I'm thinking she did a fine job with her research and you was going along with it and everybody agreed to it so, you know, I didn't think something else would change that, especially when we had an agreement on it.

THE COURT: Well, there was no agreement on it, sir, that's the point.

THE DEFENDANT: Well, I got my transcript in here saying — where we was talking, me and you, and you was saying, okay, I'm going to allow this to go through and I will decide whether you at a 14 or 18. Y'all agree — we all agree on the category, and that you will be at a 12 to 27, and I said okay, Your Honor.

THE COURT: Well, first of all —

THE DEFENDANT: And then you ran down the rights to me again —

THE COURT: That was at — I also said — I'm sure I also said I won't know your Criminal History Category until I see the report.

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THE DEFENDANT: No.

THE COURT: Well, it's in — I'm sure I said that.

THE DEFENDANT: I'm — I can pull it out now. It's nowhere near in there.

THE COURT: If I didn't, I was mistaken but everyone knows that's the case. It's not — there's not — no one knows the criminal history until you see the report.

THE DEFENDANT: See, that's where I was thrown off at.

THE COURT: Okay. Do you want to withdraw your — do you want to move to withdraw your plea? File your motion. I'll put this off. I —

THE DEFENDANT: Go ahead, Your Honor. Do your job.

THE COURT: Well, I'm going to do my job, and I'm doing it by giving you that advice.

THE DEFENDANT: I know, but then —

THE COURT: If you want to file a Motion to Withdraw your plea saying you were misled, you have a right to file the motion.

Do you want to talk it over with your lawyer?

THE DEFENDANT: No. I want to talk to over with my family.

THE COURT: Well, we'll put this off for a month. I don't care. I mean —

(Brief pause in proceedings).

THE DEFENDANT: Okay. Never mind.

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THE COURT: So you want to go forward with the sentencing today?

THE DEFENDANT: Yes, Your Honor.

THE COURT: You do not want to file a Motion to Withdraw your plea?

THE DEFENDANT: No.

THE COURT: All right. Is there anything else you'd like to say?

THE DEFENDANT: No, sir.

THE COURT: Okay. All right. Ms. Makridis, anything from the government?

MS. MAKRIDIS: Thank you, Your Honor.

Respectfully request a sentence at the high end of the guideline range, specifically a 57-month sentence, and I say that for a number of reasons.

The first is that, Your Honor, it appears that Mr. Jones is still acting violently while incarcerated. According to the — to Paragraph 4 in his pretrial adjustment, he was violent towards COS while in custody on this case as well.

The nature and circumstances of the offense also weigh in favor of a 57-month sentence. The allegations are that the — that police were called based on a domestic violence report. The report stated that Mr. Jones punched his wife. Officers noted that her eye was swollen nearly shut. She also

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stated that Mr. Jones stole two firearms from her. 2 days later she called in and said she found the firearms, but on August 1st of 2020, Mr. Jones was arrested with the two guns in his vehicle.

A routine traffic stop quickly escalated. Mr. Jones was the sole occupant of the car. Officers noted it appeared he was drinking. There was a gun laying on

the passenger floorboard of the vehicle. He was ordered out. He wouldn't get out of the car. He sped off almost hitting the officers. Officers had to jump out of the way to avoid him.

And on November 16th of 2020, during his arrest for the federal case, he also fled from law enforcement during that encounter as well.

He has a significant criminal history, which includes failure to comply. He did 5 years custody for that case. He's got drug offenses. This will be his third firearm offense. He has a CCW on his record as well as felon in possession from 2010. He was given a 51 months on that case and that was still not enough to deter Mr. Jones from possessing firearms in the future.

Even after his felon in possession arrest and subsequent conviction, he violated supervised release on a number of occasions. He had two — after that, two domestic violence reductions down to disorderly conduct, one in 2018 and one in 2020.

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So based on the defendant's prior criminal history as well his conduct during this case, I believe that a sentence at the high end of the guideline range is appropriate and I would request the same from the Court.

Thank you, Your Honor.

(Brief pause in proceedings).

THE COURT: All right. The Court has reviewed the thorough Pre-Sentence Report.

I've listened carefully to counsel and of course to you, Mr. Jones.

The touchstone of sentencing is 18 U.S.C. 3553(a). I'm required to consider everything I can learn about you, everything I can learn about this crime, calculate the advisory range correctly and consider it along with all the other factors set out in the statute and give you a sentence that's sufficient but not longer than necessary to accomplish four things: Punishment, deterrence, protecting the community, and rehabilitation.

In this case I do find that a sentence within the advisory range is sufficient but not longer than necessary, and I find that a sentence at the high end is appropriate, 57 months. And I'm doing that because I have to give you a sentence a little bit longer than the sentence you got, which was 51 months, for doing exactly the same thing roughly 10 years ago in this district, being a felon in possession of a

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firearm. And these, of course, were two particularly dangerous firearms, firearms that both had magazines that could hold more than 15 rounds. Those are exactly the kind of firearms that convicted felons should not have, and you had two of them. So it will be 57 months custody.

You will, of course, get credit for time served which began on or about November the 16th of 2020.

That sentence will be followed by 3 years of supervised release. All of the standard conditions apply. Additionally, there will be substance abuse aftercare and a search and seizure provision.

I'm not imposing a fine. You don't have the resources to pay it.

There's a mandatory \$100 special assessment that's due and payable immediately.

Again, I'm factoring in, you know, Mr. Jones, the fact that you have done some things well. You were working. You were taking care of your niece and nephew, but possessing two guns, particularly two guns of this nature, when you knew that you couldn't be anywhere near guns, it's just not fathomable to me. If you thought your wife had purchased guns, you needed to get the guns out of the house right away. Couldn't have them in the house. You couldn't have them in the car. Couldn't be anywhere near them. Your wife knew that you weren't allowed to have guns. So it's hard to — for me to believe that she

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purchased these guns without your acknowledge and knowing that you weren't allowed to have guns, but if — even if she did, it was on you to take steps so you had nothing to do with those guns and they weren't anywhere near you.

And, also, while you may not have intended to hurt anyone, you nearly hit two officers speeding away. So, fortunately, you didn't, but I got to account for all of that so . . . that will be the sentence.

You do have the right to appeal your conviction and sentence. If you wish to appeal, you have 14 days to file your Notice of Appeal.

Do you understand you have that right?

That's a yes?

THE DEFENDANT: Yes.

THE COURT: Okay. Are there any general or specific objections from either side?

MS. MAKRIDIS: On behalf of the government, no, Your Honor. Thank you.

MR. EL-KAMHAWY: No, Your Honor.

THE COURT: Okay. And anything further from either counsel?

MS. MAKRIDIS: Just respectfully request the order of the forfeiture of the firearms.

Thank you, Your Honor.

THE COURT: All right. Pursuant to the charge, those

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two firearms are forfeited —

MR. EL-KAMHAWY: Your Honor. . .

THE COURT: — as part of the sentence.

Yes, Mr. El-Kamhawy.

MR. EL-KAMHAWY: Your Honor, I will definitely file an appeal as my client will instruct me in this matter. However, I would respectfully ask the Court appoint another counsel for the appeal provided what transpired in this case and what. . . I do not believe that the level of trust exists between my client and myself and he'll be better served with a different counsel on appeal.

THE COURT: Well, all right. I can't recall, is that counsel filed by the — I mean, does the Court of Appeals appoint counsel if you're filing — I mean, I would say this: Mr. El-Kamhawy, the way to do it, you should file your Notice of Appeal because you're lawyer for Mr. Jones. If you want to file — file a notice of withdrawal and request for new counsel, that should go to the Court of Appeals.

MR. EL-KAMHAWY: I will definitely do that, Your Honor, however, in some other chambers, the judge recommends different counsel for the appeal and then the appellate court takes that into consideration.

THE COURT: Well. . . I think I'll leave — I'll leave it up to the Court of Appeals what they do. I'm certainly not going to stand — you know, oppose it. You should indicate

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that you want to withdraw and you're asking the Court of Appeals to appoint new counsel and they'll do it.

MR. EL-KAMHAWY: Okay.

THE COURT: If they ask me to do it for them, I'll do it, but I think you should take that up with the Court of Appeals.

Robert, is that something I should do?

(Off-record discussion).

THE COURT: Yeah. I think you should take that up with the Court of Appeals. But you should file the Notice of Appeal.

All right. And, lastly, Mr. Jones, I want to make note to the fact that you're fortunate to have a mother who not only is supportive of you but came in here and spoke on your behalf because, sadly, I sentence a lot of men and women and they walk in alone, they walk out alone. So you're lucky to have a supportive family and I very much appreciate your mother's appearance today.

So with that, we are adjourned and good luck to you.

THE DEFENDANT: Your Honor —

THE COURT: Yes, sir.

THE DEFENDANT: Is — I'm able to get these transcripts through my lawyer from this court date today? Or I got to do it through —

THE COURT: Your lawyer, Mr. El-Kamhawy, and your new

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lawyer can obviously request a transcript of this proceeding and any proceedings.

THE DEFENDANT: How would I know who my new lawyer is?

THE COURT: You'll — if the Court of Appeals appoints someone, you'll be notified.

THE DEFENDANT: So I can't get the transcripts through my lawyers?

THE COURT: Your lawyer can get any transcripts of this hearing and any other hearing, sir.

THE DEFENDANT: Okay.

THE COURT: That's how it works.

(Proceedings adjourned at 11:47 a.m.)

C E R T I F I C A T E

I certify that the foregoing is a correct transcript of the record of proceedings in the above-entitled matter prepared from my stenotype notes.

<u>/s/ Heather K. Newman</u>	<u>7-15-2021</u>
HEATHER K. NEWMAN, RMR, CRR	DATE