

No. _____

IN THE SUPREME COURT OF
THE UNITED STATES

OCTOBER TERM 2022

CORY JOE BARTON

Petitioner

v.

UNITED STATES OF AMERICA

Respondent

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

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ATTORNEY OF RECORD FOR PETITIONER

August 1, 2023

QUESTION PRESENTED

Did the Fifth Circuit err in holding that the determination of Mr. Barton's sentence did not violate his procedural due process rights?

LIST OF PARTIES

Pursuant to Rule 14.1(b) of the Rules of this Court, Petitioner would show that all parties to the proceeding of which the judgment is sought to be revised appear in the caption of this case.

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PETITION FOR WRIT OF CERTIORARI
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FOR THE FIFTH CIRCUIT

Petitioner, Cory Barton respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit, entered in the above-entitled proceeding on April 6, 2023. The opinion of the United States court of appeals appears in the Appendix at page 1, and is unpublished. Mr. Barton's timely filed panel motion for rehearing was denied on May 3, 2023. This Order appears in the Appendix at page 6, and is also unpublished.

BASIS OF JURISDICTION

The Fifth Circuit Court of Appeals entered their judgment on April 6, 2023. (App., p. 1). Further, a panel of that Court denied Petitioner's Motion for Rehearing on May 3, 2023. (App., p. 6). The jurisdiction of this Court is invoked pursuant to the United States Code. 28 U.S.C. § 1254(1) (2021).

STATUTES INVOLVED

21 U.S.C. § 841(a)(1),(b)(1)(A)(viii)

21 U.S.C. § 846

FED. R. CRIM. P. 32

This material has been included in the Appendix.

STATEMENT OF THE CASE

This is a criminal matter arising from a plea of guilty to a drug offense. The initial indictment, filed April 13, 2021 alleged that Mr. Barton participated in a Conspiracy to Possess With Intent to Distribute a Mixture and Substance Containing a Detectable Amount of Methamphetamine, a Schedule II Controlled Substance. The initial indictment alleged “that quantity of the mixture or substance containing methamphetamine involved in the conspiracy and attributable to each Defendant as a result of each Defendant’s own conduct and as a result of the conduct of other conspirators reasonably foreseeable” to Mr. Barton was “less than 500 grams.”

Mr. Barton entered a plea of guilty to his sole count of the indictment on July 13, 2021. After the sentencing hearing on March 9, 2022, the district court sentenced Mr. Barton to 335 months in the Bureau of

Prisons, five years of supervised release, no fine, and a \$100.00 assessment. Petitioner's issue was overruled in the Fifth Circuit Court of Appeals. *United States v. Barton*, No. 22-50204, 2023 U.S. App. LEXIS 8268 (5th Cir. 2023) (unpublished). Mr. Barton's Panel Rehearing Motion was denied on May 3, 2023. *United States v. Barton*, No. 22-50204 (5th Cir. May 3, 2023, order).

ARGUMENT FOR GRANTING THE WRIT

ARGUMENT AND AUTHORITIES FOR GRANTING THE WRIT

A. Grounds for Granting the Writ.

Petitioner argues that grant of review is required because the Fifth Circuit Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court’s supervisory power. SUP. CT. R. 10(a). The basis of Mr. Barton’s challenge is that the Fifth Circuit deprived him of procedural due process, depriving him of notice and important sentencing presumptions under the United States Sentencing Guidelines. Cf. *Burns v. United States*, 501 U.S. 129 (1991) (granting review to decide whether the district court had to provide notice to a defendant if a departure from the United States Sentencing Guidelines was to be considered).

B. Reasons for Granting the Writ.

Barton . . . contends that the PSR was improperly revised “outside the regular order of the presentence investigation report process” to include those facts concerning the additional 15 kilograms of methamphetamine. According to Barton, these facts should not have been considered by the district court as they only became part of the PSR through a faulty revisionary

process. But Barton fails to identify how that process was in error . . . [Federal Rule of Criminal Procedure 32] did not prohibit the United States Probation Office from revising the PSR on its own. And Barton was still afforded an opportunity to object to the PSR in accordance with this rule; indeed, the PSR notes Barton's objection to it calculating the methamphetamine's purity.

United States v. Barton, No. 22-50204, 2023 U.S. App. LEXIS 8268, at *4–5 (5th Cir. 2023) (unpublished).

Mr. Barton requests review due the violation of Mr. Barton's statutory procedural rights, contained in the Federal Rules of Criminal Procedure. See FED. R. CRIM. P. 32. This issue arises from the lower court's holding that a probation officer can sua sponte "revise" the presentence investigation report (PSR) – outside the regular order set by law. This holding resulted in shifting of the burden of proof to Mr. Barton concerning the accuracy of the information contained in the PSR.

1. Factual background.

A federal grand jury named Appellant Cory Joe Barton in a one-count indictment alleging Conspiracy to Possess with Intent to Distribute and to Distribute Methamphetamine. 21 U.S.C. § 846 [21 U.S.C. § 841(a)(1)(b)(1)(A)(viii)]. Mr. Barton pleaded guilty to the indicted offense. ROA.22-50204.215.

The probation officer initially issued the Presentence Investigation Report on September 2, 2021. ROA.22-50204.226-52. Initially, Mr. Barton's offense level was based solely upon the one kilogram of methamphetamine found when Mr. Barton was arrested. ROA.22-50204.235. Following Guideline calculations, the resulting Guidelines offense level was 34. ROA.22-50204.236. Appellant objected to the calculation of the base offense level using methamphetamine (actual). ROA.22-50204.181-83. The Government did not submit any objections to the PSR. ROA.22-50204.152.

On September 29, 2021, the probation officer sua sponte "revised" the report to "reflect additional information provided by law enforcement." ROA.22-50204.152. The added information resulted in a substantial increase in the drug amounts. In summary, Mr. Barton was found responsible for at least 15 kilograms of methamphetamine. ROA.22-50204.163. This increased the resulting base offense level to 38. ROA.22-50204.164-65. Mr. Barton timely objected at the sentencing hearing to the "increase of his range." ROA.22-50204.125.

2. The Fifth Circuit eviscerated a criminal defendant's sentencing procedural due process rights.

Review is needed to enforce Mr. Barton's procedural due process rights under the sentencing statute. First, Petitioner will define the concepts that generally form procedural due process in the sentencing process. Next, Petitioner will illuminate the congressionally provided procedures in federal sentencings, through statutory construction. Finally, the error will be shown for its devastating results in the basic fairness required in a criminal sentencing hearing.

The Due Process Clause encompasses a guarantee of fair procedure. *Zinermon v. Burch*, 494 U.S. 113, 125 (1990). Overall, procedural due process requires a “minimum procedural safeguards,” “rules . . . shaped by the risk of error inherent in the truthfinding process,” and by “those fundamental principles of liberty and justice which lie at the base of all civil and political institutions,” rules intended to promote an “accurate determination of decisional facts, and informed by unbiased exercises of official discretion.” *Id.* at 177.

In a procedural due process claim, the deprivation by state action of a constitutionally protected interest in “life, liberty, or property” is not in

itself unconstitutional; what is unconstitutional is the deprivation of such an interest without due process of law. *Burch*, 494 U.S. at 125. To learn whether a constitutional violation has occurred, it must be determined what process the State provided, and whether it was constitutionally adequate. *Id.* at 126. The inquiry examines the procedural safeguards built into the statutory procedures of effecting the deprivation, and any remedies for erroneous deprivations provided by statute. *Id.*

A sentencing process must satisfy the requirements of the Due Process Clause. *Gardner v. Florida*, 430 U.S. 349, 358 (1977). Statutes that authorize deprivations of liberty require that the Government give affected individuals both notice and a meaningful opportunity to be heard. *Burns v. United States*, 501 U.S. 129, 137–38 (1991). As such, a defendant has a legitimate interest in the character of the procedure which leads to the imposition of sentence. *Id.* Here, Petitioner’s procedural due process rights arise from the Federal Rules of Criminal Procedure. *Cf. United States v. Barnhart*, 980 F.2d 219, 222 (3d Cir. 1992) (stating that Congress built the minimum due process requirements for a supervised release revocation into the statute). Under contemporary constitutional doctrines, the procedural due process guarantee has been viewed as serving primarily to

assure accurate implementation of substantive rules. Stephen J. Schulhofer, DUE PROCESS OF SENTENCING, 128 U. Pa. L. Rev. 733, 813 (1980).

Here, Petitioner's claim arises out of the lower court's contortion of the sentencing process – a deformation of the process that lead to a judgment that cannot be relied upon for accuracy. Specifically, Petitioner requests review that the probation officer is allowed to wholesale amend the PSR “outside the regular order of the presentence investigation report process.” Barton, 2023 U.S. App. LEXIS 8268 at *4 (“Contrary to Barton’s reading, this rule did not prohibit the United States Probation Office from revising the PSR on its own.”). Petitioner will show the procedural rights due to him through statutory interpretation, a methodology “particularly appropriate in interpreting the Federal Rules of Criminal Procedure.” United States v. Mendoza, 565 F.2d 1285, 1289 (5th Cir. 1978).

- a. The plain meaning and other rules of statutory construction demonstrates that Rule 32 does not allow for a sua sponte global “revisions” of a PSR.

The Federal Rules of Criminal Procedure set out the required steps in the PSR process. In full, the applicable section states:

Objecting to the Report.

- (1) Time to Object. Within 14 days after receiving the presentence report, the parties must state in writing any objections, including objections to material information, sentencing guideline ranges, and policy statements contained in or omitted from the report.
- (2) Serving Objections. An objecting party must provide a copy of its objections to the opposing party and to the probation officer.
- (3) Action on Objections. After receiving objections, the probation officer may meet with the parties to discuss the objections. The probation officer may then investigate further and revise the presentence report as appropriate.

FED. R. CRIM. P. 32(f).

The purpose of interpreting this language is to construe the language so as to give effect to the intent of Congress. *United States v. Am. Trucking Ass'ns*, 310 U.S. 534, 542 (1940). The task of statutory interpretation begins and, if possible, ends with the language of the statute.” *Trout Point Lodge, Ltd. v. Handshoe*, 729 F.3d 481, 486 (5th Cir.

2013). A court must enforce the “statute’s plain meaning, unless absurd.” *In re Nowlin*, 576 F.3d 258, 261–62 (5th Cir. 2009). The plain meaning is that the entire statute, not of isolated sentences. *Beecham v. United States*, 511 U.S. 368, 372 (1994).

Here, the plain meaning analysis begins with the heading of the section. This is used as a “tool available for the resolution of a doubt” concerning the meaning of a statute. *Almendarez-Torres v. United States*, 523 U.S. 224, 234 (1998). A statutory heading is but a shorthand reference to the general subject matter involved. See *Bhd. of R.R. Trainmen v. Balt. & Ohio R.R.*, 331 U.S. 519, 528 (1947). For interpretative purposes, a heading is only used when it sheds light on an ambiguous word or phrase. *Id.* at 529. Here, “Action on Objections” limits the questioned subsection to the actions the probation officer may take once they have received objections. In other words, the “action” taken must be to a specific objection – ignore or revise. Therefore, the only “action” that can be taken is revision, which must relate to the objection(s).

The subsection’s statutory language further shows the permissible actions upon the receipt of objections. Once a probation officer receives objections to the Report, “the officer may meet with the parties to discuss

said objections.” FED. R. CRIM. P. 32(f)(3). The next statutory step is to then “investigate further” and “revise the presentence report as appropriate.” Id.

b. Last antecedent rule.

Applying other canons of construction brings this issue into greater focus. The last antecedent rule holds that qualifying words, phrases, and clauses are applied to the words or phrase immediately preceding, and are not to be construed as extending to and including others more remote. See, e.g., *Mandel Bros. v. FTC*, 254 F.2d 18, 22 (7th Cir. 1958), rev’d on other grounds, 359 U.S. 385 (1959); 82 C.J.S. Statutes § 335 (1953).¹ Here, the preceding sentence, concerning only the objections, modifies the actions to be taken solely on the objections: “the probation officer may then investigate further and revise the presentence report as appropriate.” FED. R. CRIM. P. 32(f).

¹ The rule of the last antecedent applies when the modifying phrase is not separated from the immediately preceding noun or phrase by a comma. See *In re Tyco Int’l, Ltd. Multidistrict Litig.*, 322 F. Supp.2d 116, 119 (D. N.H. 2004) (recognizing “exception to the rule of the last antecedent which applies when a comma is placed between the last antecedent and the qualifying phrase”).

- c. The Fifth Circuit’s opinion denied Mr. Barton’s procedural due process rights.

Government’s cannot create a process and then arbitrarily refuse to follow the prescribed procedures. *Johnson v. Missouri*, 143 S. Ct. 417, 418 (2022). But the Fifth Circuit’s opinion allowing a wholesale demolition of the regular process effectively bulldozes Rule 32 – to create a sentencing free-for-all.

Rule 32 contemplates a full adversary testing of the issues relevant to the determination of an advisory Guidelines sentence. *Burns*, 501 U.S. at 137 (citing FED. R. CRIM. P. 32(a)(1)). Further, the Rule mandates that the parties be given “an opportunity to comment upon the probation officer’s determination and on other matters relating to the appropriate sentence.” *Id.* However, the Fifth Circuit’s holding does anything but that.

Properly framed, Rule 32 provides for focused, adversarial development of the factual and legal issues relevant to determining the appropriate Guidelines sentence. *Burns*, 501 U.S. at 134 The Rule frames the issues by directing the probation officer to prepare a presentence report addressing all matters germane to the defendant’s sentence. *Id.* This report must be timely disclosed to the parties, who then are to be

afforded an opportunity to file responses or objections with the district court. *Id.* (emphasis added).

Rule 32’s plain language requires a limitation on the probation officer’s “investigation.” The further investigation is limited to an examination of the stated objections – not to provide an opportunity for an entire “do-over.” Simply put, a probation officer has no right to begin the Report process anew when any party files an objection.² The orderly process simply allows the probation officer to respond to the parties’ specific objections. Any other result is patently absurd.

Further, the lower court’s holding now requires a defendant to address possible sua sponte revisions unconnected to the grounds of the initial report. This results in defense counsel “trying to anticipate and negate every conceivable ground,” where a probation officer might find information to “amend” the PSR on their own initiative. See *Burns*, 501 U.S. at 137. Certainly, defense counsel should not have to rebut additional amounts of liability for a controlled substance, “where neither the

² This view is supported by legal commentators. “After receiving objections, a probation officer may meet with the parties to discuss the objections, and the officer may further investigate and revise the presentence report as appropriate.” 9A BARBARA J. VAN ARSDALE, J.D., ET AL., *FED. PROC., LAWYER’*. ED. § 22:1582 (West 2023).

presentence report nor the attorney for the Government has suggested a ground . . .” Id. If called upon to make such a defense, counsel would be considered to violate his duties to his client to “suggest such a possibility [of additional amounts of contraband the defendant should be held responsible for], even for the purpose of rebutting it.” Id.

d. Next?

The correct framing of this information has serious consequences concerning the sentencing decision. A defendant bears the burden of showing that “the information in the PSR relied on by the district court is materially untrue.” *United States v. Dennis*, 41 F.4th 732, 743 (5th Cir. 2022). Here, since the additional 15 kilograms should not be considered a part of a proper PSR, the Government bore the burden of proving the facts necessary to establish the base offense level. *United States v. McDowell*, 888 F.2d 285, 291 (3d Cir. 1989).

Instead, the lower court erroneously found the method used by the probation officer to apply additional drug amounts to the PSR did not taint their reliability. *Barton*, 2023 U.S. App. LEXIS 8268 at *5. The panel brushed aside Petitioner’s concerns, leaving the burden on him to show this improperly appended drug amount “materially untrue.” Id. at *4. In

fact, this rule, when properly applied, shows that the Government had the burden to object the PSR on the failure to included the additional proffered drug amounts. As such, Mr. Barton requests that this Court grant review to ensure his full statutory and due process rights.

C. Conclusion.

The federal courts as an institution would be stronger if they simply acknowledge that they got this sentence wrong from the start, and fix it. *Spencer v. United States*, 773 F.3d 1132, 1152 (11th Cir. 2014) (en banc) (Martin, J. dissenting). The failure of the Fifth Circuit to recognize the impact of their decision on federal sentencings calls for this Court's supervision.

PRAYER

Petitioner requests that this Honorable Court grant his Writ of Certiorari, and reverse the holdings of the Fifth Circuit, and for any other relief that he may be so entitled.

Respectfully submitted,

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United States v. Barton

United States Court of Appeals for the Fifth Circuit

April 6, 2023, Filed

No. 22-50204

Reporter

2023 U.S. App. LEXIS 8268 *; 2023 WL 2810052

UNITED STATES OF AMERICA, Plaintiff-Appellee, versus CORY JOE BARTON, Defendant-Appellant.

Notice: PLEASE REFER TO FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1 GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

Prior History: [*1] Appeal from the United States District Court for the Western District of Texas. USDC No. 6:21-CR-37-1.

United States v. Booth, 2022 U.S. Dist. LEXIS 66308, 2022 WL 1571316 (W.D. Tex., Feb. 15, 2022)

Disposition: AFFIRMED.

Case Summary

Overview

HOLDINGS: [1]-The district court did not err in relying on the PSR imposing its sentence because the facts connecting defendant to the 15 kilograms of methamphetamine bore sufficient indicia of reliability, and the PSR made such connection based on the methamphetamine distributor's statements that he sold defendant methamphetamine on multiple occasions, which eventually amounted to 15 kilograms, probably more; [2]-The court's findings concerning the purity of methamphetamine were not a product of clear error as the estimation of the purity of methamphetamine was supported by the record, including the facts presented in the PSR and their verification through the testimony provided by the FBI special agent at defendant's sentencing hearing.

Outcome

Judgment affirmed.

LexisNexis® Headnotes

Criminal Law & Procedure > ... > Appeals > Standards of Review > Clear Error Review

Evidence > Burdens of Proof > Allocation

Criminal Law & Procedure > Sentencing > Presentence Reports

Criminal Law & Procedure > ... > Standards of Review > Clearly Erroneous Review > Findings of Fact

Criminal Law & Procedure > Sentencing > Imposition of Sentence > Evidence

HN1[[↓](#)] Standards of Review, Clear Error Review

The appellate court reviews the district court's factual findings for clear error. There is no clear error if the district court's findings are plausible in light of the record as a whole. Generally, a presentence investigation report (PSR) bears sufficient indicia of reliability to be considered as evidence by the sentencing judge in making factual determinations. If the factual recitation in the PSR lacks sufficient indicia of reliability, then it is error for the district court to consider it at sentencing—regardless of whether the defendant objects or offers rebuttal evidence. But if the factual recitation in the PSR bears sufficient indicia of reliability, then the defendant bears the burden of demonstrating that the PSR is inaccurate; in the absence of rebuttal evidence, the sentencing court may properly rely on the PSR and adopt it. Mere objections to a PSR's supported facts are generally insufficient.

Criminal Law & Procedure > Sentencing > Imposition of Sentence > Evidence

HN2[[↓](#)] Imposition of Sentence, Evidence

A district court may estimate drug quantity. It can base its findings on any information that has sufficient indicia of reliability to support its probable accuracy, including a probation officer's testimony, a policeman's approximation of unrecovered drugs, and even hearsay.

Counsel: For United States of America, Plaintiff - Appellee: Joseph H. Gay Jr., Assistant U.S. Attorney, Richard Louis Durbin Jr., Assistant U.S. Attorney, Margaret Mary Embry, Assistant U.S. Attorney, U.S. Attorney's Office, San Antonio, TX.

For Cory Joe Barton, Defendant - Appellant: Stanley Lee Schwieger, Law Offices of Stan Schwieger, Waco, TX.

Judges: Before KING, JONES, and DUNCAN, Circuit Judges.

Opinion

PER CURIAM:*

Cory Joe Barton appeals his sentence of 335 months' imprisonment for conspiracy to possess with intent to distribute at least 500 grams of methamphetamine. For the following reasons, we AFFIRM.

On April 13, 2021, Cory Joe Barton was indicted for conspiracy to possess with intent to distribute and conspiracy to distribute at least 500 grams of a mixture or substance containing a detectable amount of methamphetamine, pursuant to 21 U.S.C. § 841(a)(1). Barton pleaded guilty on July 13, 2021. On September 29, 2021, the United States Probation Office submitted an addendum revising the Presentence Investigation Report (the "PSR"). The PSR states that Barton was arrested on November 11, 2020, while in possession [*2] of approximately one kilogram of methamphetamine. The PSR also states that, during a proffer with the FBI, a methamphetamine distributor, Oscar Negrete, identified Barton as an individual to whom he had sold methamphetamine on multiple occasions. Negrete estimated that he had provided Barton with "15 kilograms, probably more" of methamphetamine. The PSR states that an analysis of the methamphetamine found in Barton's possession was determined to be 77 percent pure, resulting in 713 grams of methamphetamine (actual). The PSR also estimates the purity of the 15 kilograms of methamphetamine Negrete claimed to have sold Barton based on purity tests that had been conducted on methamphetamine seized by law enforcement from another dealer who had been purchasing methamphetamine from Negrete. The PSR calculates that the average purity of this seized methamphetamine was 88 percent, resulting in 13.2 kilograms of methamphetamine (actual). According to the PSR, Barton should be held accountable for 13.91 kilograms of methamphetamine (actual), adding both methamphetamine (actual) amounts that it attributes to him. Relying, in part, on the methamphetamine it says is attributable to Barton, the [*3] PSR calculates that he should be subject to an imprisonment range of 292 to 365 months based on the sentencing guidelines. At sentencing, the district court accepted the PSR's findings and sentenced Barton to 335 months' imprisonment.

Barton raises two issues on appeal, both relating to the reliability of facts on which the district court relied in imposing its sentence. *HNI* [↑] We review the district court's factual findings for clear error. *United States v. Barfield*, 941 F.3d 757, 761 (5th Cir. 2019). "There is no clear error if the district court's finding[s] [are] plausible in light of the record

* This opinion is not designated for publication. See 5TH CIR. R. 47.5.

as a whole." *United States v. Cisneros-Gutierrez*, 517 F.3d 751, 764 (5th Cir. 2008) (quoting *United States v. Juarez-Duarte*, 513 F.3d 204, 208 (5th Cir. 2008) (per curiam)). "Generally, a PSR bears sufficient indicia of reliability to be considered as evidence by the sentencing judge in making factual determinations." *United States v. Zuniga*, 720 F.3d 587, 591 (5th Cir. 2013) (quoting *United States v. Harris*, 702 F.3d 226, 230 (5th Cir.2012)). "If the factual recitation [in the PSR] lacks sufficient indicia of reliability, then it is error for the district court to consider it at sentencing—regardless of whether the defendant objects or offers rebuttal evidence." *Id.* (alteration in original) (quoting *Harris*, 702 F.3d at 231). "But if the factual recitation in the PSR bears sufficient indicia of reliability, then the defendant bears the burden of demonstrating that the PSR is inaccurate; in the absence of rebuttal evidence, [*4] the sentencing court may properly rely on the PSR and adopt it." *Id.* (quoting *United States v. Ollison*, 555 F.3d 152, 164 (5th Cir.2009)). "Mere objections to [a PSR's] supported facts are generally insufficient." *Harris*, 702 F.3d at 230.

First, Barton argues that there is no factual basis to connect him with the additional 15 kilograms of methamphetamine. Specifically, he contends that the PSR was improperly revised "outside the regular order of the presentence investigation report process" to include those facts concerning the additional 15 kilograms of methamphetamine. According to Barton, these facts should not have been considered by the district court as they only became part of the PSR through a faulty revisionary process. But Barton fails to identify how that process was in error. "At least 7 days before sentencing, the probation officer must submit to the court and to the parties the presentence report and an addendum containing any unresolved objections, the grounds for those objections, and the probation officer's comments on them." Fed. R. Crim. P. 32(g). Contrary to Barton's reading, this rule did not prohibit the United States Probation Office from revising the PSR on its own. And Barton was still afforded an opportunity to object to the PSR in accordance with this rule; [*5] indeed, the PSR notes Barton's objection to it calculating the methamphetamine's purity. Accordingly, the method by which these facts were added to the PSR does not taint their reliability. The facts connecting Barton to the 15 kilograms of methamphetamine bear sufficient indicia of reliability as well. The PSR makes this connection based on Negrete's statements that he sold Barton methamphetamine on multiple occasions, which eventually amounted to "15 kilograms, probably more." An FBI special agent later confirmed this information at Barton's sentencing hearing. The burden was thus on Barton to present rebuttal evidence—beyond an objection—which he did not do. *See Zuniga*, 720 F.3d at 591. Therefore, the district court did not err in relying on the PSR.

Second, Barton asserts that the factual bases underlying the PSR's purity calculations are deficient. Similar to his previous argument, Barton contends that all facts concerning the purity of methamphetamine that were added to the PSR during its revision should be discounted. Barton also challenges the methodology by which the PSR estimated the purity

of the 15 kilograms of methamphetamine. As we have already ruled, there was no error in how the PSR was revised. [*6] There are also sufficient indicia of reliability underlying the PSR's purity calculation. **HN2**[↑] "A district court may estimate drug quantity." *United States v. Lee*, 966 F.3d 310, 327 (5th Cir. 2020). "It can base its findings on 'any information that has 'sufficient indicia of reliability to support its probable accuracy,' including a probation officer's testimony, a policeman's approximation of unrecovered drugs, and even hearsay.'" *Id.* (quoting *United States v. Betancourt*, 422 F.3d 240, 247 (5th Cir. 2005)). Here, the PSR estimates the purity of the 15 kilograms of methamphetamine based on the purity of methamphetamine seized from an associate of Barton, Ethan Eli Tinney, who was also being supplied by Negrete during the period of Barton's offending conduct. Specifically, the PSR calculates the average purity of methamphetamine seized from Tinney on three separate occasions, calculating an average purity of 88 percent and imputing this purity level to the 15 kilograms of methamphetamine it attributes to Barton. This estimation is supported by the record, including the facts presented in the PSR and their verification through the testimony provided by the FBI special agent at Barton's sentencing hearing. Barton fails to rebut these facts; consequently, we conclude that the court's findings were not a [*7] product of clear error.

AFFIRMED.

End of Document

United States Court of Appeals
for the Fifth Circuit

No. 22-50204

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

CORY JOE BARTON,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 6:21-CR-37-1

ON PETITION FOR REHEARING

Before KING, JONES, and DUNCAN, *Circuit Judges.*

PER CURIAM:

IT IS ORDERED that the petition for rehearing is DENIED.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

UNITED STATES OF AMERICA

v.

CORY JOE BARTON

Defendant.

Case Number: 6:21-CR-00037(1)-ADA
USM Number: 40582-509

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant, CORY JOE BARTON, was represented by Abelino Reyna.

The defendant pled guilty to Count One of the Indictment on July 13, 2021. Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21 U.S.C. § 846 {21 U.S.C. §§ 841(a)(1) and (b)(1)(A)(viii)}	Conspiracy to Possess with Intent to Distribute at Least 500 Grams of Methamphetamine, a Schedule II Controlled Substance	11/11/2020	One

As pronounced on March 9, 2022, the defendant is sentenced as provided in pages 2 through 6 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

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

Signed this 10th day of March, 2022.


ALAN D ALBRIGHT
United States District Judge

DEFENDANT: CORY JOE BARTON
CASE NUMBER: 6:21-CR-00037(1)-ADA

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **Three Hundred and Thirty-Five (335) Months as to Count One (1).**

The defendant shall remain in custody pending service of sentence.

The Court makes the following recommendations to the Bureau of Prisons: That the defendant participate in the 500 Hour Residential Drug Abuse Program, or alternatively that he participates in the most intensive drug treatment program available during the period of confinement. The Court also recommends that the defendant be incarcerated in the federal facility in El Reno, Oklahoma and that he be allowed to participate in the Unicorp program. The term imposed in this case shall be served concurrently to the defendant's state case arising out of the same set of circumstances. If, for any reason, the Bureau of Prisons does not comply with any recommendation of this Court made in this Judgment and Sentence, the Bureau of Prisons shall immediately notify the Court and any reason therefore.

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: CORY JOE BARTON
CASE NUMBER: 6:21-CR-00037(1)-ADA

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release a term of **Five (5) Years**.

While on supervised release the defendant shall comply with the mandatory, standard and if applicable, the special conditions that have been adopted by this Court, and shall comply with the following additional conditions:

The defendant shall participate in a substance abuse treatment program and follow the rules and regulations of that program. The program may include testing and examination during and after program completion to determine if the defendant has reverted to the use of drugs. The probation officer shall supervise the participation in the program (provider, location, modality, duration, intensity, etc.). During treatment, the defendant shall abstain from the use of alcohol and any and all intoxicants. The defendant shall pay the costs of such treatment if financially able.

The defendant shall submit to substance abuse testing to determine if the defendant has used a prohibited substance. The defendant shall not attempt to obstruct or tamper with the testing methods. The defendant shall pay the costs of testing if financially able.

The defendant shall not communicate, or otherwise interact, with any known member of the Peckerwood gang, or any other gang member, without first obtaining the permission of the probation officer.

The defendant shall submit his or her person, property, house, residence, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), other electronic communications or data storage devices or media, or office, to a search conducted by a United States probation officer. Failure to submit to a search may be grounds for revocation of release. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition. The probation officer may conduct a search under this condition only when reasonable suspicion exists that the defendant has violated a condition of supervision and that the areas to be searched contain evidence of this violation. Any search shall be conducted at a reasonable time and in a reasonable manner.

DEFENDANT: CORY JOE BARTON
CASE NUMBER: 6:21-CR-00037(1)-ADA

CONDITIONS OF SUPERVISION

Mandatory Conditions:

- [1] The defendant shall not commit another federal, state, or local crime during the term of supervision.
- [2] The defendant shall not unlawfully possess a controlled substance.
- [3] The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release on probation or supervised release and at least two periodic drug tests thereafter (as determined by the court), but the condition stated in this paragraph may be ameliorated or suspended by the court if the defendant's presentence report or other reliable sentencing information indicates low risk of future substance abuse by the defendant.
- [4] The defendant shall cooperate in the collection of DNA as instructed by the probation officer, if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. § 14135a).
- [5] If applicable, the defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, et. seq.) as instructed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which the defendant resides, works, is a student, or was convicted of a qualifying offense.
- [6] If convicted of a domestic violence crime as defined in 18 U.S.C. § 3561(b), the defendant shall participate in an approved program for domestic violence.
- [7] If the judgment imposes a fine or restitution, it is a condition of supervision that the defendant pay in accordance with the Schedule of Payments sheet of the judgment.
- [8] The defendant shall pay the assessment imposed in accordance with 18 U.S.C. § 3013.
- [9] The defendant shall notify the court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution, fines or special assessments.

Standard Conditions:

- [1] The defendant shall report to the probation office in the federal judicial district where he or she is authorized to reside within 72 hours of release from imprisonment, unless the probation officer instructs the defendant to report to a different probation office or within a different time frame.
- [2] After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when to report to the probation officer, and the defendant shall report to the probation officer as instructed.
- [3] The defendant shall not knowingly leave the federal judicial district where he or she is authorized to reside without first getting permission from the court or the probation officer.
- [4] The defendant shall answer truthfully the questions asked by the probation officer.
- [5] The defendant shall live at a place approved by the probation officer. If the defendant plans to change where he or she lives or anything about his or her living arrangements (such as the people the defendant lives with), the defendant shall 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, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change.
- [6] The defendant shall allow the probation officer to visit the defendant at any time at his or her home or elsewhere, and the defendant shall permit the probation officer to take any items prohibited by the conditions of the defendant's supervision that are observed in plain view.
- [7] The defendant shall work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses the defendant from doing so. If the defendant does not have full-time employment, he or she shall try to find full-

DEFENDANT: CORY JOE BARTON
CASE NUMBER: 6:21-CR-00037(1)-ADA

time employment, unless the probation officer excuses the defendant from doing so. If the defendant plans to change where the defendant works or anything about his or her work (such as the position or job responsibilities), the defendant shall 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, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change.

- [8] The defendant shall not communicate or interact with someone the defendant knows is engaged in criminal activity. If the defendant knows someone has been convicted of a felony, the defendant shall not knowingly communicate or interact with that person without first getting the permission of the probation officer.
- [9] If the defendant is arrested or questioned by a law enforcement officer, the defendant shall notify the probation officer within 72 hours.
- [10] The defendant shall 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] The defendant shall 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 the defendant poses a risk to another person (including an organization), the probation officer may require the defendant to notify the person about the risk and the defendant shall comply with that instruction. The probation officer may contact the person and confirm that the defendant has notified the person about the risk.
- [13] The defendant shall follow the instructions of the probation officer related to the conditions of supervision.
- [14] If the judgment imposes other criminal monetary penalties, it is a condition of supervision that the defendant pay such penalties in accordance with the Schedule of Payments sheet of the judgment.
- [15] If the judgment imposes a fine, special assessment, restitution, or other criminal monetary penalties, it is a condition of supervision that the defendant shall provide the probation officer access to any requested financial information.
- [16] If the judgment imposes a fine, special assessment, restitution, or other criminal monetary penalties, it is a condition of supervision that the defendant shall not incur any new credit charges or open additional lines of credit without the approval of the probation officer, unless the defendant is in compliance with the payment schedule.
- [17] If the defendant is excluded, deported, or removed upon release on probation or supervised release, the term of supervision shall be a non-reporting term of probation or supervised release. The defendant shall not illegally re-enter the United States. If the defendant is released from confinement or not deported, or lawfully re-enters the United States during the term of probation or supervised release, the defendant shall immediately report in person to the nearest U.S. Probation Office.

DEFENDANT: CORY JOE BARTON
CASE NUMBER: 6:21-CR-00037(1)-ADA

CRIMINAL MONETARY PENALTIES/SCHEDULE

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth. Unless the Court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. Criminal Monetary Penalties, except those payments made through Federal Bureau of Prisons' Inmate Financial Responsibility Program shall be paid through the Clerk, United States District Court, 800 Franklin Ave, Room 380, Waco, TX 76701 or online by Debit (credit cards not accepted) or ACH payment (direct from Checking or Savings Account) through pay.gov (link accessible on the landing page of the U.S. District Court's Website). **Your mail-in or online payment must include your case number in the exact format of DTXW621CR000037-001 to ensure proper application to your criminal monetary penalty.** The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

If the defendant is not now able to pay this indebtedness, the defendant shall cooperate fully with the office of the United States Attorney, the Federal Bureau of Prisons and/or the United States Probation Office to make payment in full as soon as possible, including during any period of incarceration. Any unpaid balance at the commencement of a term of probation or supervised release shall be paid on a schedule of monthly installments to be established by the United States Probation office and approved by the Court.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$100.00	\$0.00	\$0.00

SPECIAL ASSESSMENT

It is ordered that the defendant shall pay to the United States a special assessment of \$100.00. Payment of this sum shall begin immediately.

FINE

The fine is waived because of the defendant's inability to pay.

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 above. However, pursuant to 18 U.S.C. § 3664(i), all non-federal victims must be paid before the United States is paid.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. §3614.

The defendant shall pay interest on any fine or restitution of more than \$2,500.00, unless the fine or restitution is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. §3612(f). All payment options may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. §3612(g).

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

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.

21 U.S.C § 841 (2022).

§ 841. Prohibited acts A

(a) Unlawful acts. Except as authorized by this title, it shall be unlawful for any person knowingly or intentionally—

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or

(2) to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance.

(b) Penalties. Except as otherwise provided in section 409, 418, 419, or 420 [21 USCS § 849, 859, 860, or 861], any person who violates subsection (a) of this section shall be sentenced as follows:

(1)

(A) In the case of a violation of subsection (a) of this section involving—

(i) 1 kilogram or more of a mixture or substance containing a detectable amount of heroin;

(ii) 5 kilograms or more of a mixture or substance containing a detectable amount of—

(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;

(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(IV) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subclauses (I) through (III);

(iii) 280 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

(iv) 100 grams or more of phencyclidine (PCP) or 1 kilogram or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(v) 10 grams or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(vi) 400 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N- [1-(2-phenylethyl)-4-piperidinyl] propanamide or 100 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N- [1-(2-phenylethyl)-4-piperidinyl] propanamide;

(vii) 1000 kilograms or more of a mixture or substance containing a detectable amount of marihuana, or 1,000 or more marihuana plants regardless of weight; or

(viii) 50 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers;

such person shall be sentenced to a term of imprisonment which may not be less than 10 years or more than life and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$10,000,000 if the defendant is an individual or \$50,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a serious drug felony or serious violent felony has become final, such person shall be sentenced to a term of imprisonment of not less than 15 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or \$20,000,000 if the defendant is an individual or \$75,000,000 if the defendant is other than an individual, or both. If any person commits a violation of this subparagraph or of section 409, 418, 419, or 420 [21 USCS § 849, 859, 860, or 861] after 2 or more prior convictions for a serious drug felony or serious violent felony have become final, such person shall be sentenced to a term of imprisonment of not less than 25 years and fined in accordance with the preceding sentence. Notwithstanding section 3583 of title 18, any sentence under this subparagraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 5 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 10 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein.

21 U.S.C. § 846 (2023).

§ 846. Attempt and conspiracy

Any person who attempts or conspires to commit any offense defined in this title shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

Fed. R. Crim. P. 32
Sentencing and Judgment

(a) [Reserved]

(b) Time of Sentencing.

(1) In General. The court must impose sentence without unnecessary delay.

(2) Changing Time Limits. The court may, for good cause, change any time limits prescribed in this rule.

(c) Presentence Investigation.

(1) Required Investigation.

(A) In General. The probation officer must conduct a presentence investigation and submit a report to the court before it imposes sentence unless:

(i) 18 U.S.C. § 3593(c) or another statute requires otherwise; or

(ii) the court finds that the information in the record enables it to meaningfully exercise its sentencing authority under 18 U.S.C. § 3553, and the court explains its finding on the record.

(B) Restitution. If the law permits restitution, the probation officer must conduct an investigation and submit a report that contains sufficient information for the court to order restitution.

(2) Interviewing the Defendant. The probation officer who interviews a defendant as part of a presentence investigation must, on request, give the defendant's attorney notice and a reasonable opportunity to attend the interview.

(d) Presentence Report.

(1) Applying the Advisory Sentencing Guidelines. The presentence report must:

(A) identify all applicable guidelines and policy statements of the Sentencing Commission;

(B) calculate the defendant's offense level and criminal history category;

(C) state the resulting sentencing range and kinds of sentences available;

(D) identify any factor relevant to:

(i) the appropriate kind of sentence, or

(ii) the appropriate sentence within the applicable sentencing range; and

(E) identify any basis for departing from the applicable sentencing range.

(2) Additional Information. The presentence report must also contain the following:

- (A) the defendant's history and characteristics, including:
 - (i) any prior criminal record;
 - (ii) the defendant's financial condition; and
 - (iii) any circumstances affecting the defendant's behavior that may be helpful in imposing sentence or in correctional treatment;
 - (B) information that assesses any financial, social, psychological, and medical impact on any victim;
 - (C) when appropriate, the nature and extent of nonprison programs and resources available to the defendant;
 - (D) when the law provides for restitution, information sufficient for a restitution order;
 - (E) if the court orders a study under 18 U.S.C. § 3552(b), any resulting report and recommendation;
 - (F) a statement of whether the government seeks forfeiture under Rule 32.2 and any other law; and
 - (G) any other information that the court requires, including information relevant to the factors under 18 U.S.C. § 3553(a).
- (3) Exclusions. The presentence report must exclude the following:
- (A) any diagnoses that, if disclosed, might seriously disrupt a rehabilitation program;
 - (B) any sources of information obtained upon a promise of confidentiality; and
 - (C) any other information that, if disclosed, might result in physical or other harm to the defendant or others.
- (e) Disclosing the Report and Recommendation.
- (1) Time to Disclose. Unless the defendant has consented in writing, the probation officer must not submit a presentence report to the court or disclose its contents to anyone until the defendant has pleaded guilty or nolo contendere, or has been found guilty.
- (2) Minimum Required Notice. The probation officer must give the presentence report to the defendant, the defendant's attorney, and an attorney for the government at least 35 days before sentencing unless the defendant waives this minimum period.
- (3) Sentence Recommendation. By local rule or by order in a case, the court may direct the probation officer not to disclose to anyone other than the court the officer's recommendation on the sentence.

(f) Objecting to the Report.

(1) Time to Object. Within 14 days after receiving the presentence report, the parties must state in writing any objections, including objections to material information, sentencing guideline ranges, and policy statements contained in or omitted from the report.

(2) Serving Objections. An objecting party must provide a copy of its objections to the opposing party and to the probation officer.

(3) Action on Objections. After receiving objections, the probation officer may meet with the parties to discuss the objections. The probation officer may then investigate further and revise the presentence report as appropriate.

(g) Submitting the Report. At least 7 days before sentencing, the probation officer must submit to the court and to the parties the presentence report and an addendum containing any unresolved objections, the grounds for those objections, and the probation officer's comments on them.

(h) Notice of Possible Departure From Sentencing Guidelines. Before the court may depart from the applicable sentencing range on a ground not identified for departure either in the presentence report or in a party's prehearing submission, the court must give the parties reasonable notice that it is contemplating such a departure. The notice must specify any ground on which the court is contemplating a departure.

(i) Sentencing.

(1) In General. At sentencing, the court:

(A) must verify that the defendant and the defendant's attorney have read and discussed the presentence report and any addendum to the report;

(B) must give to the defendant and an attorney for the government a written summary of—or summarize in camera—any information excluded from the presentence report under Rule 32(d)(3) on which the court will rely in sentencing, and give them a reasonable opportunity to comment on that information;

(C) must allow the parties' attorneys to comment on the probation officer's determinations and other matters relating to an appropriate sentence; and

(D) may, for good cause, allow a party to make a new objection at any time before sentence is imposed.

(2) Introducing Evidence; Producing a Statement. The court may permit the parties to introduce evidence on the objections. If a witness testifies at sentencing, Rule 26.2(a)–(d) and (f) applies. If a party fails to comply with a Rule 26.2 order to produce a witness’s statement, the court must not consider that witness’s testimony.

(3) Court Determinations. At sentencing, the court:

(A) may accept any undisputed portion of the presentence report as a finding of fact;

(B) must—for any disputed portion of the presentence report or other controverted matter—rule on the dispute or determine that a ruling is unnecessary either because the matter will not affect sentencing, or because the court will not consider the matter in sentencing; and

(C) must append a copy of the court’s determinations under this rule to any copy of the presentence report made available to the Bureau of Prisons.

(4) Opportunity to Speak.

(A) By a Party. Before imposing sentence, the court must:

(i) provide the defendant’s attorney an opportunity to speak on the defendant’s behalf;

(ii) address the defendant personally in order to permit the defendant to speak or present any information to mitigate the sentence; and

(iii) provide an attorney for the government an opportunity to speak equivalent to that of the defendant’s attorney.

(B) By a Victim. Before imposing sentence, the court must address any victim of the crime who is present at sentencing and must permit the victim to be reasonably heard.

(C) In Camera Proceedings. Upon a party’s motion and for good cause, the court may hear in camera any statement made under Rule 32(i)(4).

(j) Defendant’s Right to Appeal.

(1) Advice of a Right to Appeal.

(A) Appealing a Conviction. If the defendant pleaded not guilty and was convicted, after sentencing the court must advise the defendant of the right to appeal the conviction.

(B) Appealing a Sentence. After sentencing—regardless of the defendant’s plea—the court must advise the defendant of any right to appeal the sentence.

(C) Appeal Costs. The court must advise a defendant who is unable to pay appeal costs of the right to ask for permission to appeal in forma pauperis.

(2) Clerk's Filing of Notice. If the defendant so requests, the clerk must immediately prepare and file a notice of appeal on the defendant's behalf.

(k) Judgment.

(1) In General. In the judgment of conviction, the court must set forth the plea, the jury verdict or the court's findings, the adjudication, and the sentence. If the defendant is found not guilty or is otherwise entitled to be discharged, the court must so order. The judge must sign the judgment, and the clerk must enter it.

(2) Criminal Forfeiture. Forfeiture procedures are governed by Rule 32.2.