

No. _____

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**IN THE
SUPREME COURT OF THE UNITED STATES**

-----◆-----
JOSEPH JONES,
Petitioner/Defendant,

vs.

THE UNITED STATES OF AMERICA,
Respondent/Plaintiff.

-----◆-----
**On Petition For a Writ of Certiorari To
The Eleventh Circuit Court of Appeals**

-----◆-----
PETITION FOR WRIT OF CERTIORARI

-----◆-----
**John Gee Edwards
Attorney for Petitioner
108 East Valley Street
Valdosta, GA 31601-5523
Phone: (229) 242-1790
Fax (229) 242-5257**

PETITION FOR WRIT OF CERTIORARI

Petitioner Joseph Jones respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the Eleventh Circuit Court of Appeals of June 16, 2023.

QUESTIONS PRESENTED

1. Whether the Appellant's rights were violated when the Eleventh Circuit Court of Appeals enforced a sentence appeal waiver in a plea agreement that was not based on valid consideration under contractual law.
2. Whether the Eleventh Circuit Court of Appeals improperly enforced an appellate waiver where the Government breached the plea agreement containing said waiver.
3. Whether the Eleventh Circuit Court of Appeals improperly enforced a sentence appeal waiver contained in the Appellant's plea agreement when same was not made knowingly and voluntarily.

PARTIES BELOW

Solicitor General of the United States
Room 5614
Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Joseph Jones, Petitioner/Defendant
Register No.: 01555-120
F.C.I. Coleman Medium
846 N. E. 54th Terrace
Sumterville, FL 33521

Leah McEwen, Assistant United States Attorney
P.O. Box 366
Albany, Georgia 31702

Michelle Schieber, Assistant United States Attorney
P.O. Box 1702
Macon, Georgia 31202

John Gee Edwards, Attorney for Appellant
108 East Valley Street
Valdosta, Georgia 31601

TABLE OF CONTENTS

| | |
|--|----|
| QUESTIONS PRESENTED | 2 |
| PARTIES BELOW | 3 |
| TABLE OF CONTENTS | 4 |
| TABLE OF AUTHORITIES..... | 5 |
| OPINIONS BELOW..... | 7 |
| JURISDICTION..... | 7 |
| CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.. | 7 |
| STATEMENT OF THE CASE..... | 15 |
| REASONS FOR GRANTING THE PETITION..... | 16 |
| CONCLUSION..... | 26 |
| PROOF OF SERVICE..... | 26 |

INDEX TO APPENDICES

| | |
|------------|--|
| APPENDIX A | <i>Judgment of the Eleventh Circuit Court of Appeals</i> |
| APPENDIX B | <i>Judgment of the United States District Court</i> |

TABLE OF AUTHORITIES

| CASES | PAGE(S) |
|--|---------|
| <i>Federal Statutes</i> | |
| 18 U.S.C. § 3742..... | 8 |
| 28 U.S.C. § 1254..... | 7 |
| <i>Federal Case Law</i> | |
| <u>Abney v. United States</u> , 431 U.S. 651, 656 (1977)..... | 23 |
| <u>Gall v. United States</u> , 552 U.S. 38, 51 (2007)..... | 24 |
| <u>Johnson Enters. of Jacksonville, Inc. v. FPL Group, Inc.</u> , 162 F.3d 1290, 1310 (11th Cir. 1998)..... | 17 |
| <u>Jones v. Barnes</u> , 463 U.S. 745, 751 (1983)..... | 23 |
| <u>Santobello v. New York</u> , 404 U.S. 257, 262, (1971)..... | 16 |
| <u>United States v. Benitez-Zapata</u> , 131 F.3d 1320 (11 th Cir. 2001)..... | 22, 23 |
| <u>United States v. Bushert</u> , 997 F.2d 1343 (1993)..... | 23, 24 |
| <u>United States v. Castillo</u> , 568 Fed. Appx. 774 at 778 (11 th Cir. 2014)..... | 21 |
| <u>United States v. Coney</u> , 2022 U.S. App. LEXIS 27133 (11 th Cir. 2022)..... | 16 |
| <u>United States v. Davidson</u> , 2013 U.S. Dist. LEXIS 112996 (M.D. Ala. 2013)..... | 18 |
| <u>United States v. Ferrell Walker</u> , Docket No. 07-15704-BB (11 th Cir. 2007)..... | 22 |
| <u>United States v. Malone</u> , 51 F.4th 1311 (11 th Cir. 2022)..... | 19 |
| <u>United States v. McPhee</u> , 108 F.3d 287, 290 (11 th Cir. 1997)..... | 21 |

| | |
|---|--------|
| <u>United States v. Packwood</u> , 848 F.2d 1009, 1011 (9th Cir. 1988)..... | 20, 22 |
| <u>United States v. Raynor</u> , 989 F.Supp.43 (D.C. 1997)..... | 24 |
| <u>United States v. Soon Dong Han</u> , 181 F.Supp.2d 1039 (N.D. Cal. 2002)..... | 24 |
| <u>United States v. Swinehart</u> , 614 F.2d 853 (3 rd Cir. 1980)..... | 17 |
| <u>United States v. Taylor</u> , 77 F.3d 368, 370 (11 th Cir. 1996)..... | 20 |
| <u>United States v. Weaver</u> , 275 F.3d 1320 (11 th Cir. 2001)..... | 22, 23 |
| <i>Federal Rules</i> | |
| Fed. R. Crim. Proc., Rule 11..... | 24 |
| <i>Sentencing Guidelines</i> | |
| U.S.S.G. § 3E1.1..... | 19 |

OPINIONS BELOW

The opinion or judgment of the Eleventh Circuit Court of Appeals in this case has not been published or reported. The Judgment of the Eleventh Circuit Court of Appeals is attached hereto in the appendix. (Appendix A). Likewise, the Judgment of the United States District Court for the Middle District of Georgia is attached hereto in the appendix. (Appendix B).

JURISDICTION

The Eleventh Circuit Court of Appeals issued its Order of dismissal on June 16, 2023. A copy of the Order denying the same appears at Appendix A. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const., 5th Amdt.:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just

compensation.

18 U.S.C. § 3742(a):

- (a) Appeal by a defendant.--A defendant may file a notice of appeal in the district court for review of an otherwise final sentence if the sentence--
- (1) was imposed in violation of law;
 - (2) was imposed as a result of an incorrect application of the sentencing guidelines; or
 - (3) is greater than the sentence specified in the applicable guideline range to the extent that the sentence includes a greater fine or term of imprisonment, probation, or supervised release than the maximum established in the guideline range, or includes a more limiting condition of probation or supervised release under section 3563(b)(6) or (b)(11) than the maximum established in the guideline range; or
 - (4) was imposed for an offense for which there is no sentencing guideline and is plainly unreasonable.

18 U.S.C. § 3742(c):

- (c) Plea agreements.--In the case of a plea agreement that includes a specific sentence under rule 11(e)(1)(C) of the Federal Rules of Criminal Procedure--

- (1) a defendant may not file a notice of appeal under paragraph (3) or (4) of subsection (a) unless the sentence imposed is greater than the sentence set forth in such agreement; and
- (2) the Government may not file a notice of appeal under paragraph (3) or (4) of subsection (b) unless the sentence imposed is less than the sentence set forth in such agreement.

Federal Rule of Criminal Procedure, Rule 11. Pleas

(b) Considering and Accepting a Guilty or Nolo Contendere Plea.

(1) *Advising and Questioning the Defendant.* Before the court accepts a plea of guilty or nolo contendere, the defendant may be placed under oath, and the court must address the defendant personally in open court. During this address, the court must inform the defendant of, and determine that the defendant understands, the following:

- (A) the government's right, in a prosecution for perjury or false statement, to use against the defendant any statement that the defendant gives under oath;
- (B) the right to plead not guilty, or having already so pleaded, to persist in that plea;
- (C) the right to a jury trial;
- (D) the right to be represented by counsel—and if necessary have the court appoint counsel—at trial and at every other stage of the proceeding;

(E) the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses;

(F) the defendant's waiver of these trial rights if the court accepts a plea of guilty or nolo contendere;

(G) the nature of each charge to which the defendant is pleading;

(H) any maximum possible penalty, including imprisonment, fine, and term of supervised release;

(I) any mandatory minimum penalty;

(J) any applicable forfeiture;

(K) the court's authority to order restitution;

(L) the court's obligation to impose a special assessment;

(M) in determining a sentence, the court's obligation to calculate the applicable sentencing-guideline range and to consider that range, possible departures under the Sentencing Guidelines, and other sentencing factors under 18 U.S.C. §3553(a);

(N) the terms of any plea-agreement provision waiving the right to appeal or to collaterally attack the sentence; and

(O) that, if convicted, a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

(2) *Ensuring That a Plea Is Voluntary.* Before accepting a plea of guilty or nolo contendere, the court must address the defendant personally in open court and determine that the plea is voluntary and did not result from force, threats, or promises (other than promises in a plea agreement).

(3) *Determining the Factual Basis for a Plea.* Before entering judgment on a guilty plea, the court must determine that there is a factual basis for the plea.

(c) Plea Agreement Procedure.

(1) *In General.* An attorney for the government and the defendant's attorney, or the defendant when proceeding pro se, may discuss and reach a plea agreement. The court must not participate in these discussions. If the defendant pleads guilty or nolo contendere to either a charged offense or a lesser or related offense, the plea agreement may specify that an attorney for the government will:

(A) not bring, or will move to dismiss, other charges;

(B) recommend, or agree not to oppose the defendant's request, that a particular sentence or sentencing range is appropriate or that a particular provision of the Sentencing Guidelines, or policy statement, or sentencing factor does or does not apply (such a recommendation or request does not bind the court); or

(C) agree that a specific sentence or sentencing range is the appropriate disposition of the case, or that a particular provision of the Sentencing Guidelines, or policy

statement, or sentencing factor does or does not apply (such a recommendation or request binds the court once the court accepts the plea agreement).

(2) *Disclosing a Plea Agreement.* The parties must disclose the plea agreement in open court when the plea is offered, unless the court for good cause allows the parties to disclose the plea agreement in camera.

(3) *Judicial Consideration of a Plea Agreement.*

(A) To the extent the plea agreement is of the type specified in Rule 11(c)(1)(A) or (C), the court may accept the agreement, reject it, or defer a decision until the court has reviewed the presentence report.

(B) To the extent the plea agreement is of the type specified in Rule 11(c)(1)(B), the court must advise the defendant that the defendant has no right to withdraw the plea if the court does not follow the recommendation or request.

(4) *Accepting a Plea Agreement.* If the court accepts the plea agreement, it must inform the defendant that to the extent the plea agreement is of the type specified in Rule 11(c)(1)(A) or (C), the agreed disposition will be included in the judgment.

(5) *Rejecting a Plea Agreement.* If the court rejects a plea agreement containing provisions of the type specified in Rule 11(c)(1)(A) or (C), the court must do the following on the record and in open court (or, for good cause, in camera):

(A) inform the parties that the court rejects the plea agreement;

(B) advise the defendant personally that the court is not required to follow the plea agreement and give the defendant an opportunity to withdraw the plea; and

(C) advise the defendant personally that if the plea is not withdrawn, the court may dispose of the case less favorably toward the defendant than the plea agreement contemplated.

(d) Withdrawing a Guilty or Nolo Contendere Plea. A defendant may withdraw a plea of guilty or nolo contendere:

(1) before the court accepts the plea, for any reason or no reason; or

(2) after the court accepts the plea, but before it imposes sentence if:

(A) the court rejects a plea agreement under 11(c)(5); or

(B) the defendant can show a fair and just reason for requesting the withdrawal.

(e) Finality of a Guilty or Nolo Contendere Plea. After the court imposes sentence, the defendant may not withdraw a plea of guilty or nolo contendere, and the plea may be set aside only on direct appeal or collateral attack.

(f) Admissibility or Inadmissibility of a Plea, Plea Discussions, and Related Statements. The admissibility or inadmissibility of a plea, a plea discussion, and any related statement is governed by Federal Rule of Evidence 410.

(g) Recording the Proceedings. The proceedings during which the defendant enters a plea must be recorded by a court reporter or by a suitable recording device. If

there is a guilty plea or a nolo contendere plea, the record must include the inquiries and advice to the defendant required under Rule 11(b) and (c).

(h) Harmless Error. A variance from the requirements of this rule is harmless error if it does not affect substantial rights.

STATEMENT OF THE CASE

Mr. Jones appealed the District Court's overruling of his objections to the P.S.I., the District Court's refusal to grant a downward variance or departure, and he challenges the procedural and substantive reasonableness of his sentence. After pleading guilty (Doc. 405) Mr. Jones objected (Doc. 633) to the draft P.S.I. The Government responded to the objections (Doc. 655), Mr. Jones replied to the Government's response (Doc. 685), and a final P.S.I. was filed (Doc. 756). His objections included a challenge to the relevancy of the sentencing guidelines, an objection to the leadership enhancement imposed, an objection to an enhancement for allegedly maintaining a drug involved premises, a motion for downward variance or departure, and an objection to the P.S.I. guidelines calculation where it assumed an offense level of greater than 43. His objections and motions for a lower sentence were overruled at sentencing. (Doc. 781). Mr. Jones objected to the procedural and substantive reasonableness of his sentence.

After filing his timely appeal, the Government moved to dismiss same on the basis of an appellate waiver in his plea agreement. Mr. Jones responded to the motion to dismiss, but the Eleventh Circuit Court of Appeals granted the motion. Now, he asks this Court to grant certiorari as to the question of whether his appeal was appropriately dismissed pursuant to an appellate waiver in his plea agreement.

REASONS FOR GRANTING THE PETITION

I. THE APPELLATE WAIVER WAS INVALID FOR LACK OF CONSIDERATION.

The government, in exchange for the defendant's promise to plead guilty, is bound by those material promises. Santobello v. New York, 404 U.S. 257, 262, (1971) (“[W]hen a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled.”). As noted in United States v. Coney, 2022 U.S. App. LEXIS 27133; 2022 WL 4489155, No. 21-13736 (11th Cir. Sept. 28, 2022), a plea agreement is to be interpreted according to the rules of contract law and failure of consideration may invalidate an appeal waiver. In Coney, the only identifiable consideration for the appellate waiver was the Government’s agreement to seek a reduction for acceptance of responsibility. Here, that was not the case and the appellate waiver fails for lack of consideration. Thus, the Eleventh Circuit Court of Appeals’ decision to enforce the appellate waiver despite lack of consideration and subsequent breach of the plea agreement violated Mr. Jones’ due process rights under the Constitution.

First, there was no consideration for acceptance of responsibility because the plea agreement reserved with the Government the right “to furnish to the Court information, if any, showing that the Defendant had not accepted responsibility,

including but not limited to, denying Defendant's involvement, giving conflicting statements as to Defendant's involvement, or engaging in additional criminal conduct including personal use of a controlled substance". (Doc. 405-1, pages 5-6). Given this reservation, there was no consideration for the plea agreement and it was voidable under contract law, and the appellate waiver is nullified as well.

To make an agreement enforceable, the parties to a contract generally must "promise to do something which will yield a benefit or advantage to the other, or which will result in a detriment or disadvantage to himself in exchange for the other promise." Johnson Enters. of Jacksonville, Inc. v. FPL Group, Inc., 162 F.3d 1290, 1310 (11th Cir. 1998)(quoting Williston on Contracts § 7:6 at 77-79, 87). If "one of the promises appears on its face to be so insubstantial as to impose no obligation at all on the promisor—who says, in effect, 'I will if I want to'" then that promise is illusory, and the contract is unenforceable. Id. (quoting Farnsworth, Contracts § 2.13 at 75-76 (1990)); see also, Swinehart, 614 F.2d at 858 ("The Government will not be allowed to avoid the obligation it ... incurred by claiming now that the language literally promises nothing to the defendant.") (quotation omitted). A plea agreement under which the government promises to perform unless, in its "sole" judgment, it no longer must, is just the sort of agreement that courts do not enforce because the government would have no obligation to comply with the agreement and thus not an agreement at all in the

sense of imposing binding mutual obligations. United States v. Davidson, 2013 U.S. Dist. LEXIS 112996 (M.D. Ala. 2013).

Second, to the extent there was consideration, the Government did not follow through with its end of the bargain. In despite of the plea agreement agreeing to a reduction for acceptance of responsibility, the Government argued against acceptance of responsibility based on Mr. Jones' objections to his P.S.I. Thus, whatever consideration there may have been for the plea agreement was nullified by the Government's breach of same and motion to deny a reduction for acceptance of responsibility. (Doc. 655, page 18).

As such, the appellate waiver is unenforceable for lack of consideration because the Government moved the District Court to deny acceptance of responsibility in breach of the agreement.

II. BECAUSE THE GOVERNMENT BREACHED THE PLEA AGREEMENT, THE APPELLATE WAIVER IS UNENFORCEABLE.

As noted, the Government motioned the District Court to deny Mr. Jones a reduction for acceptance of responsibility after he objected to the P.S.I. (Doc. 655, page 18). This is in contrast to the Government's agreement to request the reduction in the plea agreement. The Government initially sought an additional one point reduction for acceptance of responsibility in Mr. Jones' case. (Doc. 408), but argued otherwise in response to Mr. Jones' objections to the P.S.I. This

breach of the plea agreement by the Government renders it void and the appellate waiver also null. Thus, the Eleventh Circuit Court of Appeals erred by enforcing the appellate waiver.

In its response to the objections to the P.S.I., the Government broadly noted, without detail,

the Defendant stipulated to many facts in his plea agreement which he now attempts to sidestep the consequences of at sentencing. This false denial of truthful, provable, and previously admitted relevant conduct **is tantamount to a failure to demonstrate Acceptance of Responsibility**. As such, the Court should consider the continued application of the reduction which is present in the PSR based on acceptance of responsibility. U.S.S.G. § 3E1.1, Application Note 1(A).

(Doc. 655, page 18)(emphasis added). In United States v. Malone, 51 F.4th 1311 (11th Cir. 2022), the government agreed not to object to Malone's acceptance-of-responsibility reduction based on conduct that occurred before the plea, but that was the same conduct on which the government relied in opposing Malone's acceptance-of-responsibility reduction and the Eleventh Circuit deemed the plea agreement had been breached by the government. Here too, the Government did not point to any new conduct or information that altered the plea agreement's terms, thus it breached the agreement, thereby rendering the appellate waiver ineffective.

Because the plea agreement required the Government to argue for a departure based on acceptance of responsibility, and it failed to do so, the

Government breached the plea agreement and cannot now resurrect it to enforce the appellate waiver. “The government is bound by any material promises it makes to a defendant as part of a plea agreement that induces the defendant to plead guilty.” United States v. Taylor, 77 F.3d 368, 370 (11th Cir. 1996).

Consequently, Mr. Jones’ due process rights were violated and the Eleventh Circuit Court of Appeals erred in enforcing the appellate waiver and declining to hear the direct appeal on the merits. United States v. Packwood, 848 F.2d 1009, 1011 (9th Cir. 1988) (“Plea agreements implicate important due process rights ... and so the process must be fair A court must determine a breach, with an evidentiary hearing if there are disputed issues of fact.”).

Nor did the Government adhere to the plea agreement’s allowance for the Government to provide information “showing the Defendant has not accepted responsibility, including but not limited to, denying Defendant’s involvement, giving conflicting statements as to Defendant’s involvement, or engaging in additional criminal conduct including personal use of a controlled substance”. (Doc. 405-1, pages 5-6). The Government did more than furnish information to the District Court as allowed in the plea agreement. Instead, it moved the District Court to deny acceptance of responsibility.

Even assuming the Government’s characterization of Mr. Jones’ P.S.I. objections was correct, “[a] defendant’s obstructionist conduct following a guilty

plea is irrelevant to determining whether the defendant is entitled to the one-level reduction for acceptance of responsibility.” United States v. Castillo, 568 Fed. Appx. 774 at 778 (11th Cir. 2014), *citing*, United States v. McPhee, 108 F.3d 287, 290 (11th Cir. 1997). Thus, the information was not relevant to the question of acceptance of responsibility and the Government breached the plea agreement by moving to deny a reduction for same.

Secondly, while Mr. Jones objected to the P.S.I., he did not do so in a way that breached the plea agreement or was contrary to his acceptance of responsibility. The Government did not detail what information it was relying on specifically in its motion to deny acceptance of responsibility either. Moreover, the outcome in Castillo is distinguishable because the plea agreement there plainly stated “that the government could alter its recommendation based on post-plea misconduct” and such included committing a new offense and making false statements to government officials. Here, the plea agreement only allowed the Government to furnish additional materials for the District Court to consider, but the Government breached that agreement when it advocated Mr. Jones did not accept responsibility. Moreover, the information the Government relied in seeking to withdraw acceptance of responsibility was post-plea arguments in his P.S.I. objections and irrelevant to the issue of acceptance of responsibility. Thus, it was

outside the scope of the plea agreement's exception to allow the Government to furnish information related to acceptance of responsibility.

Consequently, Mr. Jones' due process rights were violated and the Eleventh Circuit Court of Appeals erred in enforcing the appellate waiver and declining to hear the direct appeal on the merits. United States v. Packwood, 848 F.2d 1009, 1011 (9th Cir. 1988) ("Plea agreements implicate important due process rights ... and so the process must be fair A court must determine a breach, with an evidentiary hearing if there are disputed issues of fact.").

III. ANY WAIVER OF THE RIGHT TO AN APPEAL WAS NOT KNOWING AND VOLUNTARY.

Mr. Jones' appellate waiver was not knowingly and voluntarily entered into and is unenforceable. United States v. Weaver, 275 F.3d 1320 (11th Cir. 2001); United States v. Benitez-Zapata, 131 F.3d 1444 (11th Cir. 1997). A similar motion to dismiss was denied by the Eleventh Circuit Court of Appeals in a case concerning possession of child pornography, namely the case of United States v. Ferrell Walker, Docket No. 07-15704-BB (11th Cir. 2007). Mr. Jones shows the decision in Walker should be equally applied here and the Government's motion to dismiss should have been denied.

Even assuming the appellate waiver survives despite the lack of consideration and breach of the plea agreement, same was not knowing and

voluntary and the Eleventh Circuit's enforcement of same violates Mr. Jones' due process rights. United States v. Weaver, 275 F.3d 1320 (11th Cir. 2001); United States v. Benitez-Zapata, 131 F.3d 1444 (11th Cir. 1997). While there is no constitutional right to appeal, there is a statutory right and any waiver of that right must be made in accordance with constitutional guarantees of due process. Jones v. Barnes, 463 U.S. 745, 751 (1983); Abney v. United States, 431 U.S. 651, 656 (1977); see 18 U.S.C. § 3742; 28 U.S.C. § 1291.

The Eleventh Circuit Court of Appeals has held that in order for a sentencing waiver to be effective, it must be made knowingly and voluntarily. United States v. Bushert, 997 F.2d 1343 (1993). In order for the waiver to be knowing and voluntary, "[t]he government must show that either (1) the district court specifically questioned the defendant concerning the sentence appeal waiver during the Rule 11 colloquy, or (2) it is manifestly clear from the record that the defendant otherwise understood the full significance of the waiver". Id. at 1351. The district court must not only advise the defendant that he or she is waiving their right to appeal the charges, but also their right to appeal their sentence and cannot confuse the defendant with language that does "not clearly convey to [the defendant] that he was giving up his right to appeal under *most* circumstances". Id. at 1352 (emphasis in original). Other courts have held that sentence appeal waivers are per se invalid and unconstitutional on the ground that a defendant cannot knowingly

and voluntarily waive his right to appeal a sentence that has yet to be decreed. See, United States v. Soon Dong Han, 181 F.Supp.2d 1039 (N.D. Cal. 2002); United States v. Raynor, 989 F.Supp. 43 (D.C. 1997).

While the District Court informed Mr. Jones his plea agreement waived a challenge to the District Court's application of the sentencing guidelines, it did not inform him it also waived any challenge to the general reasonableness of the sentence which can be reviewed by this Court on appeal. Gall v. United States, 552 U.S. 38, 51 (2007). Nor did it indicate the Government could breach the agreement and allow for the appellate waiver to remain in force. The plea agreement here did not suggest the sentence would be based upon a miscalculated sentencing range or that he waived the right to appeal the reasonableness of the sentence. Thus, it is not "manifestly clear" that Mr. Jones understood the "full significance of his sentence appeal waiver". Bushert, 997 at 1353-54.

Federal Rule of Criminal Procedure, Rule 11(b)(1)(N) states a district court must "determine that the defendant understands the terms of any plea-agreement provision waiving the right to appeal or to collaterally attack the sentence". Here, the record does indicate it was made manifestly clear to Mr. Jones that he could not appeal a determination regarding the reasonableness of the sentence. Nor did it state the Government could breach the plea agreement and the appeal waiver would remain in force. To that extent, Mr. Jones had uncertainty about the

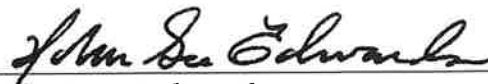
applicability of the waiver it should not be enforced and his appeal should be considered on the merits.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be granted.

This the 5th day of September, 2023.

Respectfully submitted,



John Gee Edwards

Attorney for Petitioner

Georgia State Bar Number: 241298

108 East Valley Street

Valdosta, GA 31601-5523

Phone: (229) 242-1790

Fax: (229) 242-5257

PROOF OF SERVICE

I certify that I have this date served a true and correct copy of the foregoing
upon:

Ms. Michelle L. Schieber
Assistant United States Attorney
P.O. Box 1702
Macon, Georgia 31202

Solicitor General of the United States
Room 5614
Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

by placing a copy of same in the United States Mail to the above address as shown
above with adequate postage affixed thereto to ensure delivery.

This the 5th day of September, 2023.



John Gee Edwards
Attorney for Petitioner

In the
United States Court of Appeals
For the Eleventh Circuit

No. 22-13435

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSEPH JONES,
a.k.a Baebae,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Georgia
D.C. Docket No. 1:19-cr-00021-LAG-TQL-3

JUDGMENT



2

22-13435

It is hereby ordered, adjudged, and decreed that the opinion issued on this date in this appeal is entered as the judgment of this Court.

Entered: June 16, 2023

For the Court: DAVID J. SMITH, Clerk of Court

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 22-13435

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSEPH JONES,
a.k.a Baebae,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Georgia
D.C. Docket No. 1:19-cr-00021-LAG-TQL-3

Before ROSENBAUM, JILL PRYOR, and BRASHER, Circuit Judges.

PER CURIAM:

The Government’s motion to dismiss this appeal pursuant to the appeal waiver in Appellant’s plea agreement is GRANTED. *See United States v. Bushert*, 997 F.2d 1343, 1351 (11th Cir. 1993) (sentence appeal waiver will be enforced if it was made knowingly and voluntarily); *United States v. Boyd*, 975 F.3d 1185, 1192 (11th Cir. 2020) (sentence appeal waiver will be enforced where “it was clearly conveyed to the defendant that he was giving up his right to appeal *most* circumstances” (quotation marks and brackets omitted)).

AO 245B Judgment in a Criminal Case
(Rev. 12/19) Sheet 1

UNITED STATES DISTRICT COURT

Middle District of Georgia

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

V.
JOSEPH JONES

Case Number: 1:19-CR-00021-LAG-TQL(3)

USM Number: 01555-120

JOHN GEE EDWARDS

Defendant's Attorney

THE DEFENDANT:

- ☒ pleaded guilty to count(s) 1
- ☐ 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:

Title & Section / Nature of Offense21:846 i/c/w 21:841(a)(1) and 841(b)(1)(A)(viii) - Conspiracy to Possess with
Intent to Distribute MethamphetamineOffense Ended

06/12/2019

Count

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) 6, 9, 10, 12 - 16, 18, 20, 26, & 27 ☐ 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.

09/23/2022

Date of Imposition of Judgment

s/ Leslie Abrams Gardner

Signature of Judge

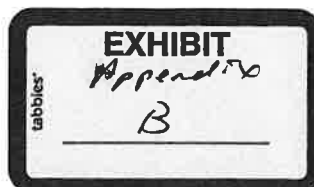
LESLIE ABRAMS GARDNER

UNITED STATES DISTRICT JUDGE

Name and Title of Judge

10/04/2022

Date



DEFENDANT: JOSEPH JONES
CASE NUMBER: 1:19-CR-00021-LAG-TQL(3)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: 360 months.

- ☒ The court makes the following recommendations to the Bureau of Prisons:
Residential Drug Abuse Program or any similar drug treatment program.
Cognitive Based Treatment 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: JOSEPH JONES
CASE NUMBER: 1:19-CR-00021-LAG-TQL(3)

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of: 5 years.

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: JOSEPH JONES
CASE NUMBER: 1:19-CR-00021-LAG-TQL(3)

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 _____
USPO Officer's Signature _____

Date _____
Date _____

AO 245B Judgment in a Criminal Case
Rev. 12/19) Sheet 3D — Supervised Release

Judgment—Page 5 of 7

DEFENDANT: JOSEPH JONES
CASE NUMBER: 1:19-CR-00021-LAG-TQL(3)

SPECIAL CONDITIONS OF SUPERVISION

You shall participate in a program of drug and alcohol testing and treatment. The U.S. Probation Office shall administratively supervise your participation in the program by approving the program, administering the testing, and supervising the treatment. You shall contribute to the costs of such treatment not to exceed an amount determined reasonable by the court approved "U.S. Probation Office's Sliding Scale for Services", and shall cooperate in securing any applicable third-party payment, such as insurance or Medicaid.

You are prohibited from possessing or using alcoholic beverages while enrolled in treatment such as mental health, sex offender or substance abuse treatment.

You shall submit your person, property, house, residence, vehicle, papers, computers (as defined by 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.

DEFENDANT: JOSEPH JONES
CASE NUMBER: 1:19-CR-00021-LAG-TQL(3)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 7.

| | <u>Assessment</u> | <u>Restitution</u> | <u>Fine</u> | <u>AVAA Assessment*</u> | <u>JVTA Assessment**</u> |
|---------------|-------------------|--------------------|-------------|-------------------------|--------------------------|
| TOTALS | \$100.00 | | | | |

- ☐ The determination of restitution is deferred until _____ An *Amended Judgment in a Criminal Case (AO245C)* 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.

- ☐ 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 7 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:
- | | | |
|---|-------------------------------|--|
| <input type="checkbox"/> the interest requirement is waived for the | <input type="checkbox"/> fine | <input type="checkbox"/> restitution |
| <input type="checkbox"/> the interest requirement for the | <input type="checkbox"/> fine | <input type="checkbox"/> 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: JOSEPH JONES
CASE NUMBER: 1:19-CR-00021-LAG-TQL(3)

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 \$ _____ 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:

Any criminal monetary penalty ordered by the court shall be due and payable in full immediately. Present and future Assets are subject to enforcement and may be included in the treasury offset program allowing qualified federal benefits to be applied to the balance of criminal monetary penalties.

Payment during the term of supervised release will commence within 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. (fine/restitution) payment shall be due during the period of imprisonment at the rate of not less than \$25 per quarter and pursuant to the bureau of prisons' financial responsibility program. The value of any future assets may be applied to offset the balance of criminal monetary penalties. The defendant may be included in the treasury offset program, allowing qualified benefits to be applied to offset the balance of any criminal monetary penalties.

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
- Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.
- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

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