

APPENDIX 1

UNITED STATES DISTRICT COURT

Southern District of Mississippi

UNITED STATES OF AMERICA

v.

BORIS WARD

JUDGMENT IN A CRIMINAL CASE

Case Number: 5:19cr3KHJ-LGI-001

USM Number: 21316-043

Larry Stamps

Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s)

☐ pleaded nolo contendere to count(s) which was accepted by the court.

☒ was found guilty on count(s) 1, 2, 3, 4, and 5 of the Second Superseding Indictment after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21 U.S.C. §§ 841(a)(1) and (b)(1)(C)	Possess with Intent to Distribute Methamphetamine	6/1/2018	1ss

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)

☐ Count(s) is are dismissed on the motion of the United States.

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

March 30, 2023

Date of Imposition of Judgment

Kristi H. Johnson

Signature of Judge

The Honorable Kristi H. Johnson

U.S. District Judge

Name and Title of Judge

April 7, 2023

Date

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ADDITIONAL COUNTS OF CONVICTION

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21 U.S.C. § § 841(a)(1) and (b)(1)(C)	Possess with Intent to Distribute Methamphetamine	6/13/2018	2ss
21 U.S.C. § § 841(a)(1) and (b)(1)(A)(viii)	Possess with Intent to Distribute 50 grams or more Methamphetamine	6/15/2018	3ss
18 U.S.C. § § 922(g)(1) and 924(a)(2)	Felon in Possession of a Firearm	6/15/2018	4ss
18 U.S.C. § 924(c)(1)(A)	Possession of a Firearm in Furtherance of a Drug Trafficking Crime	6/15/2018	5ss

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IMPRISONMENT

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

235 months as to Counts 1 through 3, 120 months as to Count 4, all to run concurrently to each other, and 60 months as to Count 5, to run consecutively to Counts 1 through 4, for a total term of 295 months.

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

The Court recommended the defendant be housed at FCC Yazoo City, Mississippi, should he so qualify.

☒ 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:

☐ by 12 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

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SUPERVISED RELEASE

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

3 year term as to Counts 1, 2, and 4, and 5 year term as to Counts 3 and 5, all to run concurrently to each other

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.

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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 _____

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SPECIAL CONDITIONS OF SUPERVISION

- 1) You shall not incur new credit charges or open additional lines of credit without the approval of the probation officer, unless the defendant is in compliance with the installment payment schedule.
- 2) You shall provide the probation office with access to any requested financial information.
- 3) You shall submit your person, property, house, residence, vehicle, papers, electronic communication devices, 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. You shall warn any other occupants that the premises may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that you have violated a condition of your supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.
- 4) You must submit to substance abuse testing to determine if you have used a prohibited substance. You must not attempt to obstruct or tamper with the testing methods.
- 5) You shall not possess, ingest, or otherwise use, a synthetic cannabinoid, or other synthetic narcotic, unless prescribed by a licensed medical practitioner.
- 6) In the event that you reside in or visit a jurisdiction where marijuana or marijuana products have been approved, legalized, or decriminalized, you shall not possess, ingest, or otherwise use marijuana or marijuana products.

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CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$ 500.00	\$	\$ 5,000.00	\$	\$
	\$100 per count				

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

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

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

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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TOTALS	\$	0.00	\$	0.00
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☐ Restitution amount ordered pursuant to plea agreement \$ _____

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

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

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

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

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

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

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

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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 monthly (e.g., weekly, monthly, quarterly) installments of \$ 50.00 over a period of xxxx (e.g., months or years), to commence 60 days (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:
In the event the fine is not paid in full prior to the termination of supervised release, you are ordered to enter into a written agreement with the Financial Litigation Program of the U.S. Attorney's Office for payment of the remaining balance. Additionally, the value of future discovered assets may be applied to offset the balance of criminal monetary penalties. You may be included in the Treasury Offset Program allowing qualified federal benefits to be applied to offset the balance of 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

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

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

APPENDIX 2-A

United States Court of Appeals for the Fifth Circuit

No. 23-60195
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

October 10, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

BORIS WARD,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 5:19-CR-3-1

Before WILLETT, DUNCAN, and DOUGLAS, *Circuit Judges*.

PER CURIAM:*

A jury convicted Boris Ward of possession of methamphetamine (mixture) with intent to distribute, possession of 50 grams or more of methamphetamine with intent to distribute, possession of a firearm by a felon, and possession of a firearm in furtherance of a drug trafficking crime. The district court sentenced him within the guidelines range to a total of 295

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

No. 23-60195

months of imprisonment, followed by a five-year term of supervised release. On appeal, Ward contends that his trial counsel rendered ineffective assistance and the district court abused its discretion by denying his request for a downward variance.

Ward argues that his trial counsel rendered ineffective assistance by (1) failing to understand the Government's plea offer and to adequately explain it, (2) advising Ward to reject a proposed stipulation to a previous felony conviction and failing to object to the introduction of evidence of Ward's prior conviction, and (3) failing to object to the introduction of photographs of methamphetamine sold by Ward in lieu of the drugs themselves, which had been destroyed by mistake. However, generally, claims of "ineffective assistance of counsel should not be litigated on direct appeal." *United States v. Isgar*, 739 F.3d 829, 841 (5th Cir. 2014) (internal quotation marks and citation omitted).

Here, the record does not allow us "to fairly evaluate the merits of the claim[s]." *Id.* (internal quotation marks and citation omitted). The record does not substantially detail trial counsel's knowledge, understanding of the case, investigations, legal research, advice to Ward, or strategic decisions made during the representation. *See United States v. Bounds*, 943 F.2d 541, 544 (5th Cir. 1991). Ward did not file any post-trial motions contesting his counsel's actions or otherwise complain about his counsel's performance. *See United States v. Gibson*, 55 F.3d 173, 179 (5th Cir. 1995). Finally, his claims are not based on purely legal issues but rather on counsel's actions or failures to act. *See United States v. Diehl*, 775 F.3d 714, 719 (5th Cir. 2015). Therefore, we decline to consider Ward's claims of ineffective assistance of counsel at this time without prejudice to his right to raise them in a 28 U.S.C. § 2255 motion. *See, e.g., United States v. Gulley*, 526 F.3d 809, 821-22 (5th Cir. 2008).

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Further, Ward claims that the distinction in the Sentencing Guidelines between methamphetamine mixture and d-methamphetamine hydrochloride, or “Ice,” resulted in an unwarranted sentencing disparity in his case. *See generally* U.S.S.G. § 2D1.1(c). He argues that the district court should have granted his request for a downward variance to account for this disparity. This argument “amounts to a challenge to the substantive reasonableness of [his] sentence,” which we review for abuse of discretion, while maintaining a presumption that a within-guidelines sentence is reasonable. *United States v. Douglas*, 957 F.3d 602, 609 (5th Cir. 2020) (internal quotation marks, brackets, and citation omitted).

While the district court has the discretion to sentence a defendant based on policy disagreements with how the Guidelines treat different forms of methamphetamine, it is not required to do so, and a within-guidelines sentence is not substantively unreasonable merely because the methamphetamine Guideline is “not empirically-based.” *United States v. Lara*, 23 F.4th 459, 486 (5th Cir.), *cert. denied*, 142 S. Ct. 2790 (2022); *see United States v. Malone*, 828 F.3d 331, 338-39 (5th Cir. 2016). In this case, the record indicates that the district court was aware of its discretion to vary downward for policy reasons and chose not to exercise its discretion. *See Malone*, 828 F.3d at 338-39. Additionally, the record shows that the district court relied on appropriate 18 U.S.C. § 3553(a) factors in determining the sentence. *See Douglas*, 957 F.3d at 609-10. Nothing suggests that the district court failed to consider a factor that should have received significant weight, gave significant weight to an improper factor, or made a clear error of judgment in balancing the sentencing factors. *See id.* at 609. Therefore, Ward has failed to rebut the presumption that his within-guidelines sentence is reasonable. *See Lara*, 23 F.4th at 486; *Douglas*, 957 F.3d at 609.

The judgment of the district court is AFFIRMED.

APPENDIX 2-B

United States Court of Appeals for the Fifth Circuit

No. 23-60195
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

October 10, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

BORIS WARD,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 5:19-CR-3-1

Before WILLETT, DUNCAN, and DOUGLAS, *Circuit Judges.*

J U D G M E N T

This cause was considered on the record on appeal and the briefs on file.

IT IS ORDERED and ADJUDGED that the judgment of the District Court is AFFIRMED.