NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 22-2764

UNITED STATES OF AMERICA

v.

HARVEY HOLLAND,
Appellant

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Criminal No. 1-01-cr-00195-006)
U.S. District Judge: Honorable Robert D. Mariani

Submitted Under Third Circuit L.A.R. 34.1(a)
October 5, 2023

Before: SHWARTZ, MATEY, and FISHER, Circuit Judges.

(Filed: October 24, 2023)

OPINION*

---

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

SHWARTZ, Circuit Judge.

Harvey Holland appeals the District Court's order granting his motion for resentencing under the First Step Act but declining to sentence him to time served. For the following reasons, we will affirm.

I

A

In 2002, a jury convicted Holland of distribution and possession with intent to distribute fifty grams or more of crack cocaine, in violation of 21 U.S.C. § 841(a)(1), and conspiracy to do so, in violation of 21 U.S.C. § 846.[1] At the time of Holland's crime, each count carried a mandatory minimum term of imprisonment of ten years and a maximum term of life under 21 U.S.C. §§ 841(b)(1)(A) and 846.

Holland's United States Sentencing Guidelines base offense level was determined according to U.S.S.G. § 2D1.1(d)(1), which directs the court to apply the offense level of forty-three set forth in § 2A1.1 if a victim was killed during the defendant's drug trafficking crime under circumstances constituting murder pursuant to 18 U.S.C. § 1111. The sentencing court applied the cross-referenced murder enhancement because the trial testimony proved by a preponderance of the evidence that Holland had committed a murder in furtherance of the drug trafficking conspiracy. Furthermore, although the Court found that Holland was a career offender, it did not sentence him under the career

[1] Holland was also charged with causing the death of another through the use of a firearm during and in relation to a drug trafficking crime, in violation of 18 U.S.C. § 924(j), but the jury hung on that count and the Government eventually dismissed it.

offender provision because the career offender offense level of thirty-seven was lower than the offense level of forty-three required by § 2D1.1. Holland's offense level of forty-three and his criminal history category of VI resulted in a Guidelines range of life imprisonment and the sentencing court imposed concurrent life sentences on both counts**.** Holland appealed and we affirmed. United States v. Holland, 76 F. App'x 452, 456 (3d Cir. 2003).

B

In 2019, Holland moved for resentencing under the First Step Act and sought a sentence of time served. The District Court resentenced Holland to consecutive terms of forty years' imprisonment on each count, holding (1) under the First Step Act, each of Holland's convictions now subjected him to a mandatory minimum term of five years' imprisonment and a maximum of forty years, United States v. Holland, No. 3:01-cr-00195, 2022 WL 4102766, at *5 (M.D. Pa. Sept. 7, 2022), (2) Holland's recommended Guidelines range was still life imprisonment due to the application of the cross-referenced murder enhancement, id. at *11, and Holland's objections to the drug weight attributable to him sought to relitigate factual determinations made at his original sentencing, which a court may not do when considering a First Step Act motion, id. at *6-7, *9-11, (3) even though Holland's sentence "did not rely on his status as a career offender," Holland was still a career offender under the Guidelines because Holland's prior New Jersey and Pennsylvania convictions qualified as crimes of violence, id. at *7-

9, and (4) the 18 U.S.C. § 3553(a) factors supported the combined statutory maximum eighty-year sentence, id. at *11-15.

Holland appeals.

II[2]

In 2010, Congress enacted the Fair Sentencing Act, which "lessen[ed] sentencing disparities between convictions involving crack cocaine and convictions involving powder cocaine . . . by, among other things, increasing the amount of crack cocaine necessary to trigger higher statutory minimum sentences (Section 2) . . . ." United States v. Murphy, 998 F.3d 549, 553 (3d Cir. 2021), abrogated on other grounds by United States v. Shields, 48 F.4th 183, 190-92 (3d Cir. 2022). In 2018, the First Step Act made Sections 2 and 3 of the Fair Sentencing Act retroactive. Id. Thus, the district court may now, on motion of the defendant, "impose a reduced sentence as if section[] 2 . . . of the Fair Sentencing Act . . . were in effect at the time the . . . offense was committed." Pub. L. No. 115-391, 132 Stat. 5194, 5222.

The First Step Act does not, however, "guarantee anyone a lower sentence." United States v. Hart, 983 F.3d 638, 639 (3d Cir. 2020); 132 Stat. at 5222 ("Nothing in this section shall be construed to require a court to reduce any sentence pursuant to this

[2] The District Court had jurisdiction over Holland's case under 18 U.S.C. § 3231 and jurisdiction to consider Holland's motion under the First Step Act pursuant to 18 U.S.C. § 3582(c)(1)(B) and Section 404 of the Act, Pub. L. No. 115-391, 132 Stat. 5194, 5222. We have jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a).

"Our review over a district court's decision to grant or deny a motion for sentence reduction is typically for abuse of discretion. However, we exercise plenary review when we are presented with legal questions." United States v. Birt, 966 F.3d 257, 259 n.2 (3d Cir. 2020) (citation and quotation marks omitted).

section."). Instead, when evaluating a First Step Act motion, a district court must first determine whether the defendant committed an offense to which the retroactive amendments to the Fair Sentencing Act apply and, therefore, is eligible to be resentenced. See Shields, 48 F.4th at 195. If the district court concludes the defendant is eligible for resentencing, the court must "recalculate [his] . . . Guidelines range . . . to reflect [only] the retroactive application of the Fair Sentencing Act." Concepcion v. United States, 142 S. Ct. 2389, 2402 & n.6 (2022). The district court then has discretion to impose a reduced sentence considering any intervening changes in law and fact since the imposition of the defendant's original sentence. Id. at 2396, 2402 n.6, 2404.

The parties do not dispute that Holland was eligible for resentencing because the statutory penalties for his drug convictions were modified by Section 2 of the Fair Sentencing Act and the First Step Act applies those modifications retroactively. We therefore examine whether the District Court (1) correctly calculated Holland's Guidelines range applying only the retroactive portions of the Fair Sentencing Act, and (2) acted within its discretion in imposing its chosen sentence.

A

The District Court correctly recognized that Holland's recommended Guidelines range was still life due to the murder cross-reference, Holland, 2022 WL 4102766, at *11, but that this range was now capped by statutory maximum terms of forty years' imprisonment on each count, see U.S.S.G. § 5G1.1 (directing sentencing courts to adjust the Guidelines range for any statutory minimum or maximum sentence). A jury found that Holland's drug offenses involved fifty grams or more of crack cocaine. Before the

Fair Sentencing Act, this amount triggered a mandatory minimum sentence of ten years and a maximum of life. 21 U.S.C. § 841(b)(1)(A) (2001). The Fair Sentencing Act increased the amount of crack cocaine required to trigger these penalties from fifty grams to 280. Pub. L. No. 111-220, 124 Stat. 2372, 2372. Under the Act, for crimes involving more than twenty-eight but less than 280 grams of crack cocaine, a defendant now faces a statutory mandatory minimum of five years and a statutory maximum of forty years. Id. (revising the qualifying amount of crack cocaine under § 841(b)(1)(B) from five grams to twenty-eight grams). Thus, because each of Holland's convictions now carries a statutory maximum term of forty years, his new Guidelines range is capped at eighty years' imprisonment.

B

We next examine whether the District Court abused its discretion in imposing the maximum eighty-year term of imprisonment. When exercising its discretion to resentence a defendant under the First Step Act, a district court must consider any changed circumstances raised by the parties, Concepcion, 142 S. Ct. at 2404, including (1) "new, relevant facts that did not exist, or could not reasonably have been known by the parties, at the time of the first sentencing," Murphy, 998 F.3d at 555, (2) intervening changes in the law, such as nonretroactive Guidelines amendments, Concepcion, 142 S. Ct. at 2403-04, (3) postsentencing developments, such as rehabilitation, prison misconduct, or health issues, Shields, 48 F.4th at 190, and (4) the § 3553(a) factors, Murphy, 998 F.3d at 555. While it is "not required to be persuaded by every argument [the] parties make," a district court "bear[s] the standard obligation" to "consider the

parties' nonfrivolous arguments" and "explain [its] decision." Concepcion, 142 S. Ct. at 2404.

The District Court complied with these requirements. It correctly held that it could not consider Holland's factual objections to (1) the murder cross-reference, and (2) the drug weights attributable to him because the relevant facts in the trial transcript were known to the parties at the time of Holland's first sentencing.[3] Murphy, 998 F.3d at 555. Moreover, the Court acted within its discretion in rejecting Holland's argument that his prior convictions were no longer crimes of violence that trigger the career offender provision, see Shields, 48 F.4th at 191-92 (holding that a resentencing court must consider the defendant's argument that he no longer qualifies as a career offender), because Holland was not originally sentenced as a career offender, and the Court did not treat him as such on resentencing, Holland, 2022 WL 4102766, at *9.

[3] To the extent some of our cases may suggest that a resentencing court may consider Guidelines enhancements and calculations for which the original sentencing court did not make any factual findings, see Shields, 48 F.4th at 192 n.7; Murphy, 998 F.3d at 555 n.5, and assuming such a suggestion is consistent with Concepcion, the District Court still did not abuse its discretion in declining to consider Holland's factual arguments and the Court's approach did not violate due process. The original sentencing court made factual findings concerning the murder cross-reference based on its "oberserv[ation of] all of the witnesses," at trial, App. 226, and thus the evidence upon which it relied had "sufficient indicia of reliability" for sentencing purposes. United States v. Miele, 989 F.2d 629, 663 (3d Cir. 1993) (quotation marks omitted). As such, even if the sentencing court did not find facts as to the drug quantity, any error the District Court made in not considering Holland's factual objections to the drug weight was harmless because that calculation did not affect Holland's Guidelines range once the murder-cross reference was applied. Cf. United States v. Langford, 516 F.3d 205, 215 (3d Cir. 2008) (explaining that an error is harmless when it is "clear that [it] did not affect the district court's selection of the sentence imposed").

Finally, the District Court adequately considered the § 3353(a) factors. The Court discussed (1) Holland's history and characteristics, including the fact that Holland was abused as a child and used drugs as a coping mechanism, (2) the nature and circumstances of the offense, including Holland's "sustained history of drug distribution," and his use of "violence as an integral part of his drug distribution," and (3) Holland's "educational efforts, employment, medical risks" and family support. Holland, 2022 WL 4102766, at *12-15. We cannot say that no reasonable sentencing court would have agreed with the Court's conclusion that two consecutive forty-year sentences were warranted in light of the need to provide just punishment given Holland's background and serious offenses. United States v. Tomko, 562 F.3d 558, 568 (3d Cir. 2009) (en banc). As such, the Court did not abuse its discretion in imposing an eighty-year term of imprisonment.

III

For the foregoing reasons, we will affirm.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 22-2764

UNITED STATES OF AMERICA

v.

HARVEY HOLLAND,
Appellant

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Criminal No. 1-01-cr-00195-006)
U.S. District Judge: Honorable Robert D. Mariani

Submitted Pursuant to Third Circuit L.A.R. 34.1(a)
October 5, 2023

Before: SHWARTZ, MATEY, and FISHER, Circuit Judges.

JUDGMENT

This cause came to be considered on appeal from the United States District Court for the Middle District of Pennsylvania and was submitted pursuant to Third Circuit L.A.R. 34.1(a) on October 5, 2023.

On consideration whereof, it is now hereby **ORDERED** that the judgment of the District Court entered on September 8, 2022 is hereby **AFFIRMED**.

All of the above in accordance with the Opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

Dated: October 6, 2023

THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
	:	**3:01-CR-195**
v.	:	**(JUDGE MARIANI)**
	:	
HARVEY HOLLAND,	:	
	:	
Defendant.	:	

ORDER

AND NOW, THIS 7th **DAY OF SEPTEMBER 2022,** for the reasons set forth in this Court's accompanying Memorandum Opinion and upon consideration of Defendant Harvey Holland's Motion for Resentencing Under Section 404(b) of the First Step Act (Doc. 494) and all relevant documents, **IT IS HEREBY ORDERED THAT** Defendant's Motion for Resentencing Under the First Step Act (Doc. 494) is **GRANTED IN PART AND DENIED IN PART, TO WIT:**

1. Defendant's Motion for Resentencing pursuant to Section 404(b) of the First Step Act (Doc. 494) is **GRANTED.**
2. Defendant's life sentence on each of counts two and five is **REDUCED** to forty years imprisonment on each count, to be served consecutively.
3. Defendant's request for a further reduction in sentence, specifically a sentence of time served, is **DENIED.**
4. Defendant's request for a plenary resentencing hearing is **DENIED.**

Robert D. Mariani
United States District Judge

THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
	:	3:01-CR-195
v.	:	(JUDGE MARIANI)
	:	
HARVEY HOLLAND,	:	
	:	
Defendant.	:	

MEMORANDUM OPINION

I. INTRODUCTION

On April 9, 2019, Defendant Harvey Holland filed a Motion for Resentencing Hearing Under Section 404 of the First Step Act. (Doc. 494). In his Motion and supporting briefs, Defendant requests this Court impose a sentence of time served. (Doc. 545 at 20). Upon review of the many written submissions from both parties,[1] this Court finds that Defendant is entitled to a sentence reduction from life imprisonment for each of counts two and five to a term of forty years imprisonment on each of counts two and five, to be served consecutively.

[1] The parties' submissions include, but are not limited to, the following: Motion for a Resentencing Hearing Under Section 404 of the First Step Act (Doc. 494); Brief in Support of a Resentencing Hearing (Doc. 495); Government's Brief in Opposition to Motion for Resentencing Hearing (Doc. 508); Reply Brief in Support of Resentencing Hearing (Doc. 510); Addendum to the Presentence Report on Defendant Requesting Sentence Reduction (Doc. 537); Government's Sentencing Memorandum (Doc. 541); Defendant's Sentencing Memorandum (Doc. 545); Memorandum in Support of Objections to the Presentence Investigation Report (Doc. 557); Objections to the Presentence Investigation Report (Doc. 557-1); Defendant's Letter Brief Regarding *United States v. Murphy*, 998 F.3d 549 (3d Cir. 2021) (Doc. 565); Government's Letter Brief Regarding *United States v. Murphy*, 998 F.3d 549 (3d Cir. 2021) (Doc. 568).

II. FACTUAL BACKGROUND

In 2002, Defendant Harvey Holland was convicted of distribution and possession with intent to distribute in excess of 50 grams of cocaine base in violation of 21 U.S.C. § 841, (count two) and conspiracy to possess with intent to distribute and distribution of in excess of 50 grams of cocaine base in violation of 21 U.S.C. § 846 (count five). (PSR at ¶¶ 1-2; Doc. 537 at 1).

Defendant's base offense level for his conviction on counts two and five was determined by the USSG § 2A1.1 cross reference included in USSG 2D1.1(d). (PSR at ¶ 30). As stated by the Presentence Investigation Report Prepared by Senior U.S. Probation Officer John Vought in 2002 ("PSR"):

> The guideline for 21 U.S.C. § 841(a)(1) and 864 offenses is USSG § 2D1.1. USSG § 2D1.1(d)(1) (cross-reference) states that if a victim was killed under circumstances constituting murder under 18 U.S.C. § 1111, USSG § 2A1.1 is to be applied. The Government's evidence establishes by a preponderance of the evidence that the defendant, Jeffrey Holland and Shawn Anderson premeditatedly killed Jason Harrigan, constituting first degree murder. Under USSG § 2A1.1, the base offense level is forty-three.

(*Id.*).

Defendant was considered a career offender pursuant to USSG § 4B1.1 based on his prior convictions. (*Id.* ¶ 37). The offense level for career offenders is 37. (*Id.*). The PSR explained that "because the offense level determined above [through the application of the § 2A1.1 cross reference] (43) is greater than that of career offender (37, USSG § 4B1.1(A)), the offense level as determined above is to be used." (*Id.*). Therefore,

Defendant's base offense level was not impacted by his status as a career offender, and it remained at 43. (*Id.* at ¶ 38).

Next, the PSR summarized Defendant's adult criminal convictions. (*Id.* at ¶¶ 40-56). These convictions resulted in a subtotal criminal history score of twenty-three. (PSR at ¶ 57). There was a two-point increase to this score because Defendant "committed the instant offense less than two years after his release from imprisonment" on charges in New Jersey state court, which raised his criminal history score to twenty-five. (*Id.* at ¶ 58). However, under the Sentencing Guidelines, a criminal history score of thirteen or more establishes a criminal history category of VI, and Defendant's status as a career offender automatically makes his criminal history category VI, as well. (*Id.* at 59). Thus, Defendant had a criminal history category of VI.

At the time of Defendant's original sentencing, Defendant's trial counsel objected to the use of the USSG § 2A1.1 cross reference guidelines enhancement because the jury did not convict Defendant on count four, which charged him with the use of a firearm during and in relation to a drug trafficking crime which resulted in the murder of Jason Harrigan. (2002 PSR Addendum). In response, Probation explained in detail why it believed the § 2A1.1 cross reference was appropriate, stating "[t]he fact that the jury was unable to reach a verdict on the count charging the defendant with homicide does not preclude the conduct as it is relevant conduct under USSG § 1B11.3(a)(1)(A)," and highlighting that "[n]ine individuals either testified or told agents of conversations they had with Mr. Holland and/or

Jeffrey Holland and Shawn Anderson concerning their involvement in the murder." (*Id.*). Probation then explained that in the event the Court determined that the § 2A1.1 cross reference did not apply, "the guidelines would be calculated pursuant to USSG § 2D1.1 and result in a base offense level of thirty-six because the amount of crack cocaine is at least 500 grams but less than one and one-half kilograms." (*Id.*).

Judge Caldwell sentenced Defendant on November 20, 2022 and, over Defendant's objection, determined that application of USSG § 2A1.1 was warranted. Before announcing Defendant's sentence, Judge Caldwell stated, "I frankly could not understand in any way how the jury failed to return a guilty verdict because in my mind, the evidence against all three of the people who were involved in this was compelling." (Doc. 272 at 7). Judge Caldwell then summarized the evidence that provided the basis for the USSG § 2A1.1 cross reference and concluded:

> I think all of these facts when put together more than persuade me beyond a reasonable doubt, certainly by a preponderance of the evidence that Harvey Holland was a participant in drug dealing, and that he and his brother conspired with Anderson and agreed to seek revenge or whatever it was against Mr. Harrigan.
>
> I think it is true that Jeffrey Holland was the boss of this conspiracy so to speak, but all of the conspirators were involved in this killing. I have no trouble coming to the conclusion that this relevant conduct must be considered in imposing a sentence.

(*Id.* at 10). Judge Caldwell ultimately sentenced Defendant to "terms of life imprisonment on each of Counts 2 and 5 to be served concurrently with each other and consecutive to the sentences imposed in the Dauphin County Court to numbers 3221-00, 3222-00 and 1921-

01, and 1963-01," a five year term of supervised release on counts two and five, and a fine of $4,200. (*Id.* at 12-13).

Defendant filed appeals and a variety of post-conviction relief motions, all of which were denied. Defendant now moves for relief under the First Step Act.

III. ANALYSIS

a. Whether Defendant is Eligible for Resentencing Under the First Step Act

First the Court will determine whether Defendant is eligible for relief pursuant to the First Step Act. *United States v. Shields*, 2022 WL 3971778, at *8 (3d Cir. Sept. 1, 2022) ("First, upon receiving the [motion for First Step Act resentencing], the court determines whether the defendant is eligible for relief under the statute[.]"). "The First Step Act authorizes district courts to reduce the prison sentences of defendants convicted of certain offenses involving crack cocaine. The Act allows a district court to impose a reduced sentence 'as if' the revised penalties for crack cocaine enacted in the Fair Sentencing Act of 2010 were in effect at the time the offense was committed." *Concepcion v. United States*, 142 S.Ct. 2389, 2396 (2022). Section 404 of the First Step Act specifies its applicability:

> (a) DEFINITION OF COVERED OFFENSE. – In this section, the term "covered offense" means a violation of a Federal criminal statute, the statutory penalties for which were modified by section 2 or 3 of the Fair Sentencing Act of 2010 (Public Law 111-220; 124 Stat. 2372), that was committed before August 3, 2010.
>
> (b) DEFENDANTS PREVIOUSLY SENTENCED. – A court that imposed a sentence for a covered offense may, on motion of the defendant, the Director of the Bureau of Prisons, the attorney for the Government, or the court, impose a reduced sentence as if sections 2 and 3 of the Fair Sentencing Act of 2010 (Public Law

> 111-220; 124 Stat. 2372) were in effect at the time the covered offense was committed.
>
> (c) LIMITATIONS. – No court shall entertain a motion made under this section to reduce a sentence if the sentence was previously imposed or previously reduced in accordance with the amendments made by sections 2 and 3 of the Fair Sentencing Act of 2010 (Public Law 111-220; 124 Stat. 2372) or if a previous motion made under this section to reduce the sentence was, after the date of enactment of this Act, denied after a complete review of the motion on the merits. Nothing in this section shall be construed to require a court to reduce any sentence pursuant to this section.

Pub. L. 115-391, § 404(a)-(c), 132 Stat. 5222.

Here, the Court finds that Defendant is eligible for resentencing under the First Step Act for his convictions on counts two and five. Defendant was convicted of distribution and possession with intent to distribute in excess of 50 grams of cocaine base in violation of 21 U.S.C. § 841 (count two) and conspiracy to possess with intent to distribute and distribution of in excess of 50 grams of cocaine base in violation of 21 U.S.C. § 846 (count five). (Doc. 537 at 1). The statutory penalties for the crack cocaine-related offenses of which Defendant was convicted were modified by the Fair Sentencing Act of 2010. Pub. L. No. 111-220, § 2, 124 Stat. 2371 (increasing the minimum quantity of cocaine base needed to trigger the ten-year minimum sentence under 21 U.S.C. § 841(b)); *see also United States v. Murphy*, 998 F.3d 549, 553 (3d Cir. 2021). The conduct underlying the charges of which Defendant was convicted occurred between January 1997 and April 2001, and Defendant was sentenced in November 2002. (*See generally* PSR). The limitations on resentencing eligibility described

in § 404(c) of the First Step Act do not apply. Therefore, Defendant is eligible for a sentencing reduction pursuant to the First Step Act.

b. Whether Defendant is Entitled to a Resentencing Hearing

In *United States v. Easter*, the Third Circuit held that a defendant moving for resentencing pursuant to the First Step Act "is not entitled to a plenary sentencing hearing at which he would be present." *United States v. Easter*, 975 F.3d 318, 326 (3d Cir. 2020) (collecting cases);[2] *Murphy*, 998 F.3d at 555 (reaffirming *Easter*); *see also United States v. Barlow*, 2022 WL 820462, at *1 (3d Cir. March 18, 2022) ("Regardless, a defendant moving for a sentence reduction under the First Step Act 'is not entitled to a plenary resentencing hearing at which he would be present.'" (quoting *Easter*, 975 F.3d at 326)); *United States v. Bullock*, 2021 WL 4145233, at *2 (3d Cir. Sept. 13, 2021 ("Action by a district court under the First Step Act is discretionary and does not entitle movants like Bullock to plenary resentencing or a resentencing hearing." (citing *Easter*, 975 F.3d at 326)). The Third Circuit reaffirmed *Easter*, holding, "neither the original sentencing judge nor a judge to whom the case has been reassigned is required to hold an in-person resentencing hearing on a First Step Act motion[.]" *United States v. Shields*, 2022 WL 3971778, at *7 (3d Cir. Sept. 1, 2022). The Third Circuit reaffirmed *Easter*, holding, "neither the original sentencing judge nor a judge

[2] The parties fully briefed the issue of whether a hearing is necessary. (*See* Doc. 495; Doc. 508; Doc. 510). These briefs, however, were filed between April and June of 2019, which is years before the Third Circuit decided *United States v. Easter* in September of 2020, *United States v. Murphy* in May 2021 (and amended in August 2021), and *United States v. Shields* in September 2022. Therefore, the Court did not rely on these briefs.

to whom the case has been reassigned is required to hold an in-person resentencing hearing on a First Step Act motion[.]" *Shields*, 2022 WL 3971778, at *7.

In light of the controlling Third Circuit caselaw summarized above, the Court finds that Defendant is not entitled to a plenary resentencing hearing. As such, the Court will evaluate the merits of his Motion for resentencing based on the parties' written submissions.[3]

c. Sentencing Guidelines

As stated above, Section 404(b) of the First Step Act provides that if a defendant is eligible for resentencing the Court may "impose a reduced sentence as if sections 2 and 3 of the Fair Sentencing Act of 2010 (P. L. 111-220; 124 Stat. 2372), were in effect at the time the covered offense was committed." Pub. L. 115-391, § 404(b), 132 Stat. 5222. "[T]he language Congress enacted in the First Step Act specifically requires district courts to apply the legal changes in the Fair Sentencing Act when calculating the Guidelines if they chose to modify a sentence." *Concepcion*, 2022 WL 142 S.Ct. at 2402. However, a resentencing court cannot

> recalculate a movant's benchmark Guidelines range in any way other than to reflect the retroactive application of the Fair Sentencing Act. Rather, the First Step Act directs district courts to calculate the Guidelines range as if the Fair Sentencing Act's amendments had been in place at the time of the offense. That Guidelines range "anchor[s]" the sentencing proceeding. *Peugh v. United States*, 569 U.S. 530, 541, 133 S.Ct. 2072, 186 L.Ed.2d 84 (2013). The district court may then consider postsentencing conduct or nonretroactive changes in

[3] The parties have submitted extensive written briefings to the Court, including sentencing memoranda and objections to the PSR. (*See supra* n.1); *see also Shields*, 2022 WL 3971778, at *8 (finding the district court "erred by denying Shields either a hearing or a reasonable opportunity to present his sentencing arguments in writing").

> selecting or rejecting an appropriate sentence, with the properly calculated Guidelines range as the benchmark.

Id. at 2402 n.6; *see also Shields*, 2022 WL 3971778, at *4.

In addition, "a district court must generally consider the parties' nonfrivolous arguments before it." *Concepcion*, 142 S.Ct. at 2404. Although the district court must consider these nonfrivolous arguments, it "is not required to be persuaded by every argument parties make, and it may, in its discretion, dismiss arguments that it does not find compelling without a detailed explanation." *Id.* As the Supreme Court summarized,

> The First Step Act does not require a district court to accept a movant's argument that evidence of rehabilitation or other changes in law counsel in favor of a resentence reduction, or the Government's view that evidence of violent behavior in prison counsel against providing relief. Nor does the First Step Act require a district court to make a point-by-point rebuttal of the parties' arguments. All that is required is for a district court to demonstrate that it has considered the arguments before it.

Id. at 2404-05. As part of this analysis, a district court is "authorized to take into account, at the time of resentencing, any changed circumstances, 'includ[ing] post-sentencing developments, such as health issues or rehabilitation arguments, as were raised' by the parties." *Shields*, 2022 WL 3971778, at *4 (quoting *Murphy*, 998 F.3d at 559; *Easter*, 975 F.3d at 327); *see also Concepcion*, 142 S.Ct. at 2398-2403. Finally, although a court may do so, courts are not required to impose a reduced sentence when evaluating a First Step Act motion. *Easter*, 975 F.3d at 327; *Concepcion*, 142 S.Ct. at 2404 ("Section 404(c) of the First Step Act confers particular discretion, clarifying that the Act does not 'require a court to reduce any sentence.'").

Using the above framework, the Court will first determine Defendant's Guidelines range, consider the nonfrivolous arguments raised by Defendant, and will then turn to an evaluation of the applicable § 3553(a) factors.

i. Class A to Class B Felonies

At the time of Defendant's original sentencing in 2002, distribution and possession with the intent to distribute 50 grams or more of crack cocaine in violation of 21 U.S.C. § 841(a)(1) (count two) and conspiracy to distribute and possession with the intent to distribute more 50 grams or more of crack cocaine in violation of 21 U.S.C. § 846 (count five) were both "Class A felonies punishable by a mandatory minimum of ten (10) years to a maximum of life imprisonment." (Doc. 537 at 1).

Since Defendant's conviction and sentencing in 2002, the penalties for the offenses of which Defendant was convicted changed under the Fair Sentencing Act and the First Step Act. The Third Circuit summarized the relevant provisions of these statutes as follows:

> In 2010, section 2 of the Fair Sentencing Act increased the minimum quantity of cocaine base needed to trigger the ten-year minimum sentence under 21 U.S.C. § 841(b) from 50 grams to 280 grams. Pub. L. No. 111-220, § 2, 124 Stat. 2371, 2372. …
>
> Congress again revised the sentencing framework for drug offenses in 2018, when it passed the First Step Act. Section 404(b) of that Act permitted a district court that had sentenced a defendant prior to the Fair Sentencing Act to "impose a reduced sentence as if sections 2 and 3 of the Fair Sentencing Act … were in effect at the time the covered offense was committed." Pub L. No. 115-391, § 404(b), 132 Stat. 5194, 5222. But a court was not "*require[d]* … to reduce any sentence pursuant to [that] section." *Id.* § 404(c) 132 Stat. at 5222 (emphasis added). Separately, section 401 of the First Step Act redefined what prior drug convictions could be used to enhance a sentence under 21 U.S.C. §

> 841(b). It said that the prior offense had to be not simply a felony drug offense but instead a "serious drug felony[,]" which is one for which the offender "served a term of imprisonment of more than 12 months[.]" *Id.* at § 401(a), 132 Stat. at 5220. Section 401 "appl[ied] to any offense that was committed before the date of enactment of [the] Act, if a sentence for the offense ha[d] not been imposed as of such date of enactment." *Id.* § 401(c), 132 Stat. at 5221.

Seabrookes, 2022 WL 3098651, at * 1.

In accordance with section 2 of the Fair Sentencing Act, made retroactive by the First Step Act, Defendant's convictions for counts two and five have been reduced to Class B felonies, and the statutory penalties have been reduced to a minimum of five years imprisonment to a maximum of forty years imprisonment. (Pub. L. No. 111-220, § 2, 124 Stat. 2371, 2372; *see also* Doc. 537 at 2). Defendant, the Government, and Probation are all in agreement on this point. (Doc. 537 at 2; Doc. 541 at 4; Doc. 545 at 2). Thus, the statutory penalties for Defendant's convictions for violating 21 U.S.C. §§ 841 and 846 are reduced from ten years to life imprisonment to five years to forty years imprisonment, and the mandatory minimum term of supervised release is reduced to four years for counts two and five.

ii. USSG § 2A1.1 Cross Reference

Next, the Court will consider whether the cross reference to USSG § 2A1.1 is still applicable to Defendant. *Concepcion*, 142 S.Ct. at 2404 ("It is well established that a district court must generally consider the parties' nonfrivolous arguments before it."). As summarized above, the base offense level calculation in the PSR prepared for Defendant's initial sentencing in 2002 states:

> The guideline for 21 U.S.C. § 841(a)(1) and 846 offenses is USSG § 2D1.1. USSG § 2D1.1(d)(1) (cross-reference) states that if a victim was killed under circumstances constituting murder under 18 U.S.C. § 1111, USSG § 2A1.1 is to be applied. The Government's evidence establishes by a preponderance of the evidence that the defendant, Jeffrey Holland and Shawn Anderson premeditatedly killed Jason Harrigan, constituting first degree murder. Under USSG § 2A1.1, the base offense level is forty-three.

(PSR at ¶ 30). In the addendum to the PSR filed on January 7, 2021, Probation stated that "[t]he base offense level cross reference to USSG §2A1.1 is unchanged but the guideline sentence is reduced to the combined statutory maximum of 80 years imprisonment." (Doc. 537 at 2).

Defendant objects to the application of the USSG § 2A1.1 cross reference. According to Defendant, USSG § 2A1.1 does not apply because the Government did not include the murder of Jason Harrigan as part of the conspiracy of which he was convicted. (Doc. 557 at 3-4). In addition, Defendant argues that "there is insufficient proof of either a murder connected to drug distribution or that Mr. Holland committed it." (*Id.* at 4).

The Court finds Defendant's arguments unpersuasive and without merit. *See Concepcion*, 142 S.Ct. at 2404 ("Of course, a district court is not required to be persuaded by every argument parties make[.]"). Although Judge Caldwell could not review the trial transcript in advance of Defendant's sentencing hearing because it was not yet available, the facts contained in the transcript were not "new, relevant facts that did not exist, or could not have reasonably been known by the parties, at the time of the first sentencing." *Murphy*, 998 F.3d at 555 (citing *Easter*, 975 F.3d at 327). This is because Judge Caldwell himself

presided over Defendant's trial, "had the unique advantage … of hearing all of the evidence in this case," and "heard and saw and observed all of the witnesses in this case." (Doc. 272 at 7). *Murphy* cautioned that when deciding a First Step Act motion, "'the resentencing court cannot … reconsider the facts as they stood at the initial sentencing.'" 998 F.3d at 555 (quoting *Jones*, 962 F.3d at 1303).[4] In short, Defendant requests this Court do something it cannot do by asking for reevaluation of the facts underlying the application of the USSG § 2A1.1 sentencing enhancement. Therefore, the Court cannot, and will not, review the specific facts underlying the sentencing court's decision from twenty years ago that the USSG § 2A1.1 enhancement applied.

Furthermore, in an objection to the PSR, Defendant argues that "on Sixth Amendment and due process grounds, the district court should not punish Mr. Holland for a crime that the jury did not convict him[.]" (Doc. 557-1 at 1; *see also* Doc. 557 at 5). This is incorrect. There are no "Sixth Amendment [or] due process" concerns with a sentencing court considering conduct of which a defendant has been acquitted or has not been convicted to determine his or her appropriate guidelines range and sentence. In fact, the Supreme Court expressly endorsed this practice in *United States v. Watts*, 519 U.S. 148 (1997), where it held that "a jury's verdict of acquittal does not prevent a sentencing court from considering conduct underlying the acquitted charge, so long as that conduct has been

---

[4] Although the Third Circuit's decision *United States v. Shields* abrogated certain holdings in *Murphy*, *see Shields*, 2022 WL 3971778, at *4, it did not abrogate *Murphy*'s holding that "a sentencing court cannot reconsider factual findings made by the original sentencing court concerning the underlying offense." *Shields*, 2022 WL 3971778, at *5 n.7 (citing *Murphy*, 998 F.3d at 554-55).

proved by a preponderance of the evidence." *Watts*, 519 U.S. at 157. Similarly, the Supreme Court has stated that "[s]entencing courts have not only taken into consideration a defendant's prior convictions, but have also considered a defendant's past criminal behavior, even if no conviction resulted from that behavior." *Nichols v. United States*, 511 U.S. 738, 747 (1994); *see also BMW of North America, Inc. v. Gore*, 517 U.S. 559, 573 n.19 (1996) ("A sentencing judge may even consider past criminal behavior which did not result in conviction."); *Williams v. New York*, 337 U.S. 241 (1949) ("Highly relevant – if not essential – to his selection of an appropriate sentence is the possession of the fullest information possible concerning the defendant's life and characteristics. And modern concepts individualizing punishment have made it all the more necessary that a sentencing judge not be denied an opportunity to obtain pertinent information by a requirement of rigid adherence to restrictive rules of evidence properly applicable to the trial.").

For the aforementioned reasons, this Court will not redetermine the facts underlying the applicability of the USSG § 2A1.1 enhancement on Defendant's sentencing guidelines, nor will this Court entertain Defendant's arguments that are foreclosed by extensive Supreme Court precedent. Thus, following the Third Circuit's holding in *Murphy* that "the resentencing court cannot … reconsider the facts as they stood at the initial sentencing," the Court will overrule Defendant's objection to the 2021 PSR Addendum (Doc. 537) and deny his request to reconsider the application of the USSG § 2A1.1 cross-reference

enhancement on Defendant's base offense level calculation. Accordingly, Defendant's base offense level remains 43 (*see* USSG § 2A1.1(a)).

iii. Career Offender

When considering a First Step Act motion, the resentencing court may consider a defendant's argument that he no longer qualifies as a career offender. *See Shields*, 2022 WL 3971778, at *5; *see also Concepcion*, 142 S.Ct. at 2403 (collecting cases). A defendant qualifies as a career offender if:

> (1) the defendant was at least eighteen years old at the time the defendant committed the instant offense of conviction; (2) the instant offense conviction is a felony that is either a crime of violence or a controlled substance offense; and (3) the defendant has at least two prior felony convictions of either a crime of violence or a controlled substance offense.

USSG § 4B1.1(a). For purposes of the career offender enhancement, a crime of violence is defined as "any offense under federal or state law, punishable by imprisonment for a term exceeding one year, that (1) has an element the use, attempted use, or threatened use of physical force against the person of another, or (2) is murder, voluntary manslaughter, kidnapping, aggravated assault, a forcible sex offense, robbery, arson, extortion, or the use or unlawful possession of a firearm described in 26 U.S.C. § 5845(a) or explosive material as defined in 18 U.S.C. § 841(c)." USSG § 4B1.2(a).

Defendant was originally sentenced as a career offender based on his prior convictions. (PSR at ¶ 37; Doc. 537 at 1). However, Defendant's base offense level did not depend on his status as a career offender. (PSR at ¶ 37 ("Pursuant to USSG § 4B1.1, the

defendant is considered a career offender, however, because the offense level determined above (43) is greater than that of a career offender (37, USSG § 4B1.1(A)), the offense level as determined above is to be used.")).

The first two requirements for the imposition of the career offender enhancement are not in dispute: Defendant was above the age of eighteen at the time of his current convictions and his conviction on count two is a controlled substance offense, which is one way of satisfying the second career offender requirement. USSG § 4B1.1(a). Defendant disputes the third requirement of the enhancement, which requires that he have two prior convictions for a controlled substance offense or a crime of violence. *Id.* Defendant claims he is no longer a career offender because his prior convictions for robbery, aggravated assault, and burglary are no longer predicate offenses for the enhancement. (Doc. 557 at 5-7; Doc. 557-1 at 2).

Defendant has a prior conviction for "Aggravated Assault/Unlawful Pointing of a Firearm" from Essex County, New Jersey. (PSR at ¶ 47). Although the PSR does not indicate the statute under which Defendant was convicted, the relevant statute for this offense is NJ Rev Stat § 2C:12-1(b)(4). This provision prohibits "[k]nowingly under circumstances manifesting extreme indifference to the value of human life point[ing] a firearm, as defined in subsection f. of N.J.S.A. 2C:39-1, at or in the direction of another, whether or not the actor believes it to be loaded." NJ Rev Stat § 2C:12-1(b)(4). The PSR's description of Defendant's offense reads:

> The defendant was represented by counsel. He was arrested under the name Louis Fontaine Lee. On April 1, 1993, the defendant was illegally in possession of a loaded .22 caliber revolver which he pointed at an Aaron Bellamy while threatening to shoot the victim. The defendant served the maximum term and was released on June 26, 1996.

(PSR at ¶ 47).

In *United States v. Williams*, the court considered whether this offense qualifies as a crime of violence under the Sentencing Guidelines and determined that it did so qualify. *United States v. Williams*, 2022 WL 2209868, at *3 (D.N.J. June 21, 2022). The *Williams* Court explained that "[p]ointing a firearm at another person also necessarily entails a threat to use 'physical force,'" and the statute at issue "requires more than knowingly pointing a firearm at another. The defendant must also do so in circumstances showing indifference to human life." *Id.* at *5. This statute requires "knowing[ ]" conduct, "not simply recklessness, and therefore is not disqualified as a crime of violence based on the *mens rea*." *Id.* at *6

This Court agrees with the conclusion of the *Williams* Court and similarly finds that NJ Stat Ann 2C:12-1(b)(4), aggravated assault/unlawful pointing of a firearm, qualifies as a crime of violence for purposes of the career offender enhancement.

For Defendant to be considered a career offender, he must have at least one more convictions for a controlled substance offense or a crime of violence. Based on the PSR, it appears the only other prior convictions that could potentially qualify are Defendant's two prior robbery convictions. (*See* PSR at ¶ 45). The Third Circuit recently determined that the Pennsylvania's robbery statute is divisible and as a result, "a court may review judicial

record evidence to ascertain a defendant's precise prior conviction." *United States v. Carey*, 2021 WL 2936741, at *2 (3d Cir. July 13, 2021).

Here, however, neither party provided the Court with record evidence that would permit the Court to "ascertain Defendant's precise prior conviction." *Id.* Thus, the Court has no facts that undermine the PSR's description of the events underlying Defendant's convictions, which state:

> (Count I)
> On September 29, 1981, Mr. Holland entered a convenience store with a gun that he cocked and pointed in the air above the clerk's head while demanding money.
>
> (Count II)
> On September 28, 1981, Mr. Holland entered a convenience store and grabbed money from the assistant manager causing the victim to hit her head on an electrical casing. The defendant was paroled on June 10, 1988, returned on a parole violation, and reparoled September 16, 1989.

(PSR at ¶ 45); *see United States v. Volek*, 796 F.App'x 123, 125 (3d Cir. 2019) ("A divisible statute calls for us to use the modified categorical approach to determine whether Volek's convictions are predicate offenses under the Guidelines. Instead of submitting the typical *Shepard* documents at sentencing, the government produced only Volek's PSR to clarify the nature of his prior convictions. We have previously held that a court can look to a presentence report if a defendant did not challenge the descriptions of the factual accounts within it." (citing *United States v. Siegel*, 477 F.3d 87, 93-94 (3d Cir. 2007))). Additionally, Defendant arguments are insufficient to call the PSR's description of the convictions into

question because he provides the Court with generalized statements of law unaccompanied by facts specific to Defendant's two prior robbery convictions. (Doc. 557 at 5-7).

Absent such record evidence or legal argument specifically tied to the facts of Defendant's convictions, the reasonable, if not unavoidable, inference from the PSR's descriptions of Defendant's conduct in connection with his prior robbery convictions is that Defendant's *mens rea* in committing these offenses was that of intentional or knowing. *See Concepcion*, "[D]istrict courts bear the standard obligation to explain their decisions and demonstrate that they considered the parties' arguments. It is well established that a district court must generally consider the parties' nonfrivolous arguments before it. … Of course, a district court is not required to be persuaded by every argument parties make, and it may, in its discretion, dismiss arguments that it does not find compelling without a detailed explanation.").

Thus, the Court has no basis to find that Defendant is no longer a career offender for purposes of the USSG § 4B1.1 enhancement. However, as stated above, Defendant's original sentence did not rely on his status as a career offender. (PSR at ¶ 37 ("Pursuant to USSG § 4B1.1, the defendant is considered a career offender, however, because the offense level determined above (43) is greater than that of a career offender (37, USSG § 4B1.1(A)), the offense level as determined above is to be used.")). The same is true at resentencing. Therefore, although the Court has determined that Defendant still qualifies as a career offender, this enhancement ultimately has no impact on his sentence. (*See infra*, III.c.v).

iv. Drug Weight Attributable to Defendant

In *Murphy*, the Third Circuit held, "a district court is 'bound by a previous finding of drug quantity that could have been used to determine the movant's statutory penalty at the time of sentencing.'" 998 F.3d at 555 (quoting *Jones*, 962 F.3d at 1303).[5] Despite the clear holding of *Murphy*, Defendant argues that *Murphy* is not informative because Defendant "is not challenging the jury's drug quantity finding or the current statutory penalty. Rather, he challenges the finding in the presentence report that affects his advisory guidelines range." (Doc. 565 at 4). Defendant also argues that his case his distinguishable from *Murphy* because "Mr. Holland, unlike Murphy, objected to the drug weight in the presentence report." (*Id.*). Finally, Defendant contends that "the Probation Office based its drug quantity calculation on an inaccurate factual predicate." (*Id.* at 5).

Much like Defendant's argument that the USSG § 2A1.1 cross reference enhancement should not apply, Defendant requests this Court to conduct an analysis in which it may not engage. As was the case when determining whether the Court can redetermine the applicability of the USSG § 2A1.1 cross-reference, it cannot be said that the facts underlying the determination of the drug weight attributable to Defendant are "new,

---

[5] In *Shields*, the Third Circuit stated that this holding of *Murphy* did not apply to defendant Shields because there, the district court "did not make any findings pertaining to these enhancements [based on drug weight] during Shield's original sentencing because it concluded that neither enhancement would change his Guidelines range given his career-offender status." *Shields*, 2022 WL 3971778, at *5 n.7. As described in this Section, the original PSR and the original sentencing court in this case made factual findings as to the drug weight attributed to Defendant. Thus, the factual scenario faced by this Court is materially different than the situation faced by the district court in *Shields*.

relevant facts that did not exist, or could not reasonably have been known by the parties, at the time of the first sentencing." *Murphy*, 998 F.3d at 555 (citing *Easter*, 975 F.3d at 327). Nothing has changed in the intervening twenty years between Defendant's original sentencing in 2002 and the Court's disposition of his First Step Act motion with regard to the weight of crack cocaine attributed to Defendant. This Court cannot "reconsider the facts as they stood at the initial sentencing." *Id.*; *see Shields*, 2022 WL 3971778, at *5 n.7.

Moreover, both the PSR and Judge Caldwell assessed the amount of crack cocaine attributable to Defendant at his sentencing. In the PSR addendum prepared in 2002, Probation determined that Defendant was responsible for "at least 500 grams but less than one and one-half kilograms" of crack cocaine. (2002 PSR addendum). At sentencing, the following exchange took place:

> THE COURT: What quantity of crack cocaine did we talk about in this case?
>
> MR. BEHE: The jury returned a verdict that was in excess of fifty grams. That would place this at a mandatory ten to life absent anything else. But the quantity of crack cocaine from the various witnesses places it conservatively at at least one half of a kilogram up to a kilogram and a half of crack cocaine that was involved in the conspiracy.
>
> THE COURT: That would be what?
>
> MR. BEHE: Five hundred grams to one and one half kilograms.

(Doc. 272 at 5-6). The Court gave Defendant's trial counsel an opportunity to "respond to anything that Mr. Behe just said," but his trial counsel did not object or question the drug weight attributed to Defendant. (*Id.* at 6). Moreover, it bears repeating that Judge Caldwell

had the "unique advantage" of "hearing all of the evidence in this case." (*Id.* at 7). The *Murphy* Court held that "the resentencing court cannot reach beyond those circumstances to reconsider the facts as they stood at the initial sentencing" and the resentencing court is "bound by a previous finding of drug quantity that *could have been used* to determine the movant's statutory penalty at the time of sentencing." *Murphy*, 998 F.3d at 555 (quotation and citation omitted) (emphasis added). Judge Caldwell could have relied on the quantity of crack cocaine attributed to Defendant had he determined that the USSG § 2A1.1 cross reference did not apply; thus, under *Murphy*, this Court cannot reconsider drug weight attributed to Defendant. (*See* 2002 PSR addendum ("Should the Court find for the defendant, the guidelines would be calculated pursuant to § 2D1.1 and result in a base offense level of thirty-six because the amount of crack cocaine is at least 500 grams but less than one and one-half kilograms.").

Finally, while Defendant is correct that, unlike the defendant in *Murphy*, he asserts factual errors in the calculation of drug weight attributed to Defendant in the 2002 PSR addendum, his argument that this fact has any impact on whether the Court can reconsider the drug weight attributable to Defendant is without merit. (*See* Doc. 565 at 4); *see Concepcion*, 142 S.Ct. at 2404 ("Of course, a district court is not required to be persuaded by every argument parties make, and it may, in its discretion, dismiss arguments that it does not find compelling without a detailed explanation."). The Third Circuit stated that its "conclusion [that the resentencing court may not reconsider the sentencing court's

determination of drug weight that could have been used to determine the defendant's statutory penalty] would not change even if [Murphy] had objected" to the drug quantity calculation at the time of his initial sentencing. *Murphy*, 998 F.3d at 554 n.3 ("The parties disagree on whether Murphy objected to the drug quantity at his initial sentencing, but our conclusion would not change even if he had objected."). The holding of *Murphy* does not turn on whether a defendant objects to the drug weight attributable to him at the time of his original sentencing. Therefore, Defendant's objection to the drug quantity calculation is immaterial to this Court's analysis of whether it can revisit the drug quantity attributed to Defendant.

Accordingly, the Court cannot revisit the weight of crack cocaine attributed to Defendant that was assessed by Probation and determined by the court at the time of his initial sentencing in 2002, and is "bound by the finding of drug quantity that could have been used to determine [Defendant's] statutory penalty at the time of sentencing." *Id.* at 555 (quotation omitted); *see also Shields*, 2022 WL 3971778, at *5 n.7.

vi. Defendant's Base Offense Level and

Criminal History Category at Resentencing

Above, the Court analyzed the impact of the First Step Act and Fair Sentencing Act on Defendant's sentencing exposure at resentencing. In light of this analysis, the Court determines that, due to the application of the USSG § 2A1.1 cross reference, Defendant's base offense level is 43. Defendant has a criminal history category of VI. Based only on

Defendant's base offense level and his criminal history category, Defendant's Sentencing Guidelines range would result in life imprisonment. USSG § 5A.

The statutory maximum sentence on each of Defendant's counts of conviction, however, is less than life imprisonment. Defendant's convictions for 21 U.S.C. §§ 841 and 846 each carry a statutorily authorized maximum penalty of forty years imprisonment. 21 U.S.C. § 841(b)(1)(B). According to the Sentencing Guidelines, "[t]he defendant's guideline range on the Sentencing Table may be affected or restricted by a statutorily authorized maximum sentence or a statutorily required minimum sentence[.]" USSG § 5G1.2 (Application Note 3(B)). Specifically, "where a statutorily authorized maximum sentence on a particular count is less than the minimum of the applicable guideline range, the sentence imposed on that count shall not be greater than the statutorily authorized maximum sentence on that count." *Id.*

Therefore, Defendant's guidelines range of life imprisonment is restricted to a maximum sentence of forty years imprisonment on count two and forty years imprisonment on count five, in addition to a term of four years supervised release on each count.

d. 3553(a) Factor Analysis

Section 404(b) of the First Step Act requires that the resentencing court "impose a reduced sentence as if sections 2 and 3 of the Fair Sentencing Act of 2010 were in effect at the time the covered offense was committed." During a First Step Act resentencing, courts "are authorized to take into account, at the time of resentencing, any changed

circumstances, 'includ[ing] post-sentencing developments, such as health issues or rehabilitation arguments[.]" *Shields*, 2022 WL 3971778, at *4; *see also Concepcion*, 142 S.Ct. at 2398-2404; *Murphy*, 998 F.3d at 559; *Easter*, 975 F.3d at 327. Here, the parties filed sentencing memoranda and other written briefings that discussed the § 3553(a) factors, attached relevant documentation (such as certificates from successful completion of Bureau of Prisons programming), and identified objections to the PSR. *See Shields*, 2022 WL 3971778, at *8. Accordingly, the Court is prepared to address the § 3553(a) factors based on the written submissions by the parties.

Above, the Court determined that Defendant is entitled to a sentence reduction from life imprisonment on counts two and five to a maximum term of forty years imprisonment on each of counts two and five, plus a mandatory minimum term of four years supervised release on each count. The Court now applies the 18 U.S.C. § 3553(a) factors. On November 20, 2002, Defendant appeared for sentencing before the late Honorable William W. Caldwell after having been convicted on two counts of a second superseding indictment: of distribution and possession with the intent to distribute 50 grams or more of crack cocaine in violation of 21 U.S.C. § 841(a)(1) (count two) and conspiracy to distribute and possess with the intent to distribute 50 grams or more of crack cocaine in violation of 21 U.S.C. § 846 (count five). (PSR at ¶¶ 1-2; Doc. 537 at 1). Defendant was sentenced to "terms of life imprisonment on each of Counts 2 and 5 to be served concurrently with each other and consecutive to the sentences imposed in the Dauphin County Court to numbers 3221-00,

3222-00 and 1921-01, and 1963-01," a five year term of supervised release on counts two and five, and a fine of $4,200. (Doc. 272 at 12-13).

i. Defendant's History and Characteristics

As stated in his sentencing memorandum, "Harvey Holland's life began when his father shot his mother while she was pregnant with him." (Doc. 545 at 1). Defendant's childhood and early adolescence can be described as a time when he was lacking in family support and affection, as well as a time during which he suffered considerable abuse. (*See* PSR at ¶¶ 72-73; Doc. 545 at 5-8). The PSR indicates that Defendant's mother and father were both "heavy drinkers" and they "argued constantly." (PSR at ¶ 72; Doc. 545 at 6). Defendant's parents separated and his father "left," so Defendant lived with his mother until her death. (PSR at ¶ 72). Defendant then lived with his mother's sister, who physically abused him and her own children. (Doc. 545 at 6). At twelve, Defendant was "admitted to the Elwyn Institute, a mental health facility/special needs school in Elwyn, Pennsylvania." (*Id.* at ¶ 73). A school psychologist at the Elwyn Institute "diagnosed Harvey as functioning in the borderline range of mental retardation." (Doc. 545 at 7). Defendant remained at the Elwyn Institute until he dropped out at the age of nineteen. (*Id.*; PSR at ¶ 73). Within two years of Defendant leaving the Elwyn Institute, he engaged in repeated criminal activity, and the PSR lists criminal convictions for, *inter alia*, robbery, burglary, and aggravated assault. (*See* PSR at ¶¶ 40-56). Defendant "eventually slipped into drug use" as a "coping mechanism," but he eventually became addicted to crack cocaine. (Doc. 545 at 7).

ii. Nature and Circumstances of the Offenses and Application of 18 U.S.C. § 3553(a) Factors

The sentence imposed by Judge Caldwell accurately reflects the seriousness of each of the offenses for which Defendant was sentenced. The jury found that Defendant possessed and/or possessed with the intent to distribute 50 grams or more of crack cocaine. (PSR at ¶ 1). The PSR further indicates that Defendant, together with Jeffrey Holland, Shawn Anderson, and Lavelle Gamble, were involved in "the unlawful distribution of substantial amounts of crack cocaine" in the Harrisburg area. (*Id.* at ¶ 4). Defendant's associates, Gamble and Anderson, were each shot to death, with Anderson having been murdered following a drug-related incident. *Id.* Paragraphs 4 through 14 of the PSR describe in considerable detail Defendant's crack cocaine distribution activities, as well as his firearm possession. The PSR explains that Mark Hughes "described Harvey Holland as very dangerous and always in possession of a gun," and that Ezerell Byum testified that "Harvey Holland's role was 'protector.'" (*Id.* at ¶¶ 11, 14). The PSR cites the testimony of Anthony Braxton as evidence of Defendant's crack-cocaine distribution operation with his brother Jeffrey Holland and includes Braxton's statement that both Defendant and his brother Jeffrey Holland, "bragged to him that they had shot an Ernie Stewart in a phone booth at the corner of 19th and Bellevue Streets in Harrisburg." (*Id.* at ¶ 7). Braxton added that "the Hollands took him past the phone booth and pointed out the bullet holes in the phone booth." (*Id.*). Law enforcement confirmed that such an incident had occurred, as

Stewart was hit in the head and had become mentally incapacitated. (*Id.*). Significantly, the PSR establishes that Defendant was a known high level, violent drug dealer.

Defendant argues that the USSG § 2A1.1 cross reference should not apply because "there is insufficient proof of either a murder connected to drug distribution or that Mr. Holland committed it." (Doc. 557 at 4). Judge Caldwell determined there was abundant evidence to the contrary, saying, "I frankly could not understand in any way how the jury failed to return a guilty verdict because in my mind, the evidence against all three of the people who were involved in this was compelling." (Doc. 272 at 7). He continued:

> THE COURT: As I did in the Jeffrey Holland case, I am going to just briefly outline the evidence that is directly related to Harvey Holland. But I also note, as Mr. Behe has, that many of the things Jeffrey Holland said to other people or did as a conspirator are admissible and can be considered against Harvey. And I am not going to outline all of that evidence.
>
> Anthony Braxton in paragraph seven of the presentence report, and I recall it from the trial, indicated that the defendant and his brother bragged about shooting an individual named Stewart who apparently was shot in a phone booth near the time when this killing occurred. I am not saying that that is evidence that either of the gentlemen were involved in shooting Harrigan, but I think it is evidence that can be considered with all of the other evidence as to whether or not Mr. Harvey Holland was involved in this killing.
>
> Mark Hughes testified that the defendant and his brother Jeffrey sold crack since 1986, and that he went to New York City to buy crack. Sometime in the winter of 2000, Mr. Hughes said that the defendant and his brother robbed and shot another dealer. I don't know if that would be Stewart or not. Mr. Behe, do you know who that was?
>
> MR. BEHE: I believe that was supposed to have been Mr. Stewart.
>
> THE COURT: I think Mr. Hughes indicated that he observed the defendant in the car – in a car at one time with a weapon, and that he was always in

possession of a weapon and told Mr. Hughes about the shooting of Mr. Stewart in the phone booth.

Jamine Jackson said that the defendant was a violent person with a reputation as an enforcer. Sharonda Poser testified she traveled to New York with the defendant to get drugs. Angela Jackson, as Mr. Behe has indicated, testified that he admitted at one time or told her at one time that he was taking care of business in Camelot Village and admitted that he had killed someone.

Toyann Anderson said that the defendant implicated himself in the murder with Shawn Anderson and Jeffrey Holland. I think I have that correct.

MR. BEHE: Yes, sir.

THE COURT: Anthony Jackson said that Jeffrey implicated the defendant Harvey and Shawn, and that Harvey admitted to Jackson that he and Jeffrey shot Harrigan.

Sharonda Posey said that the defendant Jeffrey Holland and Shawn Anderson were excited waiting for a TV news report of Mr. Harrigan's death, and that when it came on, things were said like here it is and that nigger is dead, and he got what he deserved, things of that kind.

Jeffrey later told Sharonda Posey that he and Harvey and Anderson did it. And Anderson I think also admitted to killing to Sharonda Posey. Ezerell Bynum, the three of them told him that they killed Harrigan. Jeffrey told him that they cut a hole in a gate or a fence and waited to ambush the victim. And, of course, there was evidence to that effect. I thought that was significant because how else would Mr. Bynum have that information.

Aaron Pitts, another witness, testified that Jeffrey told him why and how he and others used three different guns to kill Harrigan. And, of course, that evidence of the use of three weapons Mr. Behe has alluded to.

Omar Dykes, who did not testify, told agents that Jeffrey admitted to him that the three people involved here did that – did the killing, and that the defendant told Dykes to tell Jeffrey not to run his mouth about the killing.

I think all of these facts when put together more than persuade me beyond a reasonable doubt, certainly by a preponderance of the evidence that Harvey

> Holland was a participant in drug dealing, and that he and his brother conspired with Anderson and agreed to seek revenge or whatever it was against Mr. Harrigan.
>
> I think it is also true that Jeffrey Holland was the boss of this conspiracy so to speak, but all of the conspirators were involved in this killing. I have no trouble coming to the conclusion that this relevant conduct must be considered in imposing a sentence.

(*Id.* at 7-10).

It is this Court's view that Defendant's conduct warrants consecutive sentences of forty years imprisonment on counts two and five to not only reflect the seriousness of the offense, but also to promote respect for the law and provide just punishment for the offenses themselves. Where Defendant has a sustained history of drug distribution, where he has employed violence as an integral part of his drug distribution, and, most importantly, where he has committed murder in connection with his drug distribution activities, the just punishment, respect for the law, and deterrence of criminal conduct factors of § 3553(a) combine to support a sentence of forty years on count two and forty years on count five for a total of eighty years imprisonment.

Defendant highlights his educational efforts, employment, medical risks, and his family in support of his arguments that he is entitled to a sentence variance of time served. (*See generally* Doc. 545). According to Defendant, he has been unable to obtain a GED due to his "documented learning disability" and because he has "a fourth-grade reading level." (Doc. 545 at 10). Defendant has, however, completed multiple courses offered by the Bureau of Prisons and has maintained employment with the Trust Fund Limited Inmate

Computer System as an orderly for several years. (*Id.* at 10-11; Doc. 546, Ex. D at 1 ("I took advantage of the many programs this prison had to offer me.")). Defendant states that he was treated for prostate cancer in 2017, has been diagnosed with hyperlipidemia, and contracted COVID-19 while incarcerated. (Doc. 545 at 12). Defendant also details the familial support he has and the willingness of his family to assist with his transition after his release from prison. (Doc. 545 at 8-9, 19). Many family members of Defendant wrote letters of support explaining the kind of person they believe Defendant to be and the ways in which they will assist Defendant in the event he is released from prison. (*See generally* Doc. 546, Ex. E).

In this Court's view, these factors do not outweigh the murder of Jason Harrigan, the seriousness the drug trafficking in which he engaged, and his disrespect for the law. Defendant's post-conviction rehabilitation efforts are commendable but insufficient to overcome the realities of his drug distribution activities, which involved violence and murder.

In his letter to the Court, Defendant does express some remorse for his actions. His remorse, however, appears to be directed solely at his own abuse of drugs, writing:

> Once I got out of Elwyn Institution, I thought I had my life all figure[d] out, but I didn't as I started my life of abusing drugs and a lot came with that. I'm so sorry for that. Your Honor, as I looked back on my life of using drugs I made a big fool of myself and my life. This 18 years I have been incarcerated, made me realize that it ain't nothing in this world is more important than my freedom and my family.

(Doc. 546, Ex. D at 1). Defendant characterizes the violence he committed in furtherance of drug distribution, including the murder of Jason Harrigan, as collateral damage from his

addiction. The violence committed by Defendant was more than an unintended by-product of Defendant's drug abuse and while it may provide added context to his actions, it does not excuse Defendant's participation in drug distribution and drug-related violence and murder.

The record supports the finding that, as part of his distribution activity, Defendant, together with Jeffrey Holland and Shawn Anderson, committed one, and possibly two, murders. As a result, the focus of the 3553(a) inquiry cannot be limited to Defendant's crack addiction and drug distribution, and necessarily encompasses more than Defendant's addiction. The requirements that there be just punishment and that a sentence must be sufficient, but not greater than necessary, to satisfy the factors set forth in § 3553(a) fully justify the sentence of forty years on each of counts two and five. *Concepcion*, 142 S.Ct. at 2401 ("Nothing in the text and structure of the First Step Act expressly, or even implicitly, overcomes the established tradition of district courts' sentencing discretion.").

Finally, this Court finds that Defendant is entitled to a sentencing reduction from life imprisonment to a sentence of forty years imprisonment on each of counts two and five, to be served consecutively. Defendant is also subject to a four year term of supervised release on each count of conviction. However, nothing in the record provides a basis for this Court to reduce his sentence below the forty year sentence on each count of conviction required by resentencing under the First Step Act. For the reasons stated above, this sentence is sufficient, but not greater than necessary, to satisfy the factors of 18 U.S.C. § 3553(a). *See Concepcion*, 142 S.Ct. at 2404 ("Section 404(c) of the First Step Act confers

particular discretion, clarifying that the Act does not 'require a court to reduce any sentence.'"); *see also id.* at 2401 ("Nothing in the text and structure of the First Step Act expressly, or even implicitly, overcomes the established tradition of district courts' sentencing discretion.").

In *Shields*, the Third Circuit provided district courts with guidance as to how they should decide First Step Act motions, and this Court has followed the recommended process. The Court determined that Defendant was eligible for relief under the First Step Act (*see supra*, Section III.a) and Probation prepared an addendum to the PSR that addressed Defendant's proper Guidelines calculation. *Shields*, 2022 WL 371778, at *8 ("First, upon receiving the motion, the court determines whether the defendant is eligible for relief under the statute; second, the court orders the Probation Office to prepare an addendum to the PSR addressing the proper Guidelines calculation[.]"). Next, the Court provided the parties with multiple opportunities to "file memoranda noting any objections to the PSR, discussing the § 3553(a) factors, and attaching any relevant documentation." *Id.*; (*see also supra*, n.1). The Court determined that a resentencing hearing was not necessary because it had "sufficient information to decide whether and by how much to reduce [Defendant's] sentence" based on the "record of the original sentencing, along with the arguments of the parties" in relation to the instant § 404(b) motion. *Shields*, 2022 WL 371778, at *7.

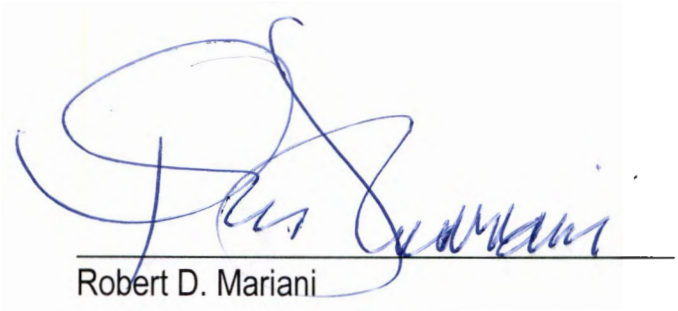
Finally, the Court determined that Defendant's sentence should be reduced and determined the appropriate reduction. *Shields*, 2022 WL 371778, at *8 ("[F]ourth, the Court decides whether to reduce the defendant's sentence, and if so, by how much."). In doing so, the Court abided by the directives from the Supreme Court and the Third Circuit. When raised by the parties in a "nonfrivolous argument[ ]," the Court considered "intervening changes of law [and] fact," such as the § 3553(a) factors and Defendant's post-conviction rehabilitation efforts and health challenges. *Concepcion*, 142 S.Ct. at 2396, 2404; *Shields*, 2022 WL 371778, at *4 ("As far as what courts 'may' consider, we had held that they are authorized to take into account, at the time of resentencing, any changed circumstances, 'including post-sentencing developments, such as health issues and rehabilitation arguments, as were raised' by the parties, *Easter*, 975 F.3d at 327, *Murphy*, 998 F.3d at 559. And the Supreme Court in *Concepcion* agreed."). In addressing these "nonfrivolous arguments," the Court abided by the Supreme Court's and Third Circuit's conclusion that "a district court's discretion does not empower it to 'recalculate a movant's benchmark Guidelines range in any way other than to reflect the retroactive application of the Fair Sentencing Act,' as 'the First Step Act directs district courts to calculate the Guidelines range as if the Fair Sentencing Act's amendments had been in place at the time of the offense.'" *Id.* (quoting *Concepcion*, 142 S.Ct. at 2402 n.6).

As required by the First Step Act, the Court "reasoned through [the parties'] arguments,'" *id.* (quoting *United States v. Maxwell*, 991 F.3d 685, 694 (6th Cir. 2021)), as

demonstrated by the above analysis in this Memorandum Opinion. *See id.* ("When it comes to that reasoned explanation, the First Step Act leaves much [ ] to the judge's own professional judgment." (internal citation and quotation omitted)). However, "[n]othing in the text and structure of the First Step Act expressly, or even implicitly overcomes the established tradition of district courts' sentencing discretion." *Id.* at 2401. Accordingly, through the application of the Fair Sentencing Act, the First Step Act, and the proper exercise of its discretion, the Court determines that Defendant should be resentenced to a term of imprisonment of forty years on count two and a term of forty years imprisonment on count five, for a total of 80 years, in addition to a term of four years supervised release on each of counts two and five.

IV. CONCLUSION

Based on the foregoing analysis, the Court will grant Defendant's Motion for Resentencing pursuant to Section 404(b) of the First Step Act and will deny Defendant's request for a sentence reduction beyond the relief granted in compliance with the requirements of § 404(b) of the First Step Act.



Robert D. Mariani
United States District Judge

UNITED STATES DISTRICT COURT

Middle District of Pennsylvania

UNITED STATES OF AMERICA
v.
HARVEY HOLLAND

AMENDED JUDGMENT IN A CRIMINAL CASE

Case Number: 1:CR-01-195-006
USM Number: 11264-067

Date of Original Judgment: 11/20/2002
(Or Date of Last Amended Judgment)

Frederick W. Ulrich, Esq.
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) 2 & 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
21:841(a)(1); 18:2	Distribution & Possession with Intent to Distribute 50 Grams or More of Crack Cocaine	4/1/2001	2SS

(continued on page 2)

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 jury was unable to reach a verdict on* Count 4 of the Second Superseding Indictment

☐ 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.

9/7/2022
Date of Imposition of Judgment

Signature of Judge

Robert D. Mariani U.S. District Judge
Name and Title of Judge

9/8/22
Date

DEFENDANT: HARVEY HOLLAND
CASE NUMBER: 1:CR-01-195-006

ADDITIONAL COUNTS OF CONVICTION

Title & Section	Nature of Offense	Offense Ended	Count
21:846	Conspiracy to Distribute and Possess with Intent to Distribute 50 Grams or More of Crack Cocaine	4/1/2001	5SS

DEFENDANT: HARVEY HOLLAND
CASE NUMBER: 1:CR-01-195-006

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of :
Eighty (80) years. This term consists of forty (40) years imprisonment on Count Two and forty (40) years imprisonment on Count Five, to be served consecutively.

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

☑ 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: HARVEY HOLLAND
CASE NUMBER: 1:CR-01-195-006

SUPERVISED RELEASE

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

five (5) years. This term consists of terms of five years on each of Counts Two and Five to be served concurrently.

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: HARVEY HOLLAND
CASE NUMBER: 1:CR-01-195-006

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.
14. You must notify the court of any material change in your economic circumstances that might affect your ability to pay restitution, fines or special assessments.

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: HARVEY HOLLAND
CASE NUMBER: 1:CR-01-195-006

ADDITIONAL SUPERVISED RELEASE TERMS

*

15. You shall participate in a program of testing and treatment for drug abuse, as directed by the Probation Officer, until such time as you are released from the program by the Probation Officer.

16. The defendant shall notify the Court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution, fines, or special assessments;

17. The defendant 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 schedule for payment of restitution, fines, or special assessments;

18. The defendant shall provide the Probation Officer with access to any requested financial information.

DEFENDANT: HARVEY HOLLAND
CASE NUMBER: 1:CR-01-195-006

CRIMINAL MONETARY PENALTIES

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

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	$ 200.00	$	$ 4,000.00	$	$

☐ 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.

Name of Payee	Total Loss***	Restitution Ordered	Priority or Percentage

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:

* 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: HARVEY HOLLAND
CASE NUMBER: 1:CR-01-195-006

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 fine and special assessment shall be paid through the Clerk of the Court, are due in full immediately, and are payable during the period of incarceration.

The fine and special assessment shall be paid to the Clerk, U.S. District Court, at P.O. Box 983, Harrisburg, PA 17108.

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.

☐ 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) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.