

APPENDIX A

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 22-1391

UNITED STATES OF AMERICA

v.

TYREE STEELE,
Appellant

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
District Court No. 2-20-cr-00121-001
District Judge: The Honorable Michael M. Baylson

Submitted under Third Circuit L.A.R. 34.1(a)
February 10, 2023

Before: CHAGARES, *Chief Judge*, SCIRICA, and SMITH, *Circuit Judges*

(Filed March 23, 2023)

OPINION*

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

SMITH, *Circuit Judge*.

In February 2020, Appellant Tyree Steele walked into a Citizens Bank wearing a ski mask. He then pulled out his wallet and handed the teller a note. When the teller told him she could not read the note, Steele demanded: “empty your top drawer, give me all your money.” He also warned her not to push any emergency buttons. After the teller handed over \$5,043, Steele fled, accidentally leaving his wallet behind.

At the time of the robbery, Steele was on supervised release for a federal conviction for a series of eight bank robberies he had committed in Pennsylvania and New Jersey in 2010. When he reported to probation for a meeting five days after the Citizens Bank robbery, Steele was arrested. Steele pled guilty to one count of bank robbery in violation of 18 U.S.C. § 2113(a).

For purposes of sentencing, the government and the Probation Office recommended that the District Court apply the career offender enhancement under U.S. Sentencing Guidelines § 4B1.1 because Steele had two prior robbery convictions that constituted “crimes of violence.” Steele argued, as he does on appeal, that his Pennsylvania robbery conviction under 18 Pa. Cons. Stat. § 3701(a)(1)(ii) was not a crime of violence, thereby rendering him ineligible for the career offender enhancement.

The District Court imposed a 120-month sentence, supported by two alternative rulings. First, the District Court stated that if the enhancement applied, it would grant a downward variance from the Guidelines range of 151–188 months to 120 months. Alternatively, if the enhancement did not apply, the District Court stated that it would impose an upward variance from the Guidelines range of 46–57 months to 120 months.

Steele timely appealed his sentence and raises two issues.¹ First, he argues that the District Court imposed a 120-month sentence for the improper purpose of rehabilitation in violation of 18 U.S.C. § 3582(a) and *Tapia v. United States*, 564 U.S. 319 (2011). Second, Steele argues that his Pennsylvania state court conviction for robbery is not a “crime of violence” under the Sentencing Guidelines and thus does not trigger the career offender enhancement.

I.

Steele did not raise any *Tapia*-based objection before the District Court. We therefore review that issue for plain error. *United States v. Couch*, 291 F.3d 251, 252 (3d Cir. 2002). On plain error review, the appellant must show an (1) error, (2) that is plain or obvious, and (3) that affects the defendant’s substantial rights. *United States v. Olano*, 507 U.S. 725, 732 (1993). Even if plain error is shown, a court should exercise its discretion to correct the forfeited error only if it “seriously affects the fairness, integrity or public reputation of judicial proceedings.” *Id.* (quoting *United States v. Young*, 470 U.S. 1, 15 (1985)) (cleaned up).

Under 18 U.S.C. § 3582(a), a sentencing court may not consider the defendant’s rehabilitation when imposing or lengthening a sentence. *Tapia*, 564 U.S. at 327. But § 3582(a) does not prohibit judges “from mentioning rehabilitation during the sentencing hearing,” and the sentencing court may discuss “the opportunities for rehabilitation

¹ The District Court had jurisdiction under 18 U.S.C. § 3231. We have jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a).

within prison or the benefits of specific treatment or training programs.” *United States v. Zabielski*, 711 F.3d 381, 391 (3d Cir. 2013) (quoting *Tapia*, 564 U.S. at 334).

The District Court did not plainly err in citing Steele’s need to “get rid of drugs” and to “learn . . . to follow rules and regulations” when explaining Steele’s sentence. JA 68–69. The District Court no doubt was expressing hope that prison time would help Steele to change his behavior. Section 3582(a) does not bar a sentencing court from expressing such a hope or from mentioning rehabilitation. *See Zabielski*, 711 F.3d at 391. Moreover, the District Court explained that 120 months was an appropriate sentence because Steele’s criminal history revealed serious recidivism,² disregard for the law, and a sense of “entitle[ment] to money that doesn’t belong to [him].” JA 67–68. The District Court also emphasized that bank robbery “is a serious crime” and that Steele “put the bank teller in a sense of fear.” *Id.* Considering that the District Court identified these non-rehabilitative factors, our review of the portion of the transcript discussing the benefits of imprisonment does not plainly show that rehabilitation was considered as a factor in the determination of Steele’s sentence. Rather, the District Court expressed a hope that the conditions of imprisonment would lead Steele toward a lawful, drug-free life.

² We do not recount Steele’s criminal history in detail because we write only for the parties. We nevertheless note that Steele was convicted in federal court for committing eight bank robberies located in Pennsylvania and New Jersey and was also convicted in Pennsylvania state court for attempting to rob a convenience store at gunpoint.

II.

Turning to the second issue, we need not decide whether Pennsylvania’s first-degree robbery statute is a “crime of violence” under the Guidelines because any error would be harmless.³ The District Court imposed a 120-month sentence under two alternative rationales. If Steele’s Pennsylvania robbery conviction is a “crime of violence” and the career offender enhancement were to apply, the District Court explained that it would vary downward in imposing a sentence. Alternatively, if the career offender enhancement were not to apply, the District Court explained that it would still impose a 120-month sentence by imposing an upward variance.

We previously have recognized harmless error in nearly identical circumstances in *United States v. Carter*, 730 F.3d 187 (3d Cir. 2013). There, the Guidelines range also turned on the application of the career offender enhancement, and the district court imposed the same sentence under two alternative rulings. *Id.* at 189. We held that the error “was harmless because the District Court explained that it would have ordered the same sentence even without finding a ‘crime of violence.’” *Id.* at 193. But we also noted that a sentencing error is not harmless “where a district court simply states that it would have imposed the same sentence without pointing to the alternative Guidelines range and explaining its decision to arrive at the specific sentence.” *Id.*

³ A closely related issue—whether Pennsylvania’s first-degree robbery statute is a “violent felony” under the Armed Criminal Career Act—is pending before this Court in *United States v. Harris*, No. 17-1861.

Here, the District Court identified the two Guidelines ranges that could apply and explained why it would arrive at a 120-month sentence under either range. To justify an upward variance, the District Court emphasized the seriousness of Steele's actions and the need for deterrence considering Steele's history of serious recidivism. These reasons adequately justify an upward variance under 18 U.S.C. § 3553(a). Thus, the District Court's alternative rationale for imposing a 120-month sentence without the career offender enhancement was not erroneous. We therefore conclude that any error in applying the career offender enhancement was harmless.

III.

For the reasons stated, we will affirm the judgment of the District Court.

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : Case No. 2:20-cr-00121-MMB-1
:
v. : March 2, 2022
:
TYREE STEELE, : 2:02 p.m. - 2:25 p.m.
:
Defendant. :
.

TRANSCRIPT OF SENTENCING HEARING
BEFORE THE HONORABLE MICHAEL M. BAYLSON
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

For the Government: JOSEPH LABAR, AUSA
U.S. ATTORNEY'S OFFICE
615 Chestnut Street
Suite 1250
Philadelphia, PA 19106

For the Defendant: NANCY MACEOIN, ESQ.
FEDERAL COMMUNITY DEFENDER OFFICE
Curtis Center
Suite 545 West
601 Walnut Street
Philadelphia, PA 19106

DEPUTY: JANICE LUTZ

Transcription Service: Hunt Reporting Company
12 Crain Hwy. N #2
Glen Burnie, MD 21061

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1 P R O C E E D I N G S

2 MS. MACEOIN: Good afternoon, Your
3 Honor.

4 MR. LABAR: Good afternoon, Your Honor.

5 THE COURT: Please be seated.

6 MS. MACEOIN: Thank you.

7 THE COURT: All right. We're here this
8 afternoon for a sentencing proceeding in case caption
9 United States v. Tyree Steele, S-T-E-E-L-E, criminal
10 number 20-121. And present for the United States is
11 Joseph Labar.

12 MR. LABAR: Good day, sir.

13 THE COURT: Present for the defendant,
14 Nancy MacEoin.

15 MS. MACEOIN: Good afternoon, Your
16 Honor.

17 THE COURT: Good afternoon. And
18 present Probation Elizabeth Powell and the defendant,
19 Tyree Steele, is here.

20 Please swear in Mr. Steele.

21 MS. MACEOIN: Stand up. Raise your
22 right hand.

23 THE DEPUTY: Raise your right hand.

24 TYREE STEELE, DEFENDANT, SWORN

25 THE DEPUTY: You can be seated.

1 THE COURT: All right. Now, Mr.
2 Steele, a couple questions for you. You understand
3 that is the date and time set for your sentencing?

4 THE DEFENDANT: Yes.

5 THE COURT: Did you receive a copy of
6 the pre-sentence report through your attorney?

7 THE DEFENDANT: Yes.

8 THE COURT: And have you had a chance
9 to read it and review it?

10 THE DEFENDANT: Yes, I did.

11 THE COURT: Have you had a chance to
12 discuss it with your attorney?

13 THE DEFENDANT: Yes, I did.

14 THE COURT: Are you ready and prepared
15 to proceed?

16 THE DEFENDANT: Yes.

17 THE COURT: Are you satisfied with Ms.
18 MacEoin as your counsel in all respects?

19 THE DEFENDANT: Yes.

20 THE COURT: Okay. All right. I see
21 that there is an objection to the pre-sentence report
22 from the defendant as to the career offender
23 designation. Correct?

24 MS. MACEOIN: That's correct, Your
25 Honor.

1 THE COURT: Okay. I have read that.
2 Per the information of counsel, I have written an
3 opinion on this general topic in a post-conviction
4 setting captioned United States v. Troy Giles,
5 G-I-L-E-S dated November 19th, 2021. This is criminal
6 action 94-20. And the opinion I filed is at document
7 254.

8 Mr. Labar, are you familiar with this?

9 MR. LABAR: I am not, sir.

10 THE COURT: Okay. Well, I have a copy
11 up here if you want to look at it. But generally, I'm
12 familiar with this debate about the categorical
13 approach of the -- penalizing the Pennsylvania robbery
14 statute as to whether it is a crime of violence or
15 not. And I -- and in this case, I showed that the --
16 let me just get this clear.

17 Are you familiar with this, Ms.
18 MacEoin?

19 MS. MACEOIN: I am, Your Honor. I
20 believe, though, in the Giles opinion, and correct me
21 if I'm wrong, was the question about what the
22 divisibility of 3701(a)(1) for -- were all for.

23 THE COURT: Yes.

24 MS. MACEOIN: Is that correct? Okay.

25 THE COURT: Yes. But generally, I

1 found that Pennsylvania would follow the categorical
2 approach. And I've read the pre-sentence report here
3 and I've read both of your memorandum. And I can tell
4 you where -- and I'm aware of the fact that the Third
5 Circuit has not ruled on this issue. And -- but it
6 has certified it to the Pennsylvania Supreme Court
7 which has not yet rendered any decision. And I
8 therefore am -- what I think -- let me stop there.

9 Mr. Labar, anything you want to say
10 about that?

11 MR. LABAR: No, Your Honor. We have --
12 know the Court's familiar with the issue. We
13 submitted -- I think both parties --

14 THE COURT: Yep.

15 MR. LABAR: -- submitted briefs that,
16 quite frankly --

17 THE COURT: Right.

18 MR. LABAR: -- each of us had the
19 assistance of others in preparation --

20 THE COURT: All right. Well, I'll tell
21 you -- so I calculated -- and, Ms. Powell, I respect
22 your views that the career offender designation
23 applies. But I don't know the exact answer and
24 neither does anybody else here because it's undecided.

25 Do you want to call any witnesses, Ms.

1 MacEoin?

2 MS. MACEOIN: I do, Your Honor. Mr.
3 Steele's mother is here, Jewel Steele. She would like
4 to address the Court. But also with her in court is
5 his sister, Tiara (ph) Steele, and his aunt, Vanessa
6 Hunter, are here for support as well.

7 THE COURT: All right. Well, you're
8 all welcome. Thank you very much for attending.
9 Would the mother like to say anything?

10 MS. MACEOIN: Yes. I think she would,
11 Your Honor.

12 THE COURT: All right. Come up to the
13 podium, please.

14 (Pause)

15 THE COURT: Okay. We don't have to
16 swear her in.

17 MS. MACEOIN: Thank you. Ms. Steele,
18 if there's anything you'd like to --

19 THE COURT: Good afternoon. Please
20 take your mask off while you're speaking. Okay.
21 State your name, please.

22 MS. STEELE: Jewel Steele.

23 THE COURT: All right. And you're the
24 mother of Tyree Steele?

25 MS. STEELE: Yes.

1 THE COURT: All right. Happy to hear
2 whatever you'd like to say.

3 MS. STEELE: Yes. First of all, good
4 afternoon. He realized what he's done but he's had
5 issues that I think contributed to it. But I think
6 that since he's been taking his medicine and he's
7 calm, when he calls me, he's in a good mood. He talks
8 to my grandkids. He asks for his sister. And I don't
9 see the anger no more. Like, the depression, the
10 medicine, I guess, is taking care of the depression.
11 But he's in a good place right now, mentally. I just
12 hope he could stay there and be a good person who can
13 contribute to society.

14 MS. MACEOIN: Ms. Steele, once he is
15 released, can he reside with family?

16 MS. STEELE: Always. He has a big
17 family.

18 MS. MACEOIN: Okay.

19 MS. STEELE: We have a big family. And
20 we all were -- I knew I (indiscernible). And I miss
21 him. But I think the way he talk, I know -- he knows
22 for a fact that he was wrong for what he did. And I
23 honestly think he won't do it again.

24 MS. MACEOIN: Thank you.

25 MS. STEELE: Thank you.

1 THE COURT: All right. Thank you very
2 much for coming in.

3 MS. STEELE: All right.

4 THE COURT: Okay. Well, I've read both
5 of your sentencing memorandum. And I have to rule on
6 the objection about the career offender status. And I
7 will do that when I impose sentence.

8 Okay. So I'd like to hear anything you
9 want to say, Mr. Labar, and then Ms. MacEoin about --

10 MR. LABAR: Your Honor --

11 THE COURT: I've read your sentencing
12 memorandum. I've read the report of the doctor that
13 was retained by the defendant. A very excellent
14 report. Very detailed. And I presume that we'll
15 follow the defendant where he be sentenced.

16 MR. LABAR: We believe that the
17 pre-sentence report is accurate. We believe that its
18 recommendations should be followed by this Court. And
19 we otherwise stand on the submissions that we've made,
20 Your Honor.

21 THE COURT: Okay. Thank you.

22 MS. MACEOIN: Thank you, Your Honor.

23 You know, Mr. Steele presents a tough
24 case to this Court as what would causally just be
25 deemed somebody who's a recidivist. All of his

1 convictions are of the same sort of nature and he had
2 this pattern of going off of his mental health
3 medication, taking street drugs and then resorting to
4 criminal behavior again.

5 And so I want to just acknowledge
6 upfront that this is a very difficult case to stand up
7 here and say a sentence within the non-career offender
8 guideline range is appropriate.

9 However, I want to submit a couple
10 things to you. First of all, his mental health
11 history is well documented. And as we can see from
12 this pattern, seems to be the source of making bad
13 decisions, first of all, by stopping taking
14 medication, and then, second, by using street drugs,
15 and then, third, by committing crime. Okay?

16 He had some interesting developmental
17 challenges when he was growing up. He, again, did not
18 have a father. He relied on many people on the street
19 to be his father figures. And the federal case for
20 which he's on supervision with Judge Schiller -- or
21 Judge Surrick -- excuse me -- he -- actually, those
22 were done under kind of the guise of an older relative
23 of his, a much older relative. And so he got involved
24 in that when he went to live with him. Again, Mr.
25 Steele kind of looking in the wrong places for the

1 right type of mentorship that he wasn't getting
2 necessarily in his home growing up.

3 His mother, obviously, tried her best.
4 She's -- had a lot on her plate given the
5 neighborhood, given the types of problems that were
6 presented. And, of course, Mr. Steele pushed the
7 boundaries a lot and, you know, as a young man had a
8 mental breakdown, wound up being hospitalized for a
9 mental health condition and then, unfortunately, did
10 not get the stability he needed to maintain that
11 mental health treatment and then also to stay away
12 from drugs.

13 He, however, now is in his thirties.
14 And I think that that's remarkable for a few reasons,
15 Your Honor. He is 33 -- 34 by now. And that is
16 remarkable because, as Your Honor is probably well
17 aware, and I think that other mental health
18 professionals have probably -- or you've seen in other
19 reports, mental health diagnoses -- you know, they
20 come on very strong at late teens and the twenties.
21 And then people learn to live with their mental health
22 disorders. They may have a break but as they get
23 older, there's less likelihood to have an onset of a
24 new mental health condition. So his age is
25 appropriate. He's out of his twenties when the brain

1 is still developing and he knows now, after --
2 especially spending this most recent time in federal
3 detention center during the pandemic with limited or
4 no opportunities to work or engage in training, with
5 rolling lockdowns, long periods of time in his cells,
6 quarantined. This is not a life that he can continue
7 to do moving forward. He does need a period of
8 federal incarceration. We're not saying that. In
9 fact, we didn't want to wait for the Harris decision
10 to come down because he is just spinning his wheels
11 sitting over at the FDC. He needs treatment. He
12 needs RDAP. He needs mental health supervision which
13 he did get.

14 THE COURT: Would you like to recommend
15 a --

16 MS. MACEOIN: I absolutely would
17 recommend RDAP for him. I think he would benefit from
18 that?

19 THE COURT: Where? You got a location?

20 MS. MACEOIN: I don't have a -- oh. He
21 was previously at Schuylkill. And I don't know if the
22 BOP would send him back there. But again, a place
23 hopefully within range of Philadelphia so his family
24 can visit him once --

25 THE COURT: All right. So close to

1 Philadelphia that has the RDAP program.

2 MS. MACEOIN: Correct. That, I think,
3 would be the best recommendation to the Bureau of
4 Prisons.

5 THE COURT: Okay. All right. I'll do
6 that.

7 MS. MACEOIN: Thank you, Your Honor.

8 So Mr. Steele knows that at this point,
9 he is still on supervision in front of Judge Surrick.

10 THE COURT: He's going to have to go
11 back for a violation there.

12 MS. MACEOIN: Has to go -- and he has
13 to see the Pennsylvania Board of Parole.

14 THE COURT: Yes.

15 MS. MACEOIN: So he's still got two
16 other people that he has to -- two other entities that
17 he has to convince that he's learned his lesson by
18 now. And, you know, as his mother alluded to, he's
19 clearheaded now. He is -- his anger management is
20 under control.

21 So when he is in a confined setting,
22 when he is under mental health supervision, he does
23 well. The question, of course I'm sure the Court's
24 aware of, is what happened next time he gets out.
25 Well, again, there will be a period of supervision for

1 Your Honor. There will probably be a period of
2 supervision for at least one of the other entities
3 that have to sentence him. And he knows that any
4 violations in the future will end up right back here.
5 And that's not a place he wants to go to anymore.

6 I know that he's prepared some words
7 that he would like to tell the Court.

8 THE COURT: Of course. Of course. All
9 right.

10 MS. MACEOIN: Thank you.

11 THE COURT: Mr. Steele, I'm happy to
12 hear whatever you'd like to say on your own behalf.

13 MS. MACEOIN: Why don't you stand up?

14 THE DEFENDANT: Yes, Your Honor. I
15 would just like to say that I'm mature enough and I'm
16 man enough and I've grown enough to feel that I'm
17 wrong. I can admit my guilt. I pled guilty because I
18 am guilty. I was told growing up to take my
19 punishment as a man and face my punishment.

20 I love my children and my family more
21 than anything. I kick myself every day for leaving
22 them. Not only do I apologize to them but I apologize
23 to my mom, my family, Ms. Nancy, my victims, the bank,
24 the branch itself. I apologize to you, Judge Baylson,
25 and to the Courts. Every day I think about how

1 emotionally and financially distressed I left my
2 family to suffer.

3 I'm too old to be this dumb and the
4 decision making I've been making. I should have
5 learned and I should have known better. To be in a
6 locked jail and during a pandemic, I realized what I
7 was taking for granted and as a (indiscernible). If
8 my loved ones turned their backs on me, I couldn't
9 blame them; I deserve it.

10 I failed as a father, a son, protector,
11 provider, et cetera. Being locked down gave me a lot
12 of time to reflect on myself and my life. Something I
13 don't think I ever did because I was always
14 sidetracked about someone or something. Being in the
15 cell alone for months gave me time to find and know
16 myself spiritually and mentally.

17 Your Honor, I believe that whatever
18 sentence you give me, whatever sentence you hand down
19 to me, that's what God wanted me to have. I'm guilty
20 of this crime but, honestly, I don't think I'm guilty
21 of being a career offender. I'm not a violent person
22 (indiscernible) violent crime. I'm fully aware of my
23 record, what it shows in black and white, but, Your
24 Honor, history -- my history nor any crime I ever did
25 was not violent. My record is not violent. I'm not a

1 violent person.

2 If I could be standing up enough to
3 plead to my crime then I can be stand (indiscernible)
4 I could serve because I believe -- if I could stand up
5 enough to plead to my crime then I could stand up on
6 if my crime was violent. I could stand on that. I
7 take responsibility for that.

8 I just want to take -- I'm nervous. So
9 you got to bear with me. That's all I've got to say.

10 THE COURT: Thank you.

11 MS. MACEOIN: Thank you, Your Honor.

12 THE COURT: Okay. Well, Mr. Steele,
13 this is a sad situation for you and for your family.
14 As I said, you're 33 years old and you have a
15 consistent history of committing crimes. And it's
16 very unfortunate.

17 Your first conviction was for drug
18 possession and you got probation at age 19. You then
19 had a probation revoked. You were then -- pled guilty
20 in federal court in New Jersey and here on bank
21 robbery charges. And you received a sentence of 12
22 months. You were then released and on supervised
23 release. And also in that time period, you robbed
24 eight banks located in New Jersey and Philadelphia.
25 That's what was involved there. And then you were on

1 supervised release and then you committed this crime,
2 another bank robbery.

3 So without getting into the debate
4 whether this is violent or not, it's a serious crime.
5 And it's -- and I have no choice but to say that
6 you're a serious recidivist. And you've committed
7 multiple crimes and in terms of punishment that you've
8 served have not served to deter you from committing
9 more crimes. That is the crime you're here for today.

10 Now if you were a career offender, as
11 the probation department recommended, then the
12 guideline range would be 151 months or more. If
13 you're not a career offender then, as I have
14 calculated your guideline range, your offense conduct
15 would be -- your offense level was 22 -- level 22, and
16 you would get off three points for accepting
17 responsibility. And you'd have an offense level of
18 19. And you would be in category 4 rather than
19 category 6. If you're a career offender, you'd be in
20 category 6. Without that, you're in category 4. And
21 your sentence would be a range of 46 to 57 months.

22 I also have to apply the 3553 factors,
23 the statutory factors of sentencing. And a bank
24 robbery is a serious crime. There's no question about
25 it. It's totally anti-social. It reflects your sense

1 of greed that you are entitled to money that doesn't
2 belong to you. Even though you may not have been
3 violent in the sense of having a gun or a weapon, you
4 nonetheless put the bank teller in a sense of fear.
5 The fact that you've been convicted of this several
6 times before did not deter you from another bank
7 robbery in this case. One indication that you may not
8 have known what you were doing but you did it anyway
9 was the fact that you left your wallet in the bank and
10 it had your name in it, that -- and you've shown just
11 a -- no sense of the importance of being law abiding.
12 And your doctor's report -- Dr. Watson reports a very
13 thorough report. You obviously have, in his opinion,
14 a lot of psychological problems and behavioral
15 problems.

16 But I can't ignore the fact that you
17 keep committing crime. And I've decided that you need
18 a lengthy term of incarceration because -- two
19 reasons. You've got to get rid of drugs. You can't
20 rely on drugs to cure your problems. And in prison,
21 you will not be getting any drugs unless they're
22 medical mandated.

23 The second thing is that you need a
24 lengthy period of incarceration where you are totally
25 within the control of someone else, that is the prison

1 authorities, and they have a lot of rules and
2 regulations. And you've got to learn that you have to
3 follow rules and regulations. When you're not in
4 prison, the rule you follow is you don't commit
5 crimes. And you haven't been able to follow that. So
6 while you're in prison, you're going to have to follow
7 a lot of rules and regulations you may think are
8 pretty stupid or silly. But there are rules there.
9 And the point is that people in prison hopefully will
10 learn the fact that when they get out of prison, they
11 have to continue to follow rules and regulations. And
12 you'll be on supervised release again for three years.
13 But as your lawyer said -- and you have a very fine
14 lawyer, by the way -- you're going to have to face
15 violation of supervised release in both state court --
16 in federal court because of the prior conviction and
17 also in state court. And I have no idea what those
18 judges are going to do.

19 But I've determined here that the
20 appropriate sentence is 120 months. So if the career
21 offender offense applies, I'm giving you a downward
22 variance. If it doesn't apply, then I'm giving you --
23 I'm making an upward variance because I think the
24 guideline range that would apply without the career
25 offender statute, which is 46 to 57 months, is

1 insufficient to accomplish the objectives of
2 incarceration that are required in your situation.

3 In addition to that, you will be
4 sentenced to a period of three years of supervised
5 release.

6 The terms and conditions will be set
7 forth in the judgment and commitment order. But they
8 include not committing any crimes, reporting to the
9 probation department, not using any drugs of any kind
10 and financial responsibility and things of that nature
11 that'll be set forth there.

12 I'll agree with counsel's request for
13 the recommendation that you be sentenced to a facility
14 that has the RDAP program as close to Philadelphia as
15 possible.

16 I also tell you that you can appeal
17 from the sentence that I've just imposed within 14
18 days. And if you want to appeal, just tell Ms.
19 MacEoin that and I believe, with the position -- her
20 office's practice was if you want to appeal, they will
21 file the appeal on your behalf and will represent you
22 on the appeal free of charge because you don't have
23 counsel -- you don't have the means to (indiscernible)
24 counsel. Do you understand that that you have the
25 right to appeal, (indiscernible)?

1 THE DEFENDANT: Uh-huh.

2 THE COURT: Okay. That's the sentence
3 of the Court. Thank you very much.

4 MS. MACEOIN: Thank you, Your Honor.

5 THE COURT: What's that? Oh yeah.
6 Restitution. Yes. No. I had restitution in the
7 amount suggested in the PSR. What is that amount, Ms.
8 Powell?

9 THE PROBATION OFFICER: Your Honor,

10 MR. HEALY: \$5,043.

11 THE COURT: Okay. You'll have to pay
12 that restitution as directed by the probation
13 department.

14 I won't impose a fine because of the
15 restitution but you can participate in the Inmate
16 Financial Responsibility program within the Bureau of
17 Prison. And that'll be set forth in the judgment and
18 commitment order also.

19 Okay. Thank you.

20 MS. MACEOIN: Thank you, Your Honor.

21 THE PROBATION OFFICER: Thank you, Your
22 Honor.

23 THE COURT: The Court's adjourned.

24 (Proceeding is adjourned)

25 * * * * *

1 C E R T I F I C A T I O N

2

3 I, Lisa Beck, certify that the foregoing is
4 a correct transcript from the official electronic
5 sound recording of the proceedings in the above-
6 entitled matter.

7



8

9 Lisa Beck

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11

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13 Dated: April 6, 2022

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APPENDIX C

UNITED STATES DISTRICT COURT

Eastern District of Pennsylvania

UNITED STATES OF AMERICA

v.

TYREE STEELE

JUDGMENT IN A CRIMINAL CASE

Case Number: DPAE2:20CR00121-001

USM Number: 62996-050

Nancy MacEoin, Esquire

Defendant's Attorney

THE DEFENDANT:☒ pleaded guilty to count(s) 1 of Indictment☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 2113(a)	Bank Robbery	2/13/2020	1

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

☐ 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.

3/2/2022

Date of Imposition of Judgment

/s/ Michael M. Baylson

Signature of Judge

MICHAEL M. BAYLSON

Name and Title of Judge

3/3/2022

Date

DEFENDANT: TYREE STEELE
CASE NUMBER: DPAE2:20CR00121-001

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:
120 months on Count 1.

☒ The court makes the following recommendations to the Bureau of Prisons:
Defendant participate in the BOP Residential Drug Abuse Program. Defendant to be designated to a facility closest to Philadelphia that offers the RDAP Program.

☒ The defendant is remanded to the custody of the United States Marshal.

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

☐ at _____ ☐ a.m. ☐ p.m. on _____ .

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

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

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: TYREE STEELE
CASE NUMBER: DPAA2:20CR00121-001

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:

3 years on Count 1.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a 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, 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: TYREE STEELE
CASE NUMBER: DPAE2:20CR00121-001

STANDARD CONDITIONS OF SUPERVISION

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

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

U.S. Probation Office Use Only

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

Defendant's Signature _____

Date _____

DEFENDANT: TYREE STEELE
CASE NUMBER: DPAE2:20CR00121-001

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall participate in a mental health program for evaluation and/or treatment and abide by the rules of any such program until satisfactorily discharged with the approval of the Court.

The defendant shall refrain from the illegal possession and/or use of drugs and shall submit to urinalysis or other forms of testing to ensure compliance. It is further ordered that the defendant shall participate in drug treatment and abide by the rules of any such program until satisfactorily discharged with the approval of the Court.

The defendant shall participate in a program at the direction of the probation officer aimed at learning a vocation or improving the defendant's literacy, education level, or employment skills in order to develop or improve skills needed to obtain and maintain gainful employment. The defendant shall remain in any recommended program until completed or until such time as the defendant is released from attendance by the probation officer.

The defendant shall provide the U.S. Probation Office with full disclosure of his financial records to include yearly income tax returns upon the request of the U.S. Probation Office. The defendant shall cooperate with the probation officer in the investigation of his financial dealings and shall provide truthful monthly statements of his income.

The defendant is prohibited from incurring any new credit charges or opening additional lines of credit without the approval of the probation officer unless the defendant is in compliance with a payment schedule for any fine or restitution obligation. The defendant shall not encumber or liquidate interest in any assets unless it is in direct service of the fine or restitution obligation or otherwise has the express approval of the Court.

DEFENDANT: TYREE STEELE

CASE NUMBER: DPAE2:20CR00121-001

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>
TOTALS	\$ 100.00	\$ 5,043.00	\$ 0.00	\$ 0.00	\$ 0.00

☐ 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, US District Court			
for distribution to: Citizens Bank	\$5,043.00	\$5,043.00	
2014 Cottman Avenue			
Philadelphia PA 19149			

TOTALS	\$	<u>5,043.00</u>	\$	<u>5,043.00</u>
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☐ 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: TYREE STEELE
CASE NUMBER: DPAE2:20CR00121-001

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 \$ 5,143.00 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:
The defendant may participate in the BOP Inmate Financial Responsibility Program and provide a minimum payment of \$25.00 per quarter towards the fine/restitution. In the event the fine/restitution is not paid prior to the commencement of supervision, the defendant shall satisfy the amount due in monthly installments of not less than \$150.00 to commence 30 days after release from confinement. The defendant shall notify the US Attorney for this district within 30 days of any change of mailing address or residence that occurs while any portion remains unpaid.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of 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 (including defendant number)	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate
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- ☐ 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) JVT A assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.