

UNPUBLISHED**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 21-4619

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

MICHAEL LAWRENCE KERLIN,

Defendant – Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Newport News. Roderick Charles Young, District Judge. (4:19-cr-00007-RCY-LRL-1)

Submitted: October 5, 2022

Decided: February 15, 2023

Before DIAZ, and QUATTLEBAUM, Circuit Judges, and FLOYD, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

ON BRIEF: Miriam Z. Seddiq, SEDDIQ LAW FIRM, Rockville, Maryland; David B. Benowitz, PRICE BENOWITZ, LLP, Washington, D.C., for Appellant. Jessica D. Aber, United States Attorney, Richard D. Cooke, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Michael Lawrence Kerlin appeals the 204-month prison sentence imposed by the district court after he pleaded guilty to several drug-related charges. Kerlin challenges the application of a second-degree murder cross-reference, the district court's calculation of attributable drug quantities, and the substantive reasonableness of his sentence. Finding no reversible error, we affirm.

I.

A.

This case stems from the deaths of two women after taking heroin Kerlin supplied. In November 2015, Kerlin called 911 to report that he had found Wendy Hinkle unconscious after she snorted heroin at his residence. Hinkle died a few days later.

Six months later, officers discovered Michelle Hull's body in a trash can behind Dixie Fuel, a gas station Kerlin owned. Her body was folded in half with her arms and feet touching. Officers searched Kerlin's house and found Hull's car, purse, and phone.

A medical examiner couldn't conclusively determine the cause and manner of Hull's death. Tests found multiple "illicit and licit drugs," including cocaine and heroin, in Hull's blood. L.A. 302. But the autopsy report also noted that Hull had "multiple blunt force head injuries," and that she may have suffocated because of her folded position in the trash can. *Id.* The examiner also found several "natural patholog[ies]" that could have contributed to her death, including "an enlarged heart" and mild arterial and cerebral plaque

buildup. *Id*; *see also* L.A. 207-13. Hull's friends told officers that she used cocaine but didn't use heroin.

One of Kerlin's employees at Dixie Fuel told investigators that she had called Kerlin after learning Hull was missing, and that Kerlin told her Hull had overdosed and died and was at the gas station. The employee said Kerlin asked her for help moving Hull's car from his garage back to Hull's house.

An inmate who was housed with Kerlin at a Virginia jail told officers that Kerlin admitted he had shot up Hull with heroin, she overdosed, and he didn't call for help because he was afraid he would be charged with murder. Kerlin admitted as part of his plea agreement that he distributed heroin to Hinkle and Hull before their deaths.

B.

A grand jury in the Eastern District of Virginia indicted Kerlin on nineteen counts related to drug trafficking and distribution. Kerlin pleaded guilty to four counts: one count of maintaining a drug-involved premises in violation of 21 U.S.C. § 856(a)(2); two counts of distribution of heroin in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C); and one count of possessing a firearm as an unlawful user of controlled substances in violation of 18 U.S.C. § 922(g)(3).

The probation officer computed the advisory sentencing guideline range for the counts related to heroin distribution. Applying the second-degree murder cross-reference in U.S.S.G. § 2D1.1(d)(1) because of Hull's death, the base offense level was 38 under § 2A1.2(a). The officer recommended subtracting three levels because Kerlin accepted responsibility for the offenses, resulting in a total offense level of 35. Because the murder

cross-reference dictated the offense level, the officer didn't calculate an offense level based on the drug quantities attributable to Kerlin.¹

At sentencing, the court heard testimony from the medical examiner who conducted Hull's autopsy. The medical examiner reiterated that she was "unable to determine why [Hull] died." J.A. 200. But she noted that if Hull was not already dead when she was placed in the trash can, "positional asphyxia" would have played "a significant role" in her death. J.A. 203. And she said that while the drugs Hull had taken "may have caused the death," "there were other factors, including the circumstances and natural disease and some of the injuries that just made [her] not think that this was just a typical drug overdose."

J.A. 207.

Kerlin objected to the application of the second-degree murder cross-reference, arguing the medical examiner's testimony wasn't enough to prove by a preponderance of the evidence that Kerlin caused Hull's death. J.A. 236-40. The court disagreed, finding:

[W]hether it's the drug overdose by itself, the positional asphyxia by itself, or a combination or both of those things, there is one thing that I think we all know that has been uncontested, and that is both of those things point back to Michael Kerlin, and they point back to Michael Kerlin in a way that was reckless, that was wanton, and that there was not a standard of care given, because there was no call to 911 for anyone to try to help.

¹ Namely, "one table[t] of Alprazolam, a schedule IV substance, 3.54 grams of 'crack' cocaine, 1,006.425 grams of powder cocaine, and 2,698 grams of heroin." J.A. 343.

LA. 257. Even if the medical examiner couldn't "say exactly how Ms. Hull passed away," the court determined, there was sufficient evidence to apply the murder cross-reference. LA. 256-57.

The court adopted the presentencing report's finding that the offense level was 35, yielding a sentencing-guideline range of 168 to 210 months. The court then sentenced Kerlin to 204 months in prison and three years of supervised release.

This appeal followed.

II.

"We review the sentence imposed by a district court under a deferential abuse-of-discretion standard." *United States v. Davis*, 679 F.3d 177, 182 (4th Cir. 2012) (cleaned up). We review factual findings for clear error and legal conclusions de novo. *Id.* Under the clear error standard, "where there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous." *United States v. Shea*, 989 F.3d 271, 280 (4th Cir. 2021).

A.

We begin with Kerlin's argument that the second-degree murder cross-reference was improper because the government failed to prove he caused Hull's death.

The government has the burden to prove a cross-referenced offense by a preponderance of the evidence. *Davis*, 679 F.3d at 182. Second-degree murder, the cross-referenced offense here, "is the unlawful killing of a human being with malice aforethought." 18 U.S.C. § 1111(a).

Kerlin doesn't dispute that the government established malice aforethought. But he argues that the government failed to prove causation—that is, “that acts or omissions of Mr. Kerlin were the cause of [Hull's] death.” Appellant's Br. at 25. He argues that the medical examiner didn't conclusively determine a cause of death, so Hull's “enlarged [heart], hardening of arteries, and various licit [] drugs” are all plausible causes of her death. *Id.* at 26.

The government replies that “the medical evidence supported three possible causes of death”: the drugs Kerlin supplied, suffocation in the trash can, and Hull's underlying health conditions. Appellee's Br. at 14–15. The court didn't clearly err, the government contends, in finding it more likely than not that natural causes weren't to blame. *Id.* at 15. Giving due deference to the district court's factual findings, we agree with the government.

The parties agree that but-for causation would satisfy the causation requirement. *Cf. Burrage v. United States*, 571 U.S. 204, 218–19 (2014). So Kerlin must show that the district court clearly erred in finding, by a preponderance of the evidence, that Hull would have lived but for Kerlin's supplying her heroin, failing to call for help, or putting her body in the trash can.

But sufficient evidence supports the district court's conclusion. The court found that Hull was not a habitual heroin user and that Kerlin gave her heroin. It also found, per the jailhouse informant, that Hull died after taking the heroin and Kerlin didn't call 911.²

If Kerlin put Hull in the trash can before she died, moreover, the medical examiner's testimony supports the theory that positional asphyxia was more likely than not a but-for cause. None of these findings are clearly erroneous. So the court didn't "create[] out of whole cloth the cause of the death." Appellant's Br. at 29. Rather, it examined the evidence and found it more likely than not that at least one of Kerlin's actions was a but-for cause of Hull's death.

We conclude that the district court didn't clearly err in applying the second-degree murder cross-reference.

B.

Next, Kerlin argues that the district court erred in calculating the relevant drug quantities attributable to him. Even assuming error, in evaluating such claims we must consider whether the error was harmless—that is, whether the defendant "received the same sentence that he would have received" without the error. *United States v. Mehta*, 594 F.3d 277, 283–84 (4th Cir. 2010).

² Given that Hull's body had no signs of needle punctures, the district court's finding that the heroin "was injected in her by the defendant"—relying on the jailhouse informant—may be error. J.A. 256–57. But the method of administration doesn't change the result.

Here, the second-degree murder cross-reference alone determined the offense level.

While the drug quantities would have established a base offense level of 30, the cross-reference yielded a base offense level of 38. So as the district court noted, “the higher guideline comes into effect, and the drug guideline does not come into effect.” LA. 257.

Accordingly, any error in calculating the drug quantities is harmless.

C.

Finally, Kerlin argues that his sentence was substantively unreasonable because the district court “erroneously applied the murder cross-reference and miscalculated the drug weights.” Appellant’s Br. at 39–40. But as discussed, the district court didn’t commit reversible error on either front. Kerlin therefore hasn’t overcome the presumption of substantive reasonableness we afford his within-Guidelines sentence. *See Rita v. United States*, 551 U.S. 338, 347 (2007).

III.

We affirm the district court’s judgment. And we dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

FILED: February 15, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-4619
(4:19-cr-00007-RCY-LRL-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

MICHAEL LAWRENCE KERLIN

Defendant - Appellant

JUDGMENT

In accordance with the decision of this court, the judgment of the district court is affirmed.

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

/s/ PATRICIA S. CONNOR, CLERK

FILED: June 5, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-4619
(4:19-cr-00007-RCY-LRL-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

MICHAEL LAWRENCE KERLIN

Defendant - Appellant

O R D E R

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Diaz, Judge Quattlebaum, and Senior Judge Floyd.

For the Court

/s/ Patricia S. Connor, Clerk

FILED: June 13, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-4619
(4:19-cr-00007-RCY-LRL-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

MICHAEL LAWRENCE KERLIN

Defendant - Appellant

M A N D A T E

The judgment of this court, entered February 15, 2023, takes effect today.

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

/s/Patricia S. Connor, Clerk

**UNITED STATES DISTRICT COURT
Eastern District of Virginia
Newport News Division**

UNITED STATES OF AMERICA) **JUDGMENT IN A CRIMINAL CASE**
v.)
MICHAEL LAWRENCE KERLIN,) Case Number: 4:19cr7
Defendant.) USM Number: 92994-083
)
) Defendant's Attorneys: Rammy Barbari, Glenn Ivey and
) retained
)

The defendant pleaded guilty to Counts 3, 5, 6 and 18.

The defendant is adjudged guilty of these offenses:

<u>Title and Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21 U.S.C. § 856(a)(2)	Maintaining Drug-Involved Premises	05/08/2016	3
21 U.S.C. § 841(a)(1) and (b)(1)(C)	Distribution of Heroin	11/11/2015	5
18 U.S.C. § 922(g)(3) and 924(a)(2)	Unlawful User of Controlled Substances in Possession of a Firearm and Ammunition	11/11/2015	6
21 U.S.C. § 841(a)(1) and (b)(1)(C)	Distribution of Heroin	05/07/2016	18

The defendant is sentenced as provided in pages 2 through 7 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

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

Count(s) 1, 2, 4, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 19

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.

11/9/21
Date of Imposition of Judgment

Signature of Judge

Roderick C. Young, United States District Judge
Name and Title of Judge

11/10/21
Date

Case Number: 4:19cr7
Defendant's Name: Kerlin, Michael Lawrence

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 204 months on Count 3, a term of 204 months on Count 5, a term of 120 months on Count 6 and a term of 204 months on Count 18, all to be served concurrently. Defendant shall be given credit for time served pursuant to 18 U.S.C. § 3585.

The Court makes the following recommendations to the Bureau of Prisons:

1. The defendant shall receive an evaluation for the need of substance abuse treatment and mental health treatment while incarcerated.
2. The Court recommends that the defendant be housed as close to his/her family as possible.

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 _____, with a certified copy of this Judgment.
at _____

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

Case Number: 4:19cr7
Defendant's Name: Kerlin, Michael Lawrence

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of 3 year(s) on Count 3, 3 years on Count 5, 3 years on Count 6 and 3 year(s) on Count 18, all to run 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.

Case Number: 4:19cr7
Defendant's Name: Kerlin, Michael Lawrence

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 _____

Case Number: 4:19cr7
Defendant's Name: Kerlin, Michael Lawrence

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall apply all monies received from income tax refunds, lottery winnings, inheritances, judgments, and any anticipated or unexpected financial gains, to the outstanding Court-ordered financial obligation, or in a lesser amount to be determined by the Court, upon the recommendation of the probation officer.
2. The defendant shall not incur new credit charges or open additional lines of credit without the approval of the probation officer.
3. The defendant shall provide the probation officer access to any requested financial information.
4. The offender shall participate in the Treasury Offset Program (TOP) as directed by the probation officer.
5. The defendant shall not consume alcohol during his period of supervised release.
6. If the defendant tests positive for alcohol or illicit substances, he shall participate in a program approved by the United States Probation Office for substance abuse, which program may include residential treatment and testing to determine whether the defendant has reverted to the use of drugs or alcohol, with partial cost to be paid by the defendant, all as directed by the probation officer.
7. The defendant shall waive all rights of confidentiality regarding substance abuse treatment in order to allow the release of information to the United States Probation Office and authorize communication between the probation officer and the treatment provider.
8. The defendant shall participate in a program approved by the United States Probation Office for mental health treatment, to include anger management. The cost of this program is to be paid by the defendant as directed by the probation officer.
9. The defendant shall waive all rights of confidentiality regarding mental health treatment in order to allow the release of information to the United States Probation Office and authorize communication between the probation officer and the treatment provider.

Case Number: 4:19cr7
Defendant's Name: Kerlin, Michael Lawrence

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	\$ 400.00	\$ 8,040.90	\$ 50,000.00	\$	\$

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

The defendant 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.

For payee information, see **Restitution Order entered and filed in open court on 11/9/21**.

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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TOTALS \$ \$

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.

Case Number: 4:19cr7
Defendant's Name: Kerlin, Michael Lawrence

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A Lump sum payment of \$ _____ due immediately, balance due
 not later than _____, or
 in accordance with C, D, E, or F below; or

B Payment to begin immediately (may be combined with C, D, or F below); or

C Payment in equal (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of (e.g., months or years), to commence (e.g., 30 or 60 days) after the date of this judgment; or

D Payment in equal (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of (e.g., months or years), to commence (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E Payment during the term of supervised release will commence within (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F Special instructions regarding the payment of criminal monetary penalties:
Any special assessment, restitution, or fine payments may be subject to penalties for default and delinquency.

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.

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:
See Consent Order of Forfeiture entered and filed in open Court on 11/9/21.

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.

General Docket
United States Court of Appeals for the Fourth Circuit

Court of Appeals Docket #: 21-4619

US v. Michael Kerlin

Appeal From: United States District Court for the Eastern District of Virginia at Newport News

Fee Status: fee paid

Docketed: 11/15/2021

Termed: 02/15/2023

Case Type Information:

- 1) Criminal
- 2) Direct Criminal
- 3) null

Originating Court Information:

District: 0422-4 : 4:19-cr-00007-RCY-LRL-1

Court Reporter: Laura G. Griffin, Court Reporter Coordinator

Court Reporter: Jody Stewart, Official Court Reporter

Court Reporter: Jill H. Trail, Official Court Reporter

Presiding Judge: Roderick Charles Young, U. S. District Court Judge

Date Filed: 01/16/2019

Date Order/Judgment:

11/10/2021

Date Order/Judgment EOD:

11/10/2021

Date NOA Filed:

11/12/2021

Date Rec'd COA:

11/12/2021

Prior Cases:

None

Current Cases:

None

UNITED STATES OF AMERICA
Plaintiff - Appellee

Jessica D. Aber, U. S. Attorney

Direct: 804-819-5400

Email: jessica.d.aber@usdoj.gov

[On Filing]

OFFICE OF THE UNITED STATES ATTORNEY

Eastern District of Virginia

919 East Main Street

Richmond, VA 23219-2447

Jacqueline Romy Bechara

Direct: 703-299-3819

Email: jacqueline.bechara@usdoj.gov

[COR NTC Government]

OFFICE OF THE UNITED STATES ATTORNEY

Eastern District of Virginia

2100 Jamieson Avenue

Alexandria, VA 22314-5194

Richard Daniel Cooke, Assistant U. S. Attorney

Direct: 804-819-5471

Email: richard.cooke@usdoj.gov

[COR NTC Government]

OFFICE OF THE UNITED STATES ATTORNEY

Eastern District of Virginia

Suite 1900

919 East Main Street

Richmond, VA 23219-2447

Lisa Rae McKeel, Esq., Assistant U. S. Attorney

Direct: 757-591-4040

Email: lisa.mckeel@usdoj.gov

[COR NTC Government]

OFFICE OF THE UNITED STATES ATTORNEY

Suite 300

Fountain Plaza 3

721 Lakefront Commons

Newport News, VA 23606-0000

V.

MICHAEL LAWRENCE KERLIN
Defendant - Appellant

David Barry Benowitz

Direct: 202-417-6000

Email: david@pricebenowitz.com

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

MICHAEL LAWRENCE KERLIN

Defendant - Appellant

11/15/2021 1 Criminal case docketed. Originating case number: 4:19-cr-00007-RCY-LRL-1. Date notice of appeal filed: 11/12/2021. Case manager: CHalupa. [21-4619] CH [Entered: 11/15/2021 09:50 AM]
1 pg, 57.15 KB

11/15/2021 2 DOCKETING NOTICE issued Re: [1] criminal case. Originating case number: 4:19-cr-00007-RCY-LRL-1. [21-4619] CH [Entered: 11/15/2021 09:52 AM]
6 pg, 145.75 KB

11/15/2021 3 APPEARANCE OF COUNSEL for US. [1001058329] [21-4619] Lisa McKeel [Entered: 11/15/2021 10:45 AM]
1 pg, 75.51 KB

11/15/2021 4 APPEARANCE OF COUNSEL by David Benowitz for Michael Lawrence Kerlin. [1001058391] [21-4619] David Benowitz [Entered: 11/15/2021 11:10 AM]
1 pg, 58.4 KB

11/24/2021 5 DOCKETING STATEMENT by Michael Lawrence Kerlin. [21-4619] David Benowitz [Entered: 11/24/2021 06:18 AM]
4 pg, 209.24 KB

11/24/2021 6 TRANSCRIPT ORDER ACKNOWLEDGMENT filed for Jill H. Trail. Identify by proceeding and date all transcript ordered from this court reporter: Sentencing held on 11/09/2021; and Plea Hearing held on 02/09/2021. Names of all parties ordering transcript from this reporter: David Benowitz for Michael Kerlin. Originating case number: 4:19-cr-00007-RCY-LRL-1. [1001065018] Transcript due from Jill H. Trail, Official Court Reporter on 01/03/2022. [21-4619] CH [Entered: 11/24/2021 09:12 AM]
5 pg, 239.36 KB

12/08/2021 7 BRIEFING ORDER filed. Paper copy requirements are temporarily suspended unless the case is under pre-argument review or being scheduled for argument, in which case a total of four paper copies of formal briefs and appendices are required. [1001071539] Opening brief and appendix due 01/12/2022. Response brief due 02/02/2022. [21-4619] CH [Entered: 12/08/2021 10:25 AM]
3 pg, 149.16 KB

12/08/2021 8 APPEARANCE OF COUNSEL by Jacqueline R. Bechara for US. [1001071565] [21-4619] Jacqueline Bechara [Entered: 12/08/2021 10:45 AM]
1 pg, 144.25 KB

01/05/2022 9 MOTION by Michael Lawrence Kerlin to extend filing time for opening brief and appendix until Monday, February 28, 2022.. Date and method of service: 01/05/2022 ecf. [1001085959] [21-4619] David Benowitz [Entered: 01/05/2022 07:15 AM]
3 pg, 109.09 KB

01/05/2022 10 ORDER filed granting Motion to extend filing time [9]. Number of days granted: 30. Opening brief and appendix due 02/11/2022. Response brief due 03/04/2022. Paper copy requirements are temporarily suspended unless the case is under pre-argument review or being scheduled for argument, in which case a total of four paper copies of formal briefs and appendices are required. Copies to all parties. [1001086231] [21-4619] CH [Entered: 01/05/2022 09:59 AM]
1 pg, 56.66 KB

02/01/2022 11 APPEARANCE OF COUNSEL by Mirriam Seddiq for Michael Lawrence Kerlin. [1001102340] [21-4619] Mirriam Seddiq [Entered: 02/01/2022 02:34 PM]
1 pg, 46.89 KB

02/09/2022 12 MOTION by Michael Lawrence Kerlin to extend filing time for opening brief and appendix until March 11, 2022.. Date and method of service: 02/09/2022 ecf, US mail. [1001107395] [21-4619] Mirriam Seddiq [Entered: 02/09/2022 01:33 PM]
2 pg, 48.38 KB

02/09/2022 13 ORDER filed granting Motion to extend filing time [12]. Number of days granted: 30. Opening brief and appendix due 03/14/2022. Response brief due 04/04/2022. Paper copy requirements are temporarily suspended unless the case is under pre-argument review or being scheduled for argument, in which case a total of four paper copies of formal briefs and appendices are required. Copies to all parties. [1001107620] [21-4619] CH [Entered: 02/09/2022 04:53 PM]
1 pg, 55.87 KB

03/02/2022 14 MOTION by Michael Lawrence Kerlin to extend filing time for opening brief and appendix until April 11, 2022.. Date and method of service: 03/02/2022 ecf, US mail. [1001120053] [21-4619] Mirriam Seddiq [Entered: 03/02/2022 10:01 AM]
2 pg, 49.67 KB

03/02/2022 15 ORDER filed granting Motion to extend filing time [14] Number of days granted: 28. Opening brief and appendix due 04/11/2022. Response brief due 05/02/2022. Paper copy requirements are temporarily suspended unless the case is under pre-argument review or being scheduled for argument, in which case a total of four paper copies of formal briefs and appendices are required. Copies to all parties. [1001120512] [21-4619] CH [Entered: 03/02/2022 04:12 PM]
1 pg, 55.8 KB

04/11/2022 16 BRIEF by Michael Lawrence Kerlin. Type of Brief: OPENING. [1001143567] [21-4619] Mirriam Seddiq [Entered: 04/11/2022 01:53 PM]
48 pg, 487.51 KB

04/11/2022 17 JOINT APPENDIX by Michael Lawrence Kerlin. Digital media exhibit volume? No. [1001143569] [21-4619] Mirriam Seddiq [Entered: 04/11/2022 01:54 PM]
326 pg, 19.27 MB

04/11/2022 18 SEALED JOINT APPENDIX VOLUME(S) (court access) by Michael Lawrence Kerlin . Digital media exhibit volume? No. Filed Ex parte: N. [1001143571] [21-4619] Mirriam Seddiq [Entered: 04/11/2022 01:56 PM]

04/11/2022 19 CERTIFICATE OF CONFIDENTIALITY (Local Rule 25(c)) by Michael Lawrence Kerlin. Sealing Required: Yes. Description of document referenced by certificate: Joint Appendix Volume II. [1001143573] [21-4619] Mirriam Seddiq [Entered: 04/11/2022 01:57 PM]
2 pg, 105.28 KB

04/11/2022 20 ORDER filed sealing joint appendix volume II. Copies to all parties. [1001143673] [21-4619] CH [Entered: 04/11/2022 03:06 PM]
1 pg, 52.34 KB

04/11/2022 40 Receipt of paper copy of OPENING BRIEF filed at [16] by Michael Lawrence Kerlin. Number of pages: [48]. Sufficient: Yes. Number of copies: [1]. Received by clerk date: 10/03/2022. [1001240856] [21-4619] TF [Entered: 10/03/2022 03:10 PM]

04/11/2022 41 Receipt of paper copy of APPENDIX filed at [18], [17] by Michael Lawrence Kerlin. Total number of volumes (including any sealed): [2]. Total number of pages in all volumes: [390]. Total number of sealed volumes: 1. Sufficient? Yes. CD/DVD/Other exhibit? No. Number of copies: [1]. Received by clerk date: 10/03/2022. [1001240861] [21-4619] TF [Entered: 10/03/2022 03:13 PM]

04/29/2022 21 MOTION by US to extend filing time for response brief until May 16, 2022.. Date and method of service: 04/29/2022 ecf. [1001154754] [21-4619] Richard Cooke [Entered: 04/29/2022 01:37 PM]
2 pg, 93.32 KB

04/29/2022 22 ORDER filed granting Motion to extend filing time [21]. Number of days granted: 14. Response brief due 05/16/2022. Paper copy requirements are temporarily suspended unless the case is under pre-argument review or being scheduled for argument, in which case a total of four paper copies of formal briefs and appendices are required. Copies to all parties. [1001154853] [21-4619] CH [Entered: 04/29/2022 03:07 PM]
1 pg, 54.71 KB

05/05/2022 23 APPEARANCE OF COUNSEL by Richard D. Cooke for US. [1001157960] [21-4619] Richard Cooke [Entered: 05/05/2022 04:28 PM]
1 pg, 121.47 KB

05/13/2022 24 MOTION by US to extend filing time for response brief until May 20, 2022.. Date and method of service: 05/13/2022 ecf. [1001162216] [21-4619] Richard Cooke [Entered: 05/13/2022 02:04 PM]
2 pg, 93.35 KB

05/13/2022 25 ORDER filed granting Motion to extend filing time [24]. Number of days granted: 4. Response brief due 05/20/2022. Paper copy requirements are temporarily suspended unless the case is under pre-argument review or being scheduled for argument, in which case a total of four paper copies of formal briefs and appendices are required. Copies to all parties. [1001162227] [21-4619] AB [Entered: 05/13/2022 02:20 PM]
1 pg, 55.11 KB

05/20/2022 26 MOTION by US to extend filing time for response brief until May 23, 2022.. Date and method of service: 05/20/2022 ecf. [1001165586] [21-4619] Richard Cooke [Entered: 05/20/2022 11:34 AM]
2 pg, 94.07 KB

05/20/2022 27 ORDER filed granting Motion to extend filing time [26] Number of days granted: 3. Response brief due 05/23/2022. Paper copy requirements are temporarily suspended unless the case is under pre-argument review or being scheduled for argument, in which case a total of four paper copies of formal briefs and appendices are required. Copies to all parties. [1001165673] [21-4619] TF [Entered: 05/20/2022 12:32 PM]
1 pg, 55.11 KB

05/24/2022 28 BRIEF by US. Type of Brief: RESPONSE. [1001166798] [21-4619] Richard Cooke [Entered: 05/24/2022 01:33 AM]
33 pg, 286.2 KB

05/24/2022 29 MOTION by US for leave to file brief out of time [28]. Date and method of service: 05/24/2022 ecf. [1001166952] [21-4619]--[Edited 05/24/2022 by CH--docket text modified] Richard Cooke [Entered: 05/24/2022 09:45 AM]
2 pg, 92.59 KB

05/24/2022 30 ORDER filed granting Motion for leave to file brief out of time [29]. Copies to all parties. [1001167146] [21-4619] CH [Entered: 05/24/2022 11:08 AM]
1 pg, 52.42 KB

05/24/2022 42 Receipt of paper copy of RESPONSE BRIEF filed at [28] by US. Number of pages: [33]. Sufficient: YES. Number of Copies: [1]. Received by clerk date: 10/05/2022. [1001243606] [21-4619] CH [Entered: 10/06/2022 03:07 PM]

06/13/2022 31 MOTION by Michael Lawrence Kerlin to extend filing time for reply brief until July 5, 2022.. Date and method of service: 06/13/2022 US mail, ecf. [1001176700] [21-4619] Mirriam Seddiq [Entered: 06/13/2022 01:36 PM]
2 pg, 48.78 KB

06/13/2022 32 ORDER filed granting Motion to extend filing time [31] Number of days granted: 21. Reply brief due 07/05/2022. Paper copy requirements are temporarily suspended unless the case is under pre-argument review or being scheduled for argument, in which case a total of four paper copies of formal briefs and appendices are required. Copies to all parties [1001176972] [21-4619] CH [Entered: 06/13/2022 04:34 PM]
1 pg, 55.87 KB

07/11/2022 33 MOTION by Michael Lawrence Kerlin to extend filing time for reply brief until July 30, 2022.. Date and method of service: 07/11/2022 ecf. [1001191243] [21-4619] Mirriam Seddiq [Entered: 07/11/2022 10:35 AM]
2 pg, 48.23 KB

07/11/2022 34 ORDER filed granting Motion to extend filing time [33] Number of days granted: 27. Reply brief due 08/01/2022. Paper copy requirements are temporarily suspended unless the case is under pre-argument review or being scheduled for argument, in
1 pg, 55.11 KB

which case a total of four paper copies of formal briefs and appendices are required. Copies to all parties. [1001191428] [21-4619] DL [Entered: 07/11/2022 12:18 PM]

08/01/2022 35 MOTION by Michael Lawrence Kerlin to extend filing time for reply brief until August 3, 2022.. Date and method of service: 08/01/2022 ecf. [1001203972] [21-4619] Mirriam Seddiq [Entered: 08/01/2022 02:50 PM]
2 pg, 48.78 KB

08/01/2022 36 ORDER filed granting Motion to extend filing time [35] Number of days granted: 2. Reply brief due 08/03/2022. No paper copies required unless case has been tentatively calendared or copies otherwise ordered. Copies to all parties.[1001204128] [21-4619] DL [Entered: 08/01/2022 04:50 PM]

08/03/2022 37 BRIEF by Michael Lawrence Kerlin. Type of Brief: REPLY. [1001205655] [21-4619] Mirriam Seddiq [Entered: 08/03/2022 01:37 PM]
13 pg, 242.21 KB

08/03/2022 39 Receipt of paper copy of REPLY BRIEF filed at [37] by Michael Lawrence Kerlin. Number of pages: [13]. Sufficient: Yes. Number of Copies: [1]. Received by clerk date: 10/03/2022. [1001240849] [21-4619] TF [Entered: 10/03/2022 03:07 PM]

09/30/2022 38 ORDER filed requiring paper copies of briefs and appendices. Paper copies due: 10/07/2022. Copies to all parties. [1001239645] [21-4619] CH [Entered: 09/30/2022 11:50 AM]
1 pg, 54.6 KB

02/15/2023 43 UNPUBLISHED PER CURIAM OPINION filed. Originating case number: 4:19-cr-00007-RCY-LRL-1. Copies to all parties and the district court/agency. [1001316408] [21-4619] CH [Entered: 02/15/2023 09:00 AM]
8 pg, 163.82 KB

02/15/2023 44 JUDGMENT ORDER filed. Decision: Affirmed. Originating case number: 4:19-cr-00007-RCY-LRL-1. Entered on Docket Date: 02/15/2023. Copies to all parties and the district court/agency. [1001316412] [21-4619] CH [Entered: 02/15/2023 09:03 AM]
3 pg, 146.71 KB

02/17/2023 45 Copy of judgment and certiorari status form transmitted to defendant and counsel. [44] Judgment Order , [43] unpublished per curiam Opinion. Copy mailed to defendant?Yes. Address of Defendant: MICHAEL LAWRENCE KERLIN USM# 92994-083 FCI Fort Dix FEDERAL CORRECTIONAL INSTITUTION P.O. BOX 2000 JOINT BASE MDL, NJ 8640. [1001318376] [21-4619] LRM [Entered: 02/17/2023 12:52 PM]
2 pg, 39.51 KB

02/22/2023 46 MOTION by Michael Lawrence Kerlin to extend filing time for rehearing petition until March 2, 2023. Date and method of service: 02/22/2023 US mail, ecf. [1001320345] [21-4619]--[Edited 02/22/2023 by CH--to modify docket text] Justin Eisele [Entered: 02/22/2023 12:09 PM]
2 pg, 49.13 KB

02/22/2023 47 ORDER filed granting Motion to extend filing time for rehearing petition [46]. Copies to all parties. [1001320602] [21-4619] CH [Entered: 02/22/2023 03:47 PM]
1 pg, 53.89 KB

02/27/2023 48 MOTION by Michael Lawrence Kerlin to extend filing time for rehearing petition until March 17, 2023. Date and method of service: 02/27/2023 US mail, ecf. [1001323158] [21-4619]--[Edited 03/15/2023 by CH--to modify document type] Justin Eisele [Entered: 02/27/2023 01:50 PM]
2 pg, 51.41 KB

02/27/2023 49 ORDER filed granting Motion to extend filing time for rehearing petition [48]. Copies to all parties. [1001323299] [21-4619] CH [Entered: 02/27/2023 03:39 PM]
1 pg, 54.93 KB

03/15/2023 50 MOTION by Michael Lawrence Kerlin to extend filing time for rehearing petition until April 1, 2023.. Date and method of service: 03/15/2023 US mail, ecf. [1001332322] [21-4619]--[Edited 03/15/2023 by CH--modify document type] Mirriam Seddiq [Entered: 03/15/2023 01:07 PM]
2 pg, 43.48 KB

03/15/2023 51 ORDER filed granting Motion to extend filing time for the petition for rehearing [50]. Copies to all parties. [1001332471] [21-4619] CH [Entered: 03/15/2023 03:30 PM]
1 pg, 55.27 KB

04/03/2023 52 MOTION by to extend filing time for the petition for rehearing until April 15, 2023. Date and method of service: 04/03/2023 US mail, ecf. [1001342439] [21-4619]--[Edited 04/03/2023 by CH--modify document type] Justin Eisele [Entered: 04/03/2023 11:29 AM]
2 pg, 52.17 KB

04/03/2023 53 ORDER filed granting Motion to extend filing time for petition for rehearing [52]. Copies to all parties. [1001342528] [21-4619] CH [Entered: 04/03/2023 12:25 PM]
1 pg, 54.8 KB

04/14/2023 54 (ENTRY RESTRICTED) MOTION by Michael Lawrence Kerlin to withdraw/relieve/substitute counsel.Attorney or client motion? Attorney. Was a copy of the motion served on the defendant? Y. If under L.R. 46(d), was client advised of right to file response within 7 days? Y. Date and method of service: 04/14/2023 US mail, ecf. [1001349350] [21-4619]--[Edited 04/14/2023 by CH--see ECF 57] Mirriam Seddiq [Entered: 04/14/2023 07:08 AM]
0 pg, 0 KB

04/14/2023 55 (ENTRY RESTRICTED) Corrected MOTION by Michael Lawrence Kerlin to withdraw/relieve/substitute counsel.Attorney or client motion? Attorney. Was a copy of the motion served on the defendant? Y. If under L.R. 46(d), was client advised of right to file response within 7 days? Y. Date and method of service: 04/14/2023 US mail, ecf. [1001349671] [21-4619]--[Edited 04/14/2023 by CH--see ECF 57] Mirriam Seddiq [Entered: 04/14/2023 12:57 PM]
0 pg, 0 KB

04/14/2023 56 (ENTRY RESTRICTED) MOTION by Michael Lawrence Kerlin motion for extension of time to file for en banc review to extend filing time for motion until May 1, 2023.. Date and method of service: 04/14/2023 US mail, ecf. [1001349674] [21-4619]--[Edited 04/14/2023 by CH--see ECF 58] Mirriam Seddiq [Entered: 04/14/2023 12:58 PM]
0 pg, 0 KB

04/14/2023 57 MOTION by to withdraw/relieve/substitute counsel.Attorney or client motion? Attorney. Was a copy of the motion served on the defendant? Y. If under L.R. 46(d), was client advised of right to file response within 7 days? Y. Date and method of service: 04/14/2023 US mail, ecf. [1001349743] [21-4619] Mirriam Seddiq [Entered: 04/14/2023 02:07 PM]
2 pg, 12.05 KB

04/14/2023 58 MOTION by Michael Lawrence Kerlin to extend filing time for motion until May 1, 2023.. Date and method of service: 04/14/2023 US mail, ecf. [1001349753] [21-4619] Mirriam Seddiq [Entered: 04/14/2023 02:13 PM]

04/17/2023 59 ORDER filed granting Motion to extend filing time for petition for rehearing [58] Number of days granted: 30; deferring action on Motion to withdraw/relieve/substitute counsel [57]. Copies to all parties. [1001350664] [21-4619] CH [Entered: 04/17/2023 03:26 PM]
1 pg, 54.04 KB

04/20/2023 60 RULE 46 NOTICE issued to Mr. David Barry Benowitz for Michael Lawrence Kerlin and Ms. Mirriam Z Seddiq for Michael Lawrence Kerlin failure to file certiorari status form.. [1001353074] [21-4619] LRM [Entered: 04/20/2023 12:11 PM]
1 pg, 87.14 KB

05/05/2023 61 RULE 46 NOTICE issued to Mr. David Barry Benowitz for Michael Lawrence Kerlin, Justin Eisele for Michael Lawrence Kerlin and Ms. Mirriam Z Seddiq for Michael Lawrence Kerlin failure to file certiorari status form.. [1001362212] [21-4619] LRM [Entered: 05/05/2023 09:53 AM]
1 pg, 87.23 KB

05/05/2023 62 CERTIORARI STATUS FORM (restricted access) by Appellant Michael Lawrence Kerlin. [21-4619] Mirriam Seddiq [Entered: 05/05/2023 10:13 AM]

05/22/2023 63 PETITION for rehearing and rehearing en banc by Michael Lawrence Kerlin. [1001371757] [21-4619] CH [Entered: 05/22/2023 05:30 PM]
16 pg, 1.39 MB

05/22/2023 64 Mandate temporarily stayed pending ruling on petition for rehearing or rehearing en banc. [1001371759] [21-4619] CH [Entered: 05/22/2023 05:30 PM]
1 pg, 73.75 KB

06/05/2023 65 COURT ORDER filed denying Motion for rehearing and rehearing en banc [63]. Copies to all parties. Mailed to: Kerlin. [1001378603] [21-4619] AW [Entered: 06/05/2023 09:02 AM]
1 pg, 40.86 KB

06/13/2023 66 ORDER filed granting Motion to withdraw/relieve/substitute counsel [57]. Copies to all parties. [1001383424] [21-4619] CH [Entered: 06/13/2023 09:23 AM]
1 pg, 53.55 KB

06/13/2023 67 Mandate issued. Referencing: [44] Judgment Order, [43] unpublished per curiam Opinion. Originating case number: 4:19-cr-00007-RCY-LRL-1. [1001383428] [21-4619] CH [Entered: 06/13/2023 09:27 AM]
1 pg, 74.91 KB

06/13/2023 68 Attorney Justin Eisele for Michael Lawrence Kerlin in 21-4619, Mirriam Z Seddiq for Michael Lawrence Kerlin in 21-4619 terminated from case. Reason for termination: Order granting withdrawal. [1001383432] [21-4619] CH [Entered: 06/13/2023 09:28 AM]