

No.
IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 2023

JEMARE RAY MCNAIR, Petitioner,

v.

UNITED STATES OF AMERICA, Respondent

MOTION TO PROCEED IN FORMA PAUPERIS

Petitioner, Jemare Ray McNair, by his undersigned counsel, requests leave to file a Petition for Writ of Certiorari without prepayment of costs and to proceed in forma pauperis pursuant to Rule 39 of the Supreme Court Rules. Counsel was appointed in the lower court pursuant to 18 U.S.C. § 3006 and Rule 44, Fed. R. CR. P.

This the 21st day of November, 2023.

Respectfully submitted,



RUDOLPH A. ASHTON, III

Panel Attorney,
Eastern District of North Carolina
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PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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QUESTION PRESENTED

- I. WHETHER CAREER OFFENDER STATUS SHOULD BE SUBJECT TO APPEAL WAIVERS IN PLEA AGREEMENTS WHERE A DEFENDANT HAS A LEGITIMATE ARGUMENT THAT HE WAS NOT A CAREER OFFENDER.

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TABLE OF CASES AND STATUTES

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PETITION FOR WRIT OF CERTIORARI

Petitioner Jemare Ray McNair, respectfully prays this Court that a writ of certiorari issue to review the order of the United States Court of Appeals for the Fourth Circuit, issued on August 24, 2023, dismissing his appeal.

OPINION BELOW

The dismissal order of the United States Court of Appeals for the Fourth Circuit for which review is sought is United States v. Jemare Ray McNair, No. 22-4114 (4th Cir., August 24, 2023). The order of the United States Court of Appeals for the Fourth Circuit is reproduced in the Appendix to this petition as Appendix A. The judgment is reproduced as Appendix B. The mandate is reproduced as Appendix C. A copy of the district court amended judgment for the Eastern District of North Carolina wherein Petitioner was sentenced to 210 months imprisonment is reproduced as Appendix D.

JURISDICTION

The order and judgment of the United States Court of Appeals for the Fourth Circuit were issued on August 24, 2023. The jurisdiction of this court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

On April 7, 2021, the Petitioner was charged in a superseding indictment with three counts of distribution of cocaine base in violation of Title 21, U.S.C. § 841(a)(1). (App. E). He pled guilty to Count One pursuant to a plea agreement which contained an appeal waiver. (App. F). He was found to be a career offender based upon two felony drug offenses for which he was sentenced on the same day. (App. G).

The Fourth Circuit Court of Appeals dismissed the Petitioner's appeal based upon the appeal waiver in the plea agreement. Petitioner contends that a finding of career offender status is an enhancement that should not be subject to dismissal based upon an appeal waiver in a plea agreement. This issue involves a defendant's rights under the Fifth and Sixth Amendments to the United States Constitution. (App. H).

STATEMENT OF THE CASE

Procedural History

On December 19, 2019 Petitioner Jemare Ray McNair was indicted in a two count indictment with distribution of cocaine base (crack) in violation of 21 U.S.C. § 841(a)(1). Count One charged him with distributing 28 grams or more of cocaine base (crack) on April 20, 2018, and Count Two charged him with distributing a quantity of cocaine base (crack) on April 27, 2018. On April 7, 2021 a superseding indictment was entered adding a third count. Count Three charged Mr. McNair with distributing a quantity of cocaine base (crack) on March 17, 2020.

On June 2, 2021, pursuant to a plea agreement, Jemare McNair pled guilty to Count One of the superseding indictment. The plea of guilty was accepted, and he was adjudged guilty of Count One. Pursuant to the plea agreement, Counts Two and Three were to be dismissed at sentencing.

The case came on for sentencing before the Honorable Louise W. Flanagan, District Court Judge, at the February 14, 2022 term of court. Several objections were overruled, including the application of the career offender enhancement. Judge Flanagan imposed a sentence of 210 months imprisonment followed by 4 years of supervised release. On February 22, 2022, Petitioner's pro se notice of appeal was filed.

After the Petitioner's opening brief and joint appendix were filed, the Government filed a motion to dismiss the appeal based upon the appeal waiver in

the plea agreement. On August 24, 2023 the Fourth Circuit granted the Government's motion to dismiss his appeal. (App. A).

Statement of Facts

In 2018, an investigation was initiated by the Robeson County Sheriff's Department following the receipt of information from a confidential informant (CI) about drug trafficking activities conducted by Petitioner Jemare Ray McNair. It was alleged that he was a supplier of cocaine base (crack), in the St. Paul's area of Robeson County.

The agents decided to use the CI to make purchases of cocaine base (crack) from the Petitioner. The first buy occurred on April 20, 2018 at a residence on King Tuck Road in St. Paul's which netted 28.78 grams of cocaine base. The second buy occurred on April 27, 2018 at the same location, and resulted in the purchase of 27.60 grams of cocaine base. The third buy was on March 17, 2020, resulting in the purchase of 24.89 grams of cocaine base.

The Presentence Report determined that Petitioner was a career offender based upon two prior convictions for possession with intent to sell and deliver cocaine. Said sentences were imposed on September 7, 2016, and Petitioner received a 24 month probationary sentence. Counsel objected to the career offender status, and filed a sentencing memorandum and supplemental objection to the Presentence Report. The district court judge overruled the objection to career offender status, which more than doubled the guideline range.

Further facts will be developed during the argument portion of this petition.

REASONS FOR GRANTING THE PETITION

- I. THE PETITIONER HAD A LEGITIMATE ARGUMENT THAT HE WAS NOT A CAREER OFFENDER WHERE THE TWO PREDICATE PROBATIONARY SENTENCES WERE IMPOSED ON THE SAME DAY AND WERE NEVER REVOKED, AND THEREFORE IT WAS ERROR FOR THE FOURTH CIRCUIT COURT OF APPEALS TO DISMISS HIS APPEAL BASED UPON THE APPEAL WAIVER IN HIS PLEA AGREEMENT.

The designation of career offender status can dramatically increase a defendant's sentence. This petition involves the dismissal of Jemare McNair's appeal based upon an appeal waiver in his plea agreement where he contends he had a legitimate argument that he was not a career offender. Petitioner's guideline range more than doubled based upon his career offender status.

Petitioner's career offender status was based upon two prior North Carolina convictions of possession with intent to sell or deliver cocaine. The two cases came on for sentencing at the September 7, 2016 term of the Robeson County Superior Court, and appear in paragraphs 25 and 27 of the Presentence Report. (App. G).

Petitioner's defense counsel objected to the application of the career offender status and filed a sentencing memorandum and supplemental objection to the Presentence Report. He attached copies of the judgments that were entered on September 7, 2016. He contended that the judgments were technically "consolidated" and therefore United States v. Davis, 720 F.3d 215 (4th Cir. 2013) controlled.

The Government's position was that Davis was distinguishable because while defendant Davis had several robbery convictions separated by intervening arrests, he only received one consolidated judgment for all of his cases. The Government

also argued that the instant case was more similar to the Fourth Circuit's recent decision in United States v. Stuart, 1 F. 4th 326 (4th Cir. 2021). Stuart involved a criminal history point challenge as opposed to a career offender challenge. While on probation for a drug offense, Stuart was charged with a second drug offense. His probation was revoked on the first offense, and he was sentenced on the second offense on that same day. The Fourth Circuit affirmed the district court assigning 3 criminal history points to each of those offenses.

The district court judge herein overruled Petitioner McNair's objection. She also authored an explanatory memorandum opinion addressing why the Davis case was inapposite and why Stuart supported her decision that Paragraphs 25 and 27 were separate sentences.

Petitioner McNair respectfully urged in his Fourth Circuit opening brief that the two predicate probationary sentences were impliedly consolidated when they were imposed on the same day and his probation was never revoked. Stated somewhat differently, Petitioner McNair received one 24 month probationary sentence which, had it been revoked, would have resulted in consecutive 10 to 21 month sentences of imprisonment. Therefore, while the judgments were not technically consolidated, Petitioner only received one probationary sentence which began on September 7, 2016 and concluded on October 1, 2018 without any revocations. (App. G).

Petitioner contends that whether a defendant attains the status of career offender is an issue that should not fall within the scope of an appeal waiver in a plea agreement. As previously noted and outlined above, he has a legitimate argument that his two prior predicate felonies only resulted in one probationary sentence which he did not violate. His final Presentence Report resulted in a total offense level of 32, a criminal history category VI, and a guideline range of 210 to 262 months. Had he not been designated a career offender, his total guideline range would have been 26, with a criminal history category IV, and a guideline range of 92-115 months. (App. G).

The United States Supreme Court has held that a defendant may, consistent with the Constitution, waive his right to appeal his sentence as part of a plea agreement. See United States v. Ruiz, 536 U.S. 622, 632-33, 122 S. Ct. 2450, 153 L. Ed. 2d 586 (2002). In Ruiz the defendant rejected a plea agreement because it required her to “waive the right” to receive “impeachment information relating to any informants or other witnesses” as well as the right to receive information supporting any affirmative defense the defendant raises if the case goes to trial. 536 U.S. at 625. When she received a sentence higher than the one recommended in the plea agreement, she appealed. The Supreme Court considered whether the Fifth and Sixth Amendments require federal prosecutors, before entering into a binding plea agreement with a defendant, to disclose “impeachment information relating to any informants or other witnesses”. The Supreme Court held that the Constitution does not require that disclosure. In addressing this issue, the

Supreme Court in Ruiz noted that when defendants plead guilty they give up certain constitutional rights based upon the Fifth and Sixth Amendments, including the privilege against self-incrimination, the right to confront one's accusers, and the right to trial by jury. Addressing the constitutional rights, the Supreme Court in Ruiz stated:

“Given the seriousness of the matter, the Constitution insists, among other things, that the defendant enter a guilty plea that is ‘voluntary’ and that the defendant must make related waivers ‘knowing[ly], intelligent[ly], [and] with sufficient awareness of the relevant circumstances and likely consequences.’ *Brady v. United States*, 397 U.S. 742 748, 90 S.Ct. 1463, 25 L.Ed.2d 747 (1970); see also *Boykin, supra*, at 242, 89 S.Ct. 1709.”

536 U.S. at 629.

The Ruiz court concluded that the Constitution does not require the Government to disclose material impeachment evidence prior to entering a plea agreement with a criminal defendant. It further concluded that the “fast track” plea agreement requiring a defendant to waive a right to affirmative defense information was not unconstitutional.


While the Supreme Court did not address the particular issue at bar, it is respectfully contended that the seriousness of a defendant being labeled a career offender should allow a defendant to appeal this status even if the defendant has signed a plea agreement with an appeal waiver in it. Petitioner Jemare McNair therefore respectfully contends that the question of whether or not he is a career offender should not fall within the scope of the appeal waiver in his plea agreement.

CONCLUSION

For the foregoing reasons, Petitioner Jemare Ray McNair, respectfully requests that a Writ of Certiorari issue to review the order of the United States Court of Appeals for the Fourth Circuit dismissing his appeal.

This the 21st day of November, 2023.

DUNN, PITTMAN, SKINNER & ASHTON, PLLC
Counsel for Jemare Ray McNair

By: 

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No.
IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 2023

JEMARE RAY MCNAIR, Petitioner,
v.
UNITED STATES OF AMERICA, Respondent

ENTRY OF APPEARANCE
and
CERTIFICATE OF SERVICE

I, Rudolph A. Ashton, III, a member of the North Carolina State Bar, having been appointed to represent the Petitioner in the United States Court of Appeals for the Fourth Circuit, pursuant to the provisions of the Criminal Justice Act, 18 U.S.C. § 3006A, hereby enter my appearance in this Court in respect to this Petition for a Writ of Certiorari.

I, Rudolph A. Ashton, III, do swear or declare that on this date, the 22nd day of November, 2023, pursuant to Supreme Court Rules 29.3 and 29.4, I have served the attached motion for leave to proceed *in forma pauperis* and petition for a writ of certiorari on each party to the above proceeding, or that party's counsel, and on every other person required to be served by depositing in an envelope containing the

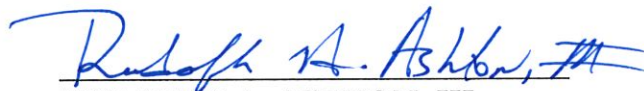
above documents in the United States mail properly addressed to each of them and with first-class postage prepaid. The names and addresses of those served are as follows:

David A. Bragdon, AUSA
Kristine L. Fritz, AUSA
Office of the United States Attorney
Eastern District of North Carolina
150 Fayetteville Street, Suite 2100
Raleigh, NC 27601

Solicitor General of the United States
Room 5616, Department of Justice
950 Pennsylvania Ave., N.W.
Washington DC 20530-0001

This the 21st day of November, 2023.

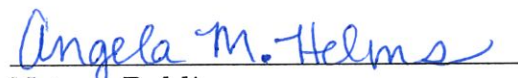
Respectfully submitted,

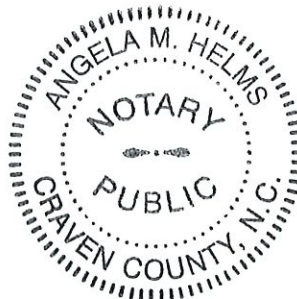


RUDOLPH A. ASHTON, III
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Subscribed and Sworn to Before Me

This the 21st day of November, 2023.


Notary Public



My Commission Expires: May 2, 2028

APPENDIX A

FILED: August 24, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-4114
(7:19-cr-00195-FL-1)

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JEMARE RAY MCNAIR, a/k/a Head,

Defendant - Appellant.

O R D E R

James Ray McNair seeks to appeal the 210-month sentence imposed following his guilty plea to distribution of 28 grams or more of cocaine base, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(B). The Government has moved to dismiss the appeal as barred by McNair's waiver of the right to appeal included in the plea agreement. Upon review of the record, we conclude that McNair knowingly and voluntarily waived his right to appeal and that the issues McNair seeks to raise on appeal fall squarely within the scope of his waiver of appellate rights. Accordingly, we grant the Government's motion to dismiss.

A-2

Entered at the direction of the panel: Judge Quattlebaum, Judge Heytens, and
Senior Judge Motz.

For the Court

/s/ Patricia S. Connor, Clerk

APPENDIX B

FILED: August 24, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-4114
(7:19-cr-00195-FL-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

JEMARE RAY MCNAIR, a/k/a Head

Defendant - Appellant

J U D G M E N T

In accordance with the decision of this court, this appeal is dismissed.

This judgment shall take effect upon issuance of this court's mandate in
accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

APPENDIX C

FILED: September 15, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-4114
(7:19-cr-00195-FL-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

JEMARE RAY MCNAIR, a/k/a Head

Defendant - Appellant

M A N D A T E

The judgment of this court, entered August 24, 2023, takes effect today.

This constitutes the formal mandate of this court issued pursuant to Rule
41(a) of the Federal Rules of Appellate Procedure.

/s/Nwamaka Anowi, Clerk

UNITED STATES DISTRICT COURT

Eastern District of North Carolina

UNITED STATES OF AMERICA

v.

JEMARE RAY MCNAIR*

Date of Original Judgment: 5/17/2022
(Or Date of Last Amended Judgment)

Reason for Amendment:

- ☐ Correction of Sentence on Remand (18 U.S.C. 3742(f)(1) and (2))
- ☐ Reduction of Sentence for Changed Circumstances (Fed. R. Crim. P. 35(b))
- ☐ Correction of Sentence by Sentencing Court (Fed. R. Crim. P. 35(a))
- ☒ Correction of Sentence for Clerical Mistake (Fed. R. Crim. P. 36)

*To correct spelling of defendant's last name

AMENDED JUDGMENT IN A CRIMINAL CASE

Case Number: 7:19-CR-195-1FL

USM Number: 07179-509

Steven B. Wright

Defendant's Attorney

- ☐ Modification of Supervision Conditions (18 U.S.C. §§ 3563(c) or 3583(e))
- ☐ Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. § 3582(c)(1))
- ☐ Modification of Imposed Term of Imprisonment for Retroactive Amendments to the Sentencing Guidelines (18 U.S.C. § 3582(c)(2))
- ☐ Direct Motion to District Court Pursuant ☐ 28 U.S.C. § 2255 or ☐ 18 U.S.C. § 3559(c)(7)
- ☐ Modification of Restitution Order (18 U.S.C. § 3664)

THE DEFENDANT:

- ☒ pleaded guilty to count(s) Count 1s
- ☐ pleaded nolo contendere to count(s) which was accepted by the court.
- ☐ was found guilty on count(s) after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21 U.S.C. § 841(a)(1), 21 U.S.C. § 841(b)(1)(B)	Distribution of 28 Grams or More of Cocaine Base (Crack)	4/20/2018	1s

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) 2s and 3s ☐ 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.

5/17/2022

Date of Imposition of Judgment



Signature of Judge

Louise W. Flanagan

U.S. District Judge

Name and Title of Judge

5/20/2022

Date

DEFENDANT: JEMARE RAY MCNAIR*
CASE NUMBER: 7:19-CR-195-1FL

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of :

210 months

☒ The court makes the following recommendations to the Bureau of Prisons:

The court recommends that the defendant receive intensive substance abuse treatment, vocational training, and educational opportunities, including GED, CDL training and culinary arts training. The court recommends defendant receive a mental health assessment and mental health treatment while incarcerated. The court recommends that he serve his term in FCI, Bennettsville, SC.

☒ 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: JEMARE RAY MCNAIR*

CASE NUMBER: 7:19-CR-195-1FL

SUPERVISED RELEASE

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

4 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 (42 U.S.C. § 16901, *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: JEMARE RAY MCNAIR*

CASE NUMBER: 7:19-CR-195-1FL

STANDARD CONDITIONS OF SUPERVISION

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

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

U.S. Probation Office Use Only

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

Defendant's Signature _____

Date _____

DEFENDANT: JEMARE RAY MCNAIR*

CASE NUMBER: 7:19-CR-195-1FL

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall submit to a search, at any time, with or without a warrant, and by any law enforcement or probation officer, of the defendant's person and any property, house, residence, vehicle, papers, computer, other electronic communication or data storage devices or media, and effects upon reasonable suspicion concerning a violation of a condition of supervised release or unlawful conduct by the defendant, or by any probation officer in the lawful discharge of the officer's supervision functions.

The defendant shall participate as directed in a program approved by the probation office for the treatment of narcotic addiction, drug dependency, or alcohol dependency which will include urinalysis testing or other drug detection measures and may require residence or participation in a residential treatment facility.

The defendant shall participate in a program of mental health treatment, as directed by the probation office.

The defendant shall support his dependent(s) and comply with the child support order issued in Robeson County, North Carolina, Docket Number 14CVD982 and make payments in accordance with the terms of the order.

DEFENDANT: JEMARE RAY MCNAIR*

CASE NUMBER: 7:19-CR-195-1FL

CRIMINAL MONETARY PENALTIES

The defendant must pay the following total criminal monetary penalties under the schedule of payments on Sheet 6.

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

☐ The determination of restitution is deferred until . An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

☐ The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss**</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	---------------------	----------------------------	-------------------------------

TOTALS	\$	0.00	\$	0.00
---------------	----	------	----	------

☐ Restitution amount ordered pursuant to plea agreement \$

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest, and it is ordered that:

☐ the interest requirement is waived for ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: JEMARE RAY MCNAIR*
CASE NUMBER: 7:19-CR-195-1FL

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be 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:

The special assessment in the amount of \$100.00 is due in full immediately.

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:

*Pursuant to the Orders of Forfeiture entered on February 14, 2022 and/or May 17, 2022.

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

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISIONNO. 7:19-CR-00195-FL

UNITED STATES OF AMERICA)

v.)

JEMARE RAY MCNAIR)

a/k/a "Head")

SUPERSEDING INDICTMENT

The Grand Jury charges that:

COUNT ONE

On or about April 20, 2018, in the Eastern District of North Carolina, the defendant, JEMARE RAY MCNAIR, also known as "Head," did knowingly and intentionally distribute twenty-eight (28) grams or more of cocaine base (crack), a Schedule II controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

COUNT TWO

On or about April 27, 2018, in the Eastern District of North Carolina, the defendant, JEMARE RAY MCNAIR, also known as "Head," did knowingly and intentionally distribute a quantity of cocaine base (crack), a Schedule II controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

COUNT THREE

On or about March 17, 2020, in the Eastern District of North Carolina, the defendant, JEMARE RAY MCNAIR, also known as "Head," did knowingly and intentionally distribute a quantity of cocaine base (crack), a Schedule II controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]

ALLEGATION OF PRIOR CONVICTION

For purposes of Title 21, United States Code, Sections 841(b) and 851, the defendant, JEMARE RAY MCNAIR, committed the violation alleged in Counts Two and Three after one prior conviction for a felony drug offense, as defined in Title 21, United States Code, Section 802(44), had become final.

FORFEITURE NOTICE

The defendant is given notice that pursuant to the provisions of Title 21, United States Code, Section 853 all of the defendant's interest in all property specified herein is subject to forfeiture.

Upon conviction of the offense(s) set forth in Count(s) One, Two, and Three, the defendant shall forfeit to the United States any property constituting, or derived from, any proceeds the defendant obtained, directly or indirectly, as a result of the said offense(s) and any property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, the said offense(s). The forfeitable property includes, but is not limited to, the gross proceeds personally obtained by the defendant, in an amount of at least \$3,275.

If any of the above-described forfeitable property, as a result of any act or omission of a defendant --

- (1) cannot be located upon the exercise of due diligence;
- (2) has been transferred or sold to, or deposited with, a third party;
- (3) has been placed beyond the jurisdiction of the court;
- (4) has been substantially diminished in value; or

(5) has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of said defendant up to the value of the forfeitable property described above.

A TRUE BILL:

REDACTED VERSION

Pursuant to the E-Government Act and the federal rules, the unredacted version of this document has been filed under seal.

FOREPERSON

DATE: 4-7-2021

G. NORMAN ACKER, III
Acting United States Attorney



BY: CAROLINE L. WEBB
Assistant United States Attorney

FILED IN OPEN COURT
ON 6-2-2021 BG
Peter A. Moore, Jr., Clerk
US District Court
Eastern District of NC

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

NO. 7:19-CR-195-FL

UNITED STATES OF AMERICA)	
)	
v.)	MEMORANDUM OF PLEA
)	AGREEMENT
JEMARE RAY MCNAIR)	
a/k/a "Head")	

The United States of America ("United States"), by and through the United States Attorney for the Eastern District of North Carolina ("USA-EDNC"), and the Defendant, with the concurrence of the Defendant's Attorney, Steven Wright, have agreed that the above-captioned case should be concluded in accordance with this Memorandum of Plea Agreement as follows:

1. This Memorandum constitutes the full and complete record of the Plea Agreement. There are no other agreements between the parties in addition to or different from the terms herein.

2. The Defendant agrees:

- a. To plead guilty to Count One of the Superseding Indictment herein.
- b. To make restitution to any victim in whatever amount the Court may order, pursuant to 18 U.S.C. §§ 3663 and 3663A. Said restitution shall be due and payable immediately.
- c. To waive knowingly and expressly the right to appeal the conviction and whatever sentence is imposed on any ground, including any appeal pursuant to 18 U.S.C. § 3742, and further to waive any right to contest the conviction or the sentence in any post-conviction proceeding, including any proceeding under 28 U.S.C. § 2255, excepting an appeal or motion based upon grounds of ineffective assistance of counsel or prosecutorial misconduct not known to the Defendant at the time of the Defendant's guilty plea. The foregoing appeal waiver does not constitute or trigger a waiver by the United States of any of its rights to appeal provided by law.

JEMARE RAY MCNAIR

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- | | | | | | |
|-----|------------------------|---|--|----------|---|
| 25. | 07/18/2014
(Age 25) | Possession With Intent to Sell
or Deliver Cocaine (F)
14CRS54390
Robeson County Superior
Court, Lumberton, NC | 09/07/2016: Pled guilty, 10 to
21 months custody, suspended,
24 months probation, 1 day
custody
09/26/2016: Probation
violation, probation continued
06/02/2017: Probation
violation, probation continued
10/01/2018: Probation
violation, probation terminated | 4A1.1(c) | 1 |
|-----|------------------------|---|--|----------|---|

On July 17, 2014, the defendant possessed with intent to sell and deliver 20 grams of cocaine. Companion charges of Felon in Possession of a Firearm and Possession With Intent to Sell or Deliver Marijuana were dismissed.

Supervision Adjustment: McNair violated the conditions of his probation by leaving the county without permission, engaging in new criminal conduct, and failing to pay monetary obligations.

- | | | | | | |
|-----|------------------------|---|---|-------------|---|
| 26. | 07/25/2014
(Age 25) | Driving While License
Revoked (M)
No Seat Belt
14CR706818
Robeson County District
Court, Lumberton, NC | 09/03/2014: Pled guilty, 15
days custody, suspended, 12
months unsupervised probation | 4A1.2(c)(1) | 0 |
|-----|------------------------|---|---|-------------|---|

The offenses occurred on July 25, 2014.

- | | | | | | |
|-----|------------------------|---|---|----------|---|
| 27. | 11/11/2014
(Age 25) | Possession With Intent to Sell
or Deliver Cocaine (F)
14CRS56992
Robeson County Superior
Court, Lumberton, NC | 09/07/2016: Pled guilty, 10 to
21 months custody,
consecutive to 14CRS54390
suspended, 24 months
probation
09/26/2016: Probation
violation, probation continued
06/02/2017: Probation
violation, probation continued
10/01/2018: Probation
terminated, probation
continued | 4A1.1(c) | 1 |
|-----|------------------------|---|---|----------|---|

On November 11, 2014, the defendant possessed with the intent to sell and deliver 6.7 grams of cocaine. Additional charges of Resisting a Public Officer, Possession of Marijuana, and Injury to Personal Property (14CRS56993), No Seat Belt (14CRS710352), Driving While License Revoked (14CRS710352), and Window Tint Violation (14CRS710353) were dismissed.

Supervision Adjustment: McNair violated the conditions of his probation by leaving the county without permission and engaging in new criminal conduct.

JEMARE RAY MCNAIR

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33. The defendant committed the instant offense while under a criminal justice sentence for 14CRS54390 and 14CRS56992; therefore, two points are added. USSG §4A1.1(d).
34. The total criminal history score is 8. According to the sentencing table in USSG Chapter 5, Part A, a criminal history score of 8 establishes a criminal history category of IV.
35. The defendant is a career offender; therefore, the criminal history category is VI. USSG §4B1.1(b).

Other Criminal Conduct

36. None.

Pending Charges

37. None.

Other Arrests

38. On July 8, 2011, the defendant was charged in Columbus County with Robbery with a Dangerous Weapon (11CR50428) and two counts of Second Degree Kidnapping (11CR50430 and 11CR50431) after he allegedly robbed two employees of Time Savers with a revolver of \$3,050 in cash and cigarettes. These charges were later dismissed.
39. The defendant was charged with the following offenses in North Carolina that were later dismissed: Cumberland County – Failure to Maintain Lane Control (17CR708091); and Robeson County – Breaking and Entering and Larceny After Breaking and Entering (11CRS58072), Resisting a Public Officer (14CR962), Speeding and Driving While License Revoked (14CR706359), Driving While License Revoked (15CR3499), Possession of a Firearm by a Felon (15CRS3177), No Operator's License and No Seatbelt (15CR703136), and No Seatbelt (16IF701473).
40. In Robeson County, charges of Robbery With a Dangerous Weapon, Conspiracy to Commit Robbery With a Dangerous Weapon, and Second Degree Kidnapping (11CR50540) and three counts of Second Degree Kidnapping (11CR50542) were alleged against the defendant, which allegedly occurred on January 19, 2011; however, these charges were never to be served on the defendant and dismissed.

PART C. OFFENDER CHARACTERISTICS

Personal and Family Data

Note: The defendant's family information was unverified, as attempts to contact family were unsuccessful.

41. Jemare Ray McNair, 32, was born on May 22, 1989, in Lumberton, North Carolina. He is the only child born to the non-marital union of Danny Baxley and Mary (nee: McNair) Jackson. The defendant's father resides in White Oak, North Carolina, while his mother, 52, resides in Lumberton. The defendant's stepfather, John Jackson, passed away in May 2021 from throat cancer. Maternal half-siblings include, Ada McNair, 26, of Lumberton; Bobby McNair, 24, who is in the Bureau of Prisons (BOP), serving a sentence of 184 months for Robbery and Brandishing a Firearm in Furtherance of a

JEMARE RAY MCNAIR
Page 13 of 15

Count 1: Distribution of 28 Grams or More of Cocaine Base (Crack)

- | | | |
|-----|--|-----------|
| 57. | Base Offense Level: The guideline for a violation of 21 U.S.C. § 841(a)(1) is USSG §2D1.1. Pursuant to the stipulated Plea Agreement, the defendant was accountable for not less than 28 grams, nor more than 112 grams of cocaine base (crack). The base offense level is 24. USSG §2D1.1(a)(5). | <u>24</u> |
| 58. | Specific Offense Characteristics: If a dangerous weapon (including a firearm) was possessed, increase by 2 levels. USSG §2D1.1(b)(1). | <u>+2</u> |
| 59. | Specific Offense Characteristics: If the defendant maintained a premises for the purpose of manufacturing or distributing a controlled substance, increase by 2 levels. USSG §2D1.1(b)(12). | <u>+2</u> |
| 60. | Victim Related Adjustment: None. | <u>0</u> |
| 61. | Adjustment for Role in the Offense: None. | <u>0</u> |
| 62. | Adjustment for Obstruction of Justice: None. | <u>0</u> |
| 63. | Adjusted Offense Level (Subtotal): | <u>28</u> |
| 64. | Chapter Four Enhancement: The defendant was at least 18 years old at the time of the instant offense of conviction; the instant offense of conviction is a felony that is either a crime of violence or a controlled substance offense; and the defendant has at least two prior felony convictions of either a crime of violence or a controlled substance offense. The defendant has prior convictions for Possession With Intent to Sell or Deliver Cocaine (14CRS54390 and 14CRS56992); therefore, the defendant is a career offender. The offense level for a career offender is 34 because the statutory maximum term of imprisonment is 25 years or more. USSG §4B1.1(b)(2). | <u>34</u> |
| 65. | Acceptance of Responsibility: The defendant has clearly demonstrated acceptance of responsibility for the offense. Accordingly, the offense level is decreased by two levels. USSG §3E1.1(a). | <u>-2</u> |
| 66. | Total Offense Level: | <u>32</u> |

PART E. SENTENCING OPTIONS

Custody

67. **Statutory Provisions:** The minimum term of imprisonment is 5 years and the maximum term is 40 years. 21 U.S.C. § 841(a)(1) and 21 U.S.C. § 841(b)(1)(B).
68. **Guideline Provisions:** Based upon a total offense level of 32 and a criminal history category of VI, the guideline imprisonment range is 210 months to 262 months.

Amend. V

CONSTITUTION

AMENDMENT V

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.

AMENDMENT VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

AMENDMENT VII

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

AMENDMENT VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

AMENDMENT IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.