

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 09-3745

UNITED STATES OF AMERICA

v.

SEAN L. HAGINS,
Appellant

(E.D. Pa. No. 2-06-cr-00485-001)

Present: MCKEE, RENDELL, and AMBRO, Circuit Judges

Motion by Appellant Pro Se to Recall the Mandate.

Respectfully,
Clerk/awi

ORDER

The foregoing Motion is denied.¹

By the Court,

s/ Marjorie O. Rendell
Circuit Judge

~~Dated: 27 December 2023~~

AWI/CC: PGS, SLH, BW

¹ See United States v. Winkelman, 746 F.3d 134, 135 (3d Cir. 2014) (explaining “[o]f course, we have the ‘inherent power’ to recall our mandate, but that ‘power can be exercised only in extraordinary circumstances We are also bound by ‘the statutory and jurisprudential limits applicable in habeas corpus cases.’”) (citations omitted); 28 U.S.C. § 2255(a) (“A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.”).

UNITED STATES DISTRICT COURT

Eastern

District of

Pennsylvania

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

V.

SEAN L. HAGINS

Case Number: DPAE2:06CR000485-001

USM Number: 60425-050

Bruce Wolf, Esq.
Defendant's Attorney

FILED SEP 17 2009

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) 1ss, 4ss - 7ss
after a plea of not guilty.

FILED

SEP 17 2009

MICHAEL E. KUNZ, Clerk
By _____ Dep. ClerkENTERED
SEP 17 2009
CLERK OF COURT

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18:371	Conspiracy to Make False Statements in the Purchase of Firearms	12-29-2004	1ss
18:922(g)(1)	Possession of Firearm by Convicted Felon	12-29-2004	4ss-7ss

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) 2ss-3ss☐ 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.

September 14, 2009

Date of Imposition of Judgment

Signature of Judge

Legrome D. Davis, United States District Court Judge
Name and Title of Judge

September 16, 2009

Date

DEFENDANT: SEAN L. HAGINS
CASE NUMBER: DPAE2:06CR000485-001

IMPRISONMENT

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

360 Months

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

The defendant is to receive drug treatment while imprisoned.

X 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 _____
a _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By

DEPUTY UNITED STATES MARSHAL

APPX. B

DEFENDANT: SEAN L. HAGINS
CASE NUMBER: DPAE2:06CR000485-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

3 Years.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall 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 the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

DEFENDANT: SEAN L. HAGINS
CASE NUMBER: DPAE2:06CR000485-001

CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 500	\$ 10,000	\$

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

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

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

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

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

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

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

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

* 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.

1 It lists the court where the convictions were rendered
2 and it also, again, mirrors the information that's in the
3 presentence report.

4 THE COURT: All right.

5 MR. WOLF: Your Honor, there was just two additional
6 points.

7 THE COURT: Please, go ahead.

8 MR. WOLF: Mr. Hagins asked me to point out to the
9 Court that with regard to Paragraph 41, the conviction for
10 distribution of cocaine where the date of the offense is
11 November 22nd of 1989, that pursuant to 4A -- I believe -- it's
12 1.2C that this is outside the fifteen-year time period for
13 purposes of counting prior convictions.

14 PROBATION OFFICER: Your Honor, a representative from
15 -- referring to Paragraph 42 -- representatives from the New
16 Jersey State Prison reported that the defendant reached his
17 maximum date of parole, April 16th, 1994, that's what the --

18 THE COURT: All right.

19 MR. WOLF: And, your Honor, with regard to
20 Paragraphs --

21 THE COURT: He also served four years on this as well,
22 but go -- go ahead, sir.

23 MR. WOLF: Your Honor, with regard to Paragraphs 56
24 and Paragraph 58, where the allegation is that Mr. Hagins was on
25 parole from New Jersey at the time of the commission of the

1 instant offense, the dates with regard to the -- the -- the
→ 2 dates of convictions for these cases are in 2006.

3 The operative dates for the conspiracy between Mr.
→ 4 Hagins and Mr. Downs was 2004 and 2005. So, during the
5 operative dates of the conspiracy being between 2004 and 2005,
6 Mr. Hagins could not have been on probation or parole from the
7 State of New Jersey with regard to cases on which he pled guilty
8 or was found guilty and sentenced in May of 2006 and April of
9 2006.

10 And, therefore, while these cases may, in fact, have
11 been arrests and may have been pending during the time of the
12 conspiracy, he was not serving a sentence for either one of
13 those cases during the operative time of the conspiracy in this
14 case.

→ 15 And that as to those two items, they should not have
→ 16 been counted in the criminal history points.

17 PROBATION OFFICER: Your Honor, with reference to that
18 issue, Paragraph 59 clearly states that these points were
19 assessed in terms of when the defendant was released and why he
20 received points based on the forgery conviction when -- which is
21 a period of time when he was participating.

22 The two counts after -- ah -- are not why the points
23 were assessed under 4A1.1B, they were.

24 THE COURT: He was released on forgery in March of
25 '03, right? Any further thoughts on that issue, Mr. Wolf?

1 MR. WOLF: Well, again, your Honor, it was -- if he
2 was released on the forgery in '03, the operative date of the
3 conspiracy in this case is 2004 and 2005.

4 THE COURT: Okay. Government, anything to add?

5 MR. SHAPIRO: Your Honor, I just would need a minute,
6 if I --

7 (Pause at 3:24 p.m.)

8 (Discussion held off the record.)

9 MR. SHAPIRO: Could -- could I have a minute, your
10 Honor?

11 THE COURT: Sure.

12 (Pause continues until 3:26 p.m.)

13 THE COURT: Sir.

14 MR. SHAPIRO: Yes, your Honor, I've had the
15 opportunity to speak to the Probation officer and I can repeat
16 or just ask the Probation officer --

17 THE COURT: Just tell me your position.

18 AUSA → MR. SHAPIRO: The Government's view is that it appears
19 that the two points that were assessed based on his being on
20 probation for offenses that he hadn't yet been convicted of,
21 that the defendant is correct.

22 Apparently, if that is taken out, the one point that
23 is mentioned in that same Paragraph 59 is correct. But it then
24 becomes two points, which leaves the defendant in the same
25 criminal history category.

1 I don't know if I was clear on that.

2 THE COURT: Maybe, we should have Ms. Maxwell
3 explain --

4 PROBATION OFFICER: That's correct, your Honor.

5 THE COURT: -- your thoughts.

6 (Laughter.)

7 PROBATION OFFICER: Essentially with -- 1.1B and E --
8 if only one -- if two points are assessed under B, you only
9 assess one point under E. If there are no points assessed under
10 B and there's still reasons to give points under E, which is
11 that the defendant committed the instant offense less than two
12 years after release, then E becomes two points.

13 THE COURT: Right.

→ 14 PROBATION OFFICER: There's essentially a shift of one
15 point, although we did not receive this in writing from Mr. Wolf
→ 16 in advance, I believe that the defendant and defense counsel are
17 correct, that he was not under supervision at that point, but he
18 committed the instant offense less than two years --

19 THE COURT: Less than two years after release. So,
20 the effect is --

21 PROBATION OFFICER: This is why --

22 THE COURT: -- right. Okay.

23 So, we will accept the agreement on that point.

24 MR. WOLF: Well, your Honor, obviously, with -- with
25 regard to all of the points that I've raised, some -- the Court

1 did not agree with me on all of them -- it was going to be my
→ 2 position that it was a criminal history category of V and not of
3 VI.

4 THE COURT: And Ms. Croce is indicated to me that she
5 has difficulty hearing you.

6 MR. WOLF: I apologize, your Honor.

7 Again, because of all of the points that I raised in
8 -- in total, your Honor, with regard to the prior convictions
9 which should not have been counted, it was going to my position
→ 10 that the criminal history category was not VI, but rather V.

11 But the Court has not agreed with me with regard to
12 all of the prior convictions.

13 THE COURT: No, I don't agree with you.

14 MR. WOLF: Yes, but -- my argument --

15 THE COURT: But your argument about --

16 MR. WOLF: -- my argument --

17 THE COURT: -- the municipal offenses --

18 MR. WOLF: Yeah, my --

19 THE COURT: -- is that what you're referring to?

20 MR. WOLF: Yes, my argument --

21 THE COURT: I don't agree with that.

22 MR. WOLF: -- overall was going to be that he was not
23 a criminal history category of VI, but rather a V.

24 THE COURT: Government, your thoughts?

25 MR. SHAPIRO: The Government believes that he's

1 properly categorized as a VI with --

2 THE COURT: Thirty-five/VI, right?

3 MR. SHAPIRO: Yes.

4 THE COURT: Go ahead then.

5 MR. SHAPIRO: With the one -- with the one point
6 change that the Probation Officer just explained on the record
7 far more clearly than I did.

8 THE COURT: Let me just understand the Government's
9 view of the total offense level, that would be?

10 MR. SHAPIRO: Thirty-five.

11 THE COURT: And the criminal history would be?

12 MR. SHAPIRO: VI.

→ 13 THE COURT: And -- and Mr. Wolf disputes a number of
→ 14 things, both the offense level -- do you dispute the offense
15 level?

→ 16 MR. WOLF: Yes, your Honor, because of the arguments
17 that I've made earlier with regard to the --

18 THE COURT: Right.

19 MR. WOLF: -- obstruction of justice arguments and the
20 altering or obliterating serial numbers.

→ 21 THE COURT: And you dispute also the criminal history
22 category?

→ 23 MR. WOLF: And the criminal history category.

24 Your Honor, it would -- it was my position --

25 THE COURT: Okay.

1 But let me just tell me that I -- I heard your
2 arguments before, but I find it to be a thirty-five, VI, so
3 that's the operative range for the purposes of this hearing.

4 MR. WOLF: I understand.

5 THE COURT: And that puts us at two ninety-two to
6 three sixty-five, that's the correct calculation for that range,
7 am I right?

8 MR. WOLF: Yes, sir.

9 THE COURT: Government, do you agree with that so far?

10 MR. SHAPIRO: Yes, your Honor.

11 THE COURT: So, we're now ready to hear your
12 presentation at sentencing, sir.

13 MR. WOLF: Does your Honor wish me to stand or remain
14 seated for the purposes of the microphone or --

15 THE COURT: Actually, why don't you come up to the
16 podium and stand for me, please.

17 MR. WOLF: Certainly, your Honor.

18 (Pause at 3:30 p.m.)

19 MR. WOLF: May I have the Court's indulgence just to
20 grab one more thing?

21 (Pause continues.)

22 MR. WOLF: Your Honor, in this matter from the
23 presentence report, I'm sure the Court knows Mr. Hagins is
24 thirty-seven years of age, he will be thirty-eight at the end of
25 this month.

11-1-2011 The 3rd circuit
ruled and made a change
to this kind of sentence called
a "general sentence" that would
require resentencing case is (Unité States v. Ward 3rd Cir 2011)

1 to pay it at a rate of \$100.00 a month commencing thirty days
2 after your release.

3 And -- right.

4 (Pause at 3:59 p.m.)

5 THE COURT: So, as far as the exact structure of the
6 sentence is concerned -- the incarcerative sentence -- the total
7 period of incarceration is three hundred and sixty months.

8 There is -- or three hundred and sixty-five excuse me.

9 There's sixty months as to Count 1, that runs
10 concurrently with 4, 5 and 6 and a hundred and twenty months
11 consecutively on Count 7. Let's just make it a total of three-
12 sixty, so that's where we are, it's three sixty. All right. So,
13 that's the total period of incarceration.

14 So, do you understand the sentence, sir?

15 THE DEFENDANT: Yes.

16 THE COURT: Any questions about the sentence?

17 THE DEFENDANT: How about 3D.2 -- I thought it says
18 it's grouped -- the firearm count -- with the others.

19 THE COURT: All right.

20 So, you should speak to your lawyer.

21 And -- you raise an interesting point. Let me just --
22 let me just say this for the record.

23 In its true essence, the sentence is under 3553,
24 right, it's not the necessarily -- I have considered the
25 guidelines but I don't think the mechanical formulation of the

1 guidelines really addresses what you're about. I think 3553
2 where they say, look at the nature and the circumstances of the
3 offender, that's where this sentence is coming from, right.

4 So, it happens that my perceptions of you coincide
5 pretty much with the guidelines, but really every second of time
6 I give you, I give it to you because of my perceptions of who
7 you are and the dangers that you present and that's where we're
8 coming from.

9 Do you understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: All right.

12 Give him his rights.

13 MR. WOLF: Mr. Hagins, you've been found -- ah --

14 you've been sentenced by the Court today to three hundred and
→ 15 sixty months incarceration, three years of supervised release, a
16 \$500.00 special assessment and a \$10,000.00 fine.

17 You have seven days from today's date within which you
18 can file an appeal to the Third Circuit challenging any part of
19 what occurred during your trial, the -- the hearing here today
20 or the sentence that's been imposed upon you.

21 Do you have any questions about the rights? You must
22 file that appeal in writing. I will continue to assist you as
23 your Court-appointed on that case and pursuing that appeal if
24 you still desire to do so.

25 THE DEFENDANT: Yeah.

1 MR. WOLF: Do you have any questions about the rights
2 -- your rights?

→ 3 THE DEFENDANT: No. I just want to put on the record
4 that I've do plan on appealing the sentence and the charges.
5 And I do expect to appeal within -- have the notice of appeal
6 within seven days.

7 MR. WOLF: Yeah, that will be fine.

8 THE COURT: All right.

9 You will file the appeal for him, sir?

10 MR. WOLF: I will file the notice of appeal, your
11 Honor.

12 THE COURT: Okay. Yes, sir?

13 THE DEFENDANT: The notice of appeal or the whole
14 appeal?

15 THE COURT: Yes, sir.

16 MR., SHAPIRO: Your Honor, the Government had filed
17 a motion for a preliminary order of forfeiture with regard to
18 the --

19 THE COURT: Sure, if you'd pass that up, I would -- I
20 would sign off on that.

21 (Discussion held off the record.)

22 THE DEFENDANT: Excuse me, your Honor.

23 I want to get on the record that -- ah -- he said, he
24 would file the notice of appeal, but he wasn't sure if I wanted
25 him to file the formal -- the direct appeal going -- further --

1 take the next step to file the appeal.

2 THE COURT: He'll pursue the appeal until relieved by
3 the Court, Mr. Wolf, you'll file the appeal and pursue the
4 appeal.

5 MR. WOLF: Yes, sir.

6 THE COURT: All right?

7 MR. WOLF: Yes. And that --

8 THE COURT: Any question or ambiguity about that?

9 MR. WOLF: No ambiguity whatsoever.

10 I advised Mr. Hagins that the notice of appeal would
11 be filed by the end of this week -- the formal notice of appeal
12 with the Clerk's office will be filed by the end of this week.

13 THE COURT: Okay. Good luck to you.

14 MR. SHAPIRO: Thank you, your Honor.

15 THE DEFENDANT: Thank you.

16 DEPUTY CLERK: All rise.

17 (Adjourned in this matter at 4:05 p.m.)

18 * * *

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

vs.

SEAN L. HAGINS

PRESENTENCE INVESTIGATION REPORT

Docket No. 06-485

Prepared For: THE HONORABLE LEGROME D. DAVIS
U.S. District Court Judge

Prepared By: Leslie E. Maxwell
United States Probation Officer
267-299-4591

Assistant U.S. Attorney
Paul G. Shapiro, Esquire
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Defense Counsel
Michael J. Engle, Esquire
123 S. Broad Street
Suite 1812
Philadelphia, PA 19109
(215) 985-4592
Designation: CJA Appointed

Sentence Date: July 8, 2008

Offense: Count One: Conspiracy to make false statements in the purchase of firearms
18 U.S.C. § 371 - Five years/\$250,000 fine, a Class D felony

Counts Four, Five, Six, and Seven: Felon in possession of a firearm
18 U.S.C. § 922(g)(1) - Ten years/\$250,000, a Class C felonies

Arraignment: November 6, 2006

Release Status: Federal custody since November 3, 2006

Detainers: None

Codefendants: David Downs, 06-534

Related Cases: None

Date Report Prepared: June 2, 2008

Date Report Revised: June 30, 2008

RE: SEAN L. HAGINS

Identifying Data:

Birth Name: Sean Lanier Hagins

Date of Birth: 9/29/1971

Age: 36

Race: Black, Non-Hispanic

Sex: Male

SSN No: 138-62-7099

FBI No: 152742LA9

USM No: 60425-050

Other ID No: NJSID#: 623475B
NJ State Prison Inmate #: P416207
PASID#: 290-89-90-6

PACTS No: 28633

Education: Some high school

Dependents: Two

Citizenship: United States

Legal Address: 230 Spring Street
Trenton, NJ 08618

Current Address: F.D.C.
P.O. Box 562
Philadelphia, PA 19105

Aliases: Charles Smith, Baysean White, Shawn Baysean, Sean Moore, Sean Patterson,
and Lanier White

Photo
Not
Available

Restriction on Use and Redisclosure of Presentence Investigation Report: Disclosure of this presentence investigation report to the Federal Bureau of Prisons and redisclosure by the Bureau of Prisons is authorized by the United States District Court solely to assist administering the offender's prison sentence (i.e., classification, designation, programming, sentence calculation, pre-release planning, escape apprehension, prison disturbance response, sentence commutation, or pardon) and other limited purposes, including deportation proceedings and federal investigations directly related to terrorist activities. If this presentence investigation report is redisclosed by the Federal Bureau of Prisons upon completion of its sentence administration function, the report must be returned to the Federal Bureau of Prisons or destroyed. It is the policy of the federal judiciary and the Department of Justice that further redisclosure of the presentence investigation report is prohibited without the consent of the sentencing judge.

RE: SEAN L. HAGINS

PART A. THE OFFENSE**Charge(s) and Conviction(s)**

1. On December 19, 2007, a federal grand jury returned a Second Superseding Indictment, charging Sean L. Hagins with conspiracy to make false statements in the purchase of firearms, in violation of 18 U.S.C. § 371 (Count One); and felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1)(Counts Four through Seven). A notice of forfeiture was also included.
2. On March 6, 2008, following a jury trial before the Honorable Legrome D. Davis, the defendant was found guilty of Counts One and Four through Seven of the Second Superseding Indictment.
3. The instant offenses occurred between September 2004 to June 2005; therefore, both the Sentencing Reform Act of 1984 and the Antiterrorism and Effective Death Penalty Act of 1996, apply. The edition of the Sentencing Guidelines Manual used to calculate the guidelines in the report is that incorporating amendments effective November 1, 2004, as there are ex-post facto issues.

Plea Agreement Information

4. There is no plea agreement in this matter.

Pretrial Adjustment

5. The defendant has been in federal custody since November 3, 2006.

Status of Codefendants

6. On December 6, 2006, David L. Downs, 06-534, appeared before the Honorable Marvin Katz. Downs pled guilty to conspiracy to make false statements in the purchase of firearms, in violation of 18 U.S.C. § 371, and making false statements in records of federal firearms licensee, in violation of 18 U.S.C. § 924(a)(1)(A). On March 24, 2008, he was sentenced to 12 months imprisonment with three years supervised release.

Related Cases

7. None.

The Offense Conduct

8. Between September 1, 2004, and June 14, 2005, Sean Hagins and David Downs, conspired to purchase 52 firearms in 34 transactions from six licensed firearms dealers in the Eastern District of Pennsylvania. In each case, Downs filled out an ATF Form 4473 in which he certified that he was the actual buyer of the firearm. In each case, the Form 4473 contained a warning, in bold-

RE: SEAN L. HAGINS

face type, that read as follows:

Warning: You are not the actual buyer if you are acquiring the firearm(s) on behalf of another person. If you are not the actual buyer, the dealer cannot transfer the firearm(s) to you.

9. Downs signed the forms that contained the notice indicating that "making any false oral or written statement, of the exhibiting of any false or misrepresented identification with respect to this transaction, is a crime punishable as a felony." Each form also specifically warned him that "answering 'yes' to question 12a when he was not the actual buyer of the firearm is a crime punishable as a felony."
10. David Downs first became acquainted with Sean Hagins when he began purchasing crack cocaine in Trenton, New Jersey. Downs admitted that he started using crack cocaine in April of 2004. Downs reported to authorities that the defendant asked him if he could get a firearm for him. He further informed the agents that he began buying firearms for Hagins beginning in June 2004.
11. Hagins was arrested on December 29, 2004, by Philadelphia Police, only a short time after the straw purchase conspiracy had started. On December 29, 2004, Alexander Panchenko was traveling North on I-95 near the Castor Avenue exit when a white Audi with New Jersey plates repeatedly cut in front of him. Panchenko changed lanes in an effort to avoid the Audi, but the Audi continued to follow and cut in front of him. When traffic became congested and slowed almost to a stop in the area of Bridge Street, the Audi drove up in the breakdown lane beside Panchenko's car. The driver, an African-American male with dreadlocks, spit at Panchenko and repeatedly yelled at him to pull over. When Panchenko ignored him, the driver pointed a handgun out of his window at Panchenko. Panchenko again tried to get away from the Audi, ultimately driving in the breakdown lane himself. The Audi continued to pursue him.
12. Just before the Cottman Avenue exit, Panchenko called 911 assistance on his cell phone. He described the gunman as black male with dreadlocks, and described the car as a white Audi with New Jersey plates. The driver of the Audi continued to yell at Panchenko and then accelerated and got off the highway at the Cottman Avenue exit.
13. When Panchenko saw a police car near the Academy Road exit, he pulled over to report what had happened. The incident had already been broadcast over police radio as the officer advised that he was waiting for the Audi to come past. Panchenko was advised by the officer that the Audi had been stopped.
14. The Audi was stopped by a marked unit at Cottman Avenue and Hawthorne Street. The police officers approached the Audi. Before the officers had an opportunity to say anything, the driver of the car, later identified as Sean Hagins, repeatedly insisted that he had only pointed the faceplate of his radio, and not a gun, at the other driver.

RE: SEAN L. HAGINS

15. The occupants of the Audi were ordered out of the car. The officer searched the passenger compartment and after a few minutes a gun was found tucked into a space between the center console and floor of the Audi in the driver's foot well. Panchenko positively identified Hagins as the driver of the Audi who had pointed a gun at him.¹
16. Between January 31, 2006, and February 9, 2006, Hagins and Downs engaged in numerous phone calls and face-to-face conversations. The conversations between Hagins and Downs revealed specific instructions given by Hagins to Downs regarding what firearms were to be purchased. They would also discuss the money necessary for the purchase of the weapons. Downs purchased the designated firearms from federal firearms licensees in the Eastern District of Pennsylvania and turned over the guns to Hagins in return for cash and crack cocaine.
17. These conversations involved the future sale of crack cocaine to Downs. The tape recorded conversations reflected Hagins confirming his relationship with Downs and their history of purchasing guns. They agreed that Downs would continue to make future purchases for Hagins. Hagins included specific instructions for Downs regarding the particular gun shops where the firearms were to be purchased.
18. Hagins threatened David Downs during the course of the straw purchase conspiracy. The defendant warned Downs that "his people" knew where he lived. Downs reported this to ATF agents during subsequent interviews.
19. It should be noted that three of the four felon in possession charges in this case, Counts Four through Six, are related to guns that the defendant possessed as a result of the straw purchase conspiracy.

Count Four	Date of purchase: 10/6/2004	Lock's Philadelphia Gun Exchange	Type of firearm: CZ, model 52 pistol	Serial No.: M05378
Count Five	Date of purchase: 10/20/2004	Guns & Things, Pennel, PA	Type of firearm: Intratec, model DC 9 ("TEC - 9")	Serial No.: D075942
Count Six	Date of purchase: 06/02/2005	Mike's Sporting Goods, Inc., Levittown, PA	Type of firearm: Sig Sauer, model P239 pistol	Serial No.: SA4103370

20. In total, the defendant was involved in the straw purchase of 50 firearms.

¹The defendant was charged in the Municipal Court for Philadelphia County, with respect to this incident. The charges were ultimately dismissed on May 24, 2005, due to lack of evidence. However, the defendant's possession of the firearm recovered at the time of this arrest is the foundation for Count Seven of the Second Superseding Indictment.

Victim Impact

21. There are no identifiable victims of the offense.

Adjustment for Obstruction of Justice

22. Pursuant to U.S.S.G. § 3C1.1, if the defendant willfully obstructed or impeded, or attempted to obstruct or impede the administration of justice with respect to the investigation, prosecution, or sentencing of the instant offense of conviction and the obstructive conduct related to the defendant's offense of conviction and any relevant conduct, increase by two levels. Hagins testified during his trial which took place between February 28, 2008, and March 6, 2008. The defendant made statements under oath regarding his version of the counts of conviction. The jury clearly rejected the defendant's statements regarding his participation in the instant offense. Pursuant to U.S.S.G. § 3C1.1, two levels are added.

Adjustment for Acceptance of Responsibility

23. The defendant was interviewed by the United States Probation Officer, in the presence of his attorney, at the Federal Detention Center on March 19, 2008.
24. Hagins has continued to maintain his innocence since the guilty verdict was rendered. He reported to the probation officer that he was innocent of all charges and did not wish to make any further statements. In addition, the defendant went to trial and made false statements regarding his role and activities in this conspiracy which were rejected with the jury's guilty verdict. Therefore, he is not eligible for the adjustment for acceptance of responsibility, pursuant to U.S.S.G. §§ 3E1.1(a) and (b).

Offense Level Computation

25. The November 1, 2004, edition of the Guidelines Manual has been used in this case.
26. Please refer to § 1B1.3(a)(1)(B), of the Sentencing Guidelines. All relevant conduct to be used in determining the offense level. The defendant is held accountable for participating in a conspiracy involving false statements to a firearms dealer, all arising from the defendant's participation in the straw purchase of 52 firearms.
27. Counts One and Four through Seven are grouped together under the provisions of § 3D1.2(d). According to that section, the counts are grouped when the offense level is determined largely on the basis of the total amount of harm or loss, the quantity of a substance involved, or some other measure of aggregate harm, or if the offense is ongoing or continuous in nature and the offense guideline is written to cover such behavior.

Count One - Conspiracy to make false statements to a firearms dealer, in violation of 18 U.S.C. §

RE: SEAN L. HAGINS

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Counts Four through Seven - Felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1)

28. **Base Offense Level:** The United States Sentencing Commission Guideline for violation of 18 U.S.C. § 371 is found in U.S.S.G. § 2X1.1. This section directs that the substantive offense, a violation of 18 U.S.C. § 922(g)(1), be utilized to calculate the offense level. Pursuant to U.S.S.G. § 2K2.1(a)(2), the base offense level is 24. The defendant committed the instant offense subsequent to sustaining two convictions for distribution of heroin and cocaine and possession with the intent to distribute cocaine in New Jersey. 24
29. **Specific Offense Characteristic:** Pursuant to 2K2.1(b)(1)(C), since the offense involved 25 to 99 firearms, a six level increase is warranted. In this case, the instant offense involved 50 firearms. +6
30. **Specific Offense Characteristic:** Pursuant to 2K2.1(b)(4), if the firearm had an altered or obliterated serial number, two levels are added. Two of the fifty-two firearms were recovered with obliterated serial numbers that were able to be restored. They are as follows: a Colt revolver, serial number F68864 and a Hi-Point, pistol, serial number X711225. +2
31. **Specific Offense Characteristic:** If the defendant used or possessed the firearm in connection with another felony offense, or transferred any firearm with knowledge, intent, or reason to believe that it would be possessed in connection with another felony offense, increase by four levels, pursuant to § 2K2.1(b)(5). The record is clear that the defendant was involved in a conspiracy to straw purchase weapons. It is also clear that some of these weapons were possessed by the defendant during the course of committing additional criminal offenses. Hagins was involved in the distribution of crack cocaine to David Downs. The defendant gave Downs money and crack cocaine in exchange for the straw purchased weapons.² +4
32. **Victim-Related Adjustments:** None. 0
33. **Adjustments for Role in the Offense:** None. 0

² Although the defendant was found not guilty of Counts Two and Three, the underlying conduct may still be considered. Pursuant to U.S. vs. Watts, 519 U.S. 148, conduct underlying charges for which the defendant has been acquitted may be relied on in sentencing. In a recorded conversation between Hagins and co-defendant Downs, which occurred on January 31, 2006, Hagins sold \$100 worth of crack cocaine to Downs.

The government asserts that Hagins' reselling of the straw purchased weapons to gang members in Trenton fortifies this adjustment, pursuant to § 2K2.1(b)(5).

34. **Adjustment for Obstruction of Justice:** Pursuant to U.S.S.G. § 3C1.1, two levels are added. Hagins testified at trial and made statements under oath regarding the nature and circumstances of his relationship with David Downs and the straw purchase conspiracy. The jury clearly rejected the defendant's statements. Pursuant to U.S.S.G. § 3C1.1, two levels are added.³ +2
35. **Adjusted Offense Level (Subtotal):** 38
36. **Chapter Four Enhancements:** None. 0
37. **Total Offense Level:** 38

PART B. DEFENDANT'S CRIMINAL HISTORY

Juvenile Adjudication(s)

38. None.

Adult Criminal Conviction(s)

39. NOTE: Pennsylvania State Law, adopted November 29, 1972, requires the assignment or knowing waiver of counsel for all indigent defendants.
40. NOTE: New Jersey Court Rules 3:27-1 and 3:27-2, require all defendants charged with indictable and non-indictable offenses to be advised by the Court of their right to retain counsel, or if indigent, the right of assigned counsel, in accordance with the Public Defender Act of July 30, 1967.
- | | | | | | |
|-----|-----------------------|--|--|----------|---|
| 41. | 11/22/89
(Age: 18) | Distribution of cocaine
Superior Court for
Mercer County, New
Jersey
Indictment No.: I767-
90 | On July 26, 1991, the
defendant was found
guilty of this charge
and sentenced to serve
four years
incarceration. He was
paroled from prison on
May 3, 1993. | 4A1.1(a) | 3 |
|-----|-----------------------|--|--|----------|---|

³Hagins qualifies for the two-level upward adjustment, pursuant to U.S.S.G. § 3C1.1, on two separate grounds. First for testifying falsely during his trial as well as for threatening the federal witness, David Downs. The defendant warned Downs that "his people" knew where he lived. Considering Hagins criminal connections and his business dealings with members of Trenton drug gangs, this should be considered a credible threat against the witness.

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42. Representatives from the New Jersey State Prison reported that the defendant reached his maximum date of parole on April 16, 1994.
43. Details of this conviction have been requested from the United States Probation Office for the District of New Jersey. Any information received will be disclosed in the final draft of this report.
44. 01/25/91 Obstruction of justice On September 20, 4A1.2(e)(3) 0
 (Age: 19) Superior Court for 1991, the defendant
 Hunterdon County, was found guilty of
 New Jersey this charge and was
 Indictment #: I58-91 sentenced to 180 days
 incarceration and two
 years probation.
45. The Hunterdon County, New Jersey Probation office revealed that the defendant failed to appear for a violation of probation hearing on April 21, 1995. A warrant was issued for his arrest. The probation record reflected that Hagin's case was terminated unsuccessfully and closed effective March 29, 1996.
46. 05/02/97 Possession of On April 10, 2003, the 4A1.1(c) 1
 (Age: 27) marijuana defendant was found
 Municipal Court for guilty of this offense
 Trenton, New Jersey and assessed a fine of
 Case No.: 1997- \$280.
 0080401111
47. Details of this conviction have been requested from the United States Probation Office for the District of New Jersey. Any information received will be disclosed in the final draft of this report.
48. 08/22/97 Possession of On August 23, 1997, 4A1.1(c) 1
 (Age: 25) marijuana the defendant was
 Municipal Court for found guilty of this
 Trenton, New Jersey offense and sentenced
 Case No.: 1997- to 30 days custody to
 0044881111 be served at the
 Mercer County, New
 Jersey jail.
49. Details of this conviction have been requested from the United States Probation Office for the District of New Jersey. Any information received will be disclosed in the final draft of this

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report.

- | | | | | | |
|--|-----------------------|---|---|----------|---|
| 50. | 08/29/97
(Age: 25) | Forgery
Superior Court for
Mercer County, New
Jersey
Indictment No.: 97-
4891 | On January 5, 2001,
the defendant was
found guilty of this
offense and was
sentenced to five years
incarceration. He was
ineligible for parole for
the first 2 ½ years of
the sentence. | 4A1.1(a) | 3 |
| <p>51. Hagins was arrested by Princeton Borough, New Jersey, Police, on August 29, 1997. The defendant and other accomplices had been involved in passing counterfeit currency at several small businesses in the Princeton Borough, New Jersey, area.</p> | | | | | |
| <p>52. Representatives from the New Jersey State Prison reported that the defendant paroled on March 4, 2003. They also revealed that the defendant reached his maximum date of parole on January 30, 2004.</p> | | | | | |
| 53. | 10/25/00
(Age: 29) | Possession of
marijuana
Municipal Court for
Bordentown
Township, New Jersey
Case No.: 00-15274C | On June 21, 2005, the
defendant was found
guilty of these charges
and was sentenced 90
days incarceration and
a fine of \$1,497. | 4A1.1(b) | 2 |
| <p>54. A warrant was issued for the defendant's arrest on December 8, 2000. Hagins was a fugitive until the warrant was served on June 19, 2005. All fines have been paid in full.</p> | | | | | |
| <p>55. Details of this conviction have been requested from the United States Probation Office for the District of New Jersey. Any information received will be disclosed in the final draft of this report.</p> | | | | | |
| 56. | 01/15/04
(Age: 25) | Distribution of heroin
and cocaine
Superior Court for
Mercer County, New
Jersey
Indictment No.:
51000168S | On May 19, 2006, the
defendant was found
guilty of these charges
and was sentenced to
four years probation. | 4A1.1(c) | 1 |

RE: SEAN L. HAGINS

57. It should be noted that the defendant has yet to appear for the violation of probation which is pending in the Superior Court for Mercer County, New Jersey.

58.	08/19/05 (Age: 33)	Failure to give controlled dangerous substance to police Municipal Court for Hamilton Township, New Jersey	On April 24, 2006, the defendant was found guilty of these charges and was assessed a fine of \$705.	4A1.1(c)	1
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Criminal History Computation

59. At the time the instant offense was committed, the defendant was on probation in Mercer County, New Jersey for distribution of heroin. Pursuant to U.S.S.G. § 4A1.1(d), two points are added. The instant offense was committed less than two years following the defendant's release from custody on March 4, 2003, for the forgery conviction. Pursuant to U.S.S.G. § 4A1.1(e), one point is added. The total of the criminal history points is 15. According to the sentencing table at U.S.S.G. Chapter 5, Part A, 15 criminal history points establishes a criminal history category of VI.

Other Criminal Conduct

	<u>Date of Arrest</u>	<u>Charge</u>	<u>Agency</u>	<u>Disposition</u>
60.	12/18/89	Burglary	Ewing Township, New Jersey, Police Department	All charges were dismissed on July 26, 1991.

RE: SEAN-L. HAGINS

- | | | | | |
|-----|----------|---|---|---|
| 61. | 07/19/00 | Possession of marijuana and possession of drug paraphernalia
CP 09-CR-0004572-2000 | Bristol Township, Pennsylvania, Police Department | On November 20, 2001, these charges were dismissed. |
| 62. | 12/29/04 | Possession of a crime of violence, carrying a firearm without a license, terroristic threats, simple assault, reckless endangerment of another person, harassment, and carrying a firearm on a public street
MC-51-CR-1235381-2004 | Philadelphia Police Department | On May 24, 2005, all charges were withdrawn due to lack of prosecution. |
63. On December 29, 2004, Alexander Panchenko was traveling North on I-95 near the Castor Avenue exit when a white Audi with New Jersey plates repeatedly cut in front of him. Panchenko changed lanes in an effort to avoid the Audi, but the Audi continued to follow and cut in front of him. When traffic became congested and slowed almost to a stop in the area of Bridge Street, the Audi drove up in the breakdown lane beside Panchenko's car. The driver, an African-American male with dreadlocks, spit at Panchenko and repeatedly yelled at Panchenko to pull over. When Panchenko ignored him, the driver pointed a handgun, which looked to Panchenko to be a Glock, out of his window at Panchenko. Panchenko again tried to get away from the Audi, ultimately driving in the breakdown lane himself. The Audi continued to follow him.
64. Just before the Cottman Avenue exit, Panchenko called 9-1-1 on his cell phone. Panchenko described the gunman as black male with dreadlocks, and described the car as a white Audi with New Jersey plates. The driver of the Audi continued to yell at Panchenko and then accelerated and got off the highway at the Cottman Avenue exit.
65. When Panchenko saw a police car near the Academy Road exit, he pulled over to report what had happened. The incident had already been broadcast over police radio as the officer advised that he was waiting for the Audi to come past. Panchenko was advised by the officer that the Audi had been stopped.
66. The Audi was stopped by a marked unit at Cottman Avenue and Hawthorne Street. The police

RE: SEAN L. HAGINS

officers approached the Audi. Before the officers had an opportunity to say anything, the driver of the car, later identified as Sean Hagins, repeatedly insisted that he had only pointed the face-plate of his radio, and not a gun, at the other driver.

67. The occupants of the Audi were ordered out of the car. The officer searched the passenger compartment and after a few minutes a gun was found tucked into a space between the center console and floor of the Audi in the driver's foot well. Panchenko positively identified Hagins as the driver of the Audi who had pointed a gun at him.

68.	03/08/97	Possession of marijuana	Trenton, New Jersey, Police Department	On August 23, 1997, these charges were dismissed.
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PART C. OFFENDER CHARACTERISTICS

69. Information regarding the defendant's personal and family history was obtained during a personal interview with the defendant at the Federal Detention Center (FDC) in Philadelphia, Pennsylvania, conducted on March 19, 2008, in the presence of counsel. Since meeting with the defendant, the probation officer has requested records from virtually every institution identified by the defendant where he received treatment, attended school, or was employed in order to verify the information. Any records received by the probation officer are detailed in the following sections along with information provided by the defendant.

Personal and Family Data

70. Sean Lanier Hagins was born on September 29, 1971, in Trenton, New Jersey. The defendant reported that he is a lifelong resident of New Jersey. He is the only child born to the relationship between Norman Major and Betty Hagins, age 62. Hagins stated that he has never met his father. The defendant is unsure of whether or not his mother was honest about the actual identity of his father. Hagins stated that his parents were never involved in a marital relationship. He was raised solely by his mother who was the single parent of five children. The defendant reported that all of his siblings have different fathers. Hagins reported that his mother married Robert Dallas. No further details were provided. The defendant did note that he worked for a period of time with Mr. Dallas as a construction laborer.
71. He described his family as "very poor." His mother received assistance in the form of food stamps and welfare. Hagins stated that he would often go to school hungry with unclean clothing. The defendant admitted that there were times that the family lived in homeless shelters and rescue missions. Although the defendant denied being subjected to any forms of abuse including physical, mental, or sexual, there was no doubt in his mind that he was neglected. The defendant stated that any discipline imposed within the home was appropriate and never to excess. Hagins stated that his mother would work several part-time jobs and he was left unsupervised. The defendant estimated that he started "running the streets" when he was six

RE: SEAN L. HAGINS

years old. Hagins did not blame his mother in any way for this, he stated that his mother did the best she could for someone in her situation. The defendant stated that his mother sent him to live with his maternal grandparents in Hoffman, North Carolina, when he was approximately 14 years old. Hagins admitted that he started to get into trouble in school and did not adapt well to the discipline imposed by his grandparents. He was returned to New Jersey within one year.

72. Hagins reported sharing a "decent" relationship with his mother as an adult. He reported speaking to her once in the nineteen months he has been incarcerated at the Federal Detention Center. The defendant stated that he shares a close relationship with his sister Brigitte Hagins, age 38. Hagins reported the following additional siblings: Andre Hagins, age 40; Craig Hagins, age 39; and Erica Hagins, age 32.
73. Hagins reported marrying Shanikia (nee: Patterson) Hagins, age 29, on April 6, 2004, at City Hall, located in Mercer County, New Jersey. There have been two children born to this union. Rashawn Hagins, age nine; and Jakyah Hagins, age four; both reside with their mother in Trenton, New Jersey. Hagins reported that both of his children are in good physical health. He was proud to report that his son is also doing quite well academically in school.
74. Shanikia Hagins was interviewed telephonically on June 2, 2008. Mrs. Hagins reported at the beginning of the conversation that she is estranged from the defendant. She stated that there was not much that she could say about the present situation. Mrs. Hagins indicated that she was completely unaware of the defendant's criminal activity because she has been working two jobs for the past nine years. She has been employed with the State of New Jersey, Office of Medical Examiners, for the past nine years and is currently working part time at Sam's Club. Mrs. Hagins stated that she has been tasked with raising two young children by herself due to her husbands criminal activity. She reported that their daughter has not seen the defendant since she was two years old and their son was seven years old the last time they visited with the defendant. Mrs. Hagins stated that she has not visited the defendant at the Federal Detention Center in close to one year.
75. Public records from the State of New Jersey confirmed that Shanikia Hagins is employed with the New Jersey Division of Consumer Affairs. She presently earns \$34,000, annually and has been employed with the State of New Jersey for approximately eight years.
76. The interview was concluded with Mrs. Hagins espousing her gratitude to her mother and sister for their support during these rough times. She was at a loss as to what to say about the defendant. Mrs. Hagins ended by stating that she didn't put him in prison and he is a man who made his own poor decisions. She is upset that her children have to be the ones to suffer.

Physical Condition

77. Hagins stands 6'1" and weighs approximately 250 pounds. He has brown eyes and brown hair. The defendant maintains his hair in dreadlocks. Hagins has two tattoos. They are as follows: his

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wife's name on the left side of his chest (Shanikia), and "RIP PETER" located on his inner right arm.

78. The defendant described his present physical health as "good." Hagins indicated that the only surgical scar he has is located in his groin and was a result of hernia surgery. The defendant reported that he was treated at Frankford Hospital on November 27, 2007, after he injured himself while playing basketball at the Federal Detention Center. Verification of this information was requested from the facility; however, they indicated no information was in their records system. A request of this information was subsequently requested through the Bureau of Prisons. Verification is pending.
79. Hagins denied being under the care of a physician prior to his incarceration for the instant offense. He further denied being prescribed any medications by a physician.

Mental and Emotional Health

80. The defendant reported that he has never been evaluated or treated by any mental health professionals either as a juvenile or adult. Hagins stated that he has never been prescribed any psychotropic medications. He described his present mental health as "fine."

Substance Abuse

81. Hagins reported a lengthy history of drug abuse which he estimated began at age 11. The defendant stated that he started smoking marijuana with one of his older siblings. He readily admitted to smoking crack cocaine with his siblings by age 15. Hagins reported that he continued to abuse marijuana and crack cocaine for many years. The defendant submitted an affidavit in support of motion to dismiss on January 27, 2008, with this Court. Contained within this motion Hagins asserted that he has received previous drug treatment for his addiction to marijuana and crack cocaine.
82. Hagins stated that he was awaiting the availability of a treatment bed date in April 2006 with the Salvation Army, located in Trenton, New Jersey. A request for verification of this information was sent to the Salvation Army. They did not have a record for this defendant. Hagins also reported previous treatment with the New Horizons Treatment Services, located in Trenton, New Jersey. A request for verification was forwarded to this program. Verification of this information is pending.
83. The defendant spoke candidly about his addiction to marijuana and crack cocaine since he was a teenager. He was informed that the Bureau of Prisons has drug treatment available and that he would be eligible for said treatment. Hagins expressed immediate concern that any treatment programs may hinder his ability to enter the UNICOR programs available through the Bureau of Prisons.

Education and Vocational Skills

RE: SEAN L. HAGINS

84. The defendant withdrew from Trenton High School, located in Trenton, New Jersey, in 1988. Hagins reported that he took courses and the test for his GED while incarcerated in New Jersey State Prison; however, he was not sure if he passed the test. New Jersey State authorities reported that they have no record of the defendant earning his GED.

Employment Record

85. Hagins reported that he has limited verifiable employment as an adult. The defendant stated that he has worked "under the table" in a delicatessen. Hagins stated that he was unemployed at the time of his arrest. The defendant reported that had worked as a laborer (brick masonry work) for his stepfather, Robert Dallas, off and on for several years. Hagins stated that he was paid in cash for the days that he worked.
86. Records from the Social Security Administration reflected that Hagins had no legitimate earnings history from 1995 through 2001. In 2002, the defendant earned \$2,600, from two separate employers. Hagins has no legitimate earnings history from 2003 through 2006.

Financial Condition: Ability to Pay

87. Hagins denied having any assets, including bank accounts, motor vehicles or real estate. The defendant had been residing in a rental property locate at 230 Spring Street, Trenton, New Jersey, for approximately ten years. Hagins reported residing with his wife and two children. It should be noted that the defendant could not recall the last time he filed federal income taxes.
88. A review of Hagins' credit history revealed that the defendant has no account balances or credit history of any kind. This report did show that the defendant has \$228 in a collection account with Sprint. The defendant also has approximately \$3,100 in the form of a civil judgement with Lancer Investments which was filed in the Superior Court for Mercer County, New Jersey. An additional public credit database revealed that there were four separate liens filed against the defendant by the Office of the Public Defender for Mercer County, New Jersey. These liens amount to approximately \$2,200.
89. It should be noted that the defendant has court appointed counsel for this matter.
90. Pursuant to U.S.S.G. § 5E1.2 (a), the Court shall impose a fine in all cases, except where the defendant establishes that he is unable to pay and is not likely to become able to pay a fine. It would appear that the defendant would not be able to pay a fine in the guideline range.
91. If the defendant is incarcerated, payment on a fine or restitution can commence through the Bureau of Prisons Inmate Financial Responsibility Program. An inmate participating in this program will be able to contribute half of monthly prison work earnings, for every month of imprisonment served, toward any immediately due fine or restitution.

RE: SEAN L. HAGINS**PART D. SENTENCING OPTIONS****Custody**

92. **Statutory Provisions:** For Count One, the maximum term of imprisonment is five years. 18 U.S.C. § 371. For Four, Five, Six, and Seven, the maximum term of imprisonment is 10 years. 18 U.S.C. § 922(g)(1).
93. **Guideline Provisions:** Pursuant to U.S.S.G. Chapter 5, Part A, based on a total offense level of 38 and a criminal history category of VI, **the guideline range for imprisonment is 360 months to life.**

Impact of the Plea Agreement

94. There is no plea agreement in this matter, as this was a jury trial.

Supervised Release

95. **Statutory Provisions:** For Counts One, Four, Five, Six, and Seven, if a term of imprisonment is imposed, the Court may impose a term of supervised release of not more than three years. 18 U.S.C. § 3583(b)(2). The defendant must submit to one drug test within 15 days after commencing supervised release and at least two periodic tests thereafter, unless the Court determines, based on reliable information, that there is a low risk of future substance abuse, pursuant to 18 U.S.C. § 3583(d).
96. **Guideline Provisions:** The guideline range for a term of supervised release is two to three years, pursuant to U.S.S.G. § 5D1.2(a). If a sentence of imprisonment of one year or less is imposed, a term of supervised release is not required but is optional, pursuant to U.S.S.G. § 5D1.1(b). Supervised release is required if the Court imposes a term of imprisonment of more than one year, unless a departure is granted in accordance with the Application Notes of U.S.S.G. §§ 5D1.1 and 5D1.2.

Probation

97. **Statutory Provisions:** The defendant is eligible for not less than one nor more than five years probation by statute, pursuant to 18 U.S.C. § 3561(c)(1). The defendant must submit to one drug test within 15 days after being placed on probation and at least two periodic tests thereafter, unless the court determines, based on reliable information, that there is a low risk of future substance abuse, pursuant to 18 U.S.C. § 3563(a)(5).
98. **Guideline Provisions:** Because the minimum of the guideline range is greater than six months, the defendant is not eligible for probation. U.S.S.G. § 5B1.1(a).

DNA Collection

RE: SEAN L. HAGINS

99. Titles 18 U.S.C. § 3563(a) and 18 U.S.C. § 3583(d) require persons convicted of federal felonies to cooperate in the collection of a DNA sample. The defendant's current offense or a prior federal conviction is a felony.

Fines

100. **Statutory Provisions:** The maximum fine is \$250,000, per count, or twice the loss or gain caused by the offense, whichever is greater, pursuant to 18 U.S.C. § 3571. The Criminal Fine Improvement Act of 1987 is applicable. Any fine exceeding \$2,500, not satisfied within 15 days, will be charged interest at a rate determined by the U.S. Treasury auctions. If a defendant is unable to pay interest, the Court may waive the interest, limit the total interest to a specific dollar amount, or limit the time of interest accrual. 18 U.S.C. § 3612(f). The liability to pay a fine terminates the later of 20 years from the entry of judgment or 20 years after release from imprisonment. 18 U.S.C. § 3613(b). Fine payments, as well as the special assessment, should be made payable to Clerk, U.S. District Court. A special assessment of \$500 is mandatory and due at sentencing, pursuant to 18 U.S.C. § 3013.
101. **Guideline Provisions:** The fine range for the instant offense is \$25,000 to \$250,000, pursuant to U.S.S.G. § 5E1.2(c)(3). The court shall impose a fine in all cases except where the defendant establishes that he is unable to pay and is not likely to become able to pay any fine, pursuant to U.S.S.G. § 5E1.2(a).

PART E. FACTORS THAT MAY WARRANT DEPARTURE

102. The probation officer has no information concerning the offense or the offender which would warrant a departure from the advisory sentencing guidelines.

PART F. FACTORS THAT MAY WARRANT A SENTENCE OUTSIDE OF THE GUIDELINES SYSTEM

103. The probation officer has not identified possible grounds for a sentence outside of the advisory guidelines system.

Respectfully submitted,

Daniel W. Blahusch
Chief U.S. Probation Officer

Appx. D

RE: SEAN L. HAGINS

By:

Leslie E. Maxwell
United States Probation Officer

Approved:

Thomas J. Hunt
Supervising U.S. Probation Officer

Date

**ADDENDUM TO THE PRESENTENCE REPORT
UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA
UNITED STATES V. SEAN HAGINS, DOCKET NO. 06-485**

Subsequent to the disclosure of the draft presentence report, the Probation office received additional information, now included in Paragraphs 18, 20, 51, which does not impact the guideline applications as stated in the draft presentence report.

OBJECTIONS

By the Government

The government has no objections to the presentence report.

By the Defendant

Objection No. 1: The defendant objects to paragraphs 18 and 34, because there is no taped conversation in which Hagins ever threatened David Downs.

Response: The report has been amended and corrected to reflect that Hagins verbally threatened David Downs during the course of the straw purchase conspiracy. The defendant warned Downs that "his people" knew where he lived. Downs reported this to ATF agents during subsequent interviews. The guideline calculations as originally drafted will remain the same in the final disclosure of the presentence report to the Court.

The government added that Hagins was also involved in obstructive conduct with regard to government witness Gilbert Nickens. There are taped conversations of Hagins, while he was in custody, directing that discovery material provided by the government and relating to Nickens' cooperation, be copied and placed in establishments in the Trenton area. Both Hagins and Nickens are from Trenton, New Jersey. This conduct was designed to intimidate and retaliate against this witness. As this information fortifies the adjustment, pursuant to § 3C1.1, the calculation will remain as originally drafted.

Objection No. 2: The defendant objects to paragraph 22, which references another basis for the two-level enhancement for false testimony during trial, pursuant to § 3C1.1.

Response: During the course of the trial, Hagins took the stand and denied specific elements of the crimes for which he was eventually found guilty. Section 3C1.1, application note 2, clearly speaks to this issue when the adjustment is applied after a trial. This application note indicates that the Court should be cognizant that inaccurate testimony or statements sometimes may result from confusion, mistake, or faulty memory and thus, not all inaccurate testimony or statements necessarily reflect a willful attempt to obstruct justice.

RE: SEAN L. HAGINS

Pursuant to the United States vs. Dunnigan, 507 U.S. 87, 113 S.Ct. 1111 (1993), the District Court is instructed to make independent findings that the defendant willfully attempted to obstruct justice by testifying falsely during trial. The Court must find that the misrepresentations were willful, material to the investigation or prosecution, and made with specific intent to obstruct justice, rather than as a result of confusion, mistake, or faulty memory. Considering the voluminous amount of evidence presented at the trial, along with the testimony of many witnesses, the defendant's recounting of his conduct and responsibility involving the instant offense was clearly false and not a product of confusion, mistake, or faulty memory. Therefore, the adjustment will remain as originally calculated.

Objection No. 3: The defendant objects to paragraph 30 of the report, which calls for a two-level enhancement, pursuant to § 2K2.1(b)(4), for obliterated serial numbers on the straw purchased weapons.

Response: Although the two weapons admitted into evidence with obliterated serial numbers were not recovered in Hagins' possession, there was a sizeable amount of evidence that Hagins had removed serial numbers from some of the straw purchased weapons before he resold them to various individuals. This information is corroborated by taped conversations between Hagins and Downs, which were presented at trial. Therefore, the adjustment will remain as originally drafted.

Objection No. 4: The defendant objects to the four level enhancement, pursuant to § 2K2.1(b)(5).

Response: With respect to Counts Two and Three, although the defendant was found not guilty of these charges the underlying conduct may still be considered. Pursuant to U.S. vs. Watts, 519 U.S. 148, conduct underlying charges for which the defendant has been acquitted may be relied on in sentencing. In a recorded conversation between Hagins and co-defendant Downs, which occurred on January 31, 2006, Hagins sold \$100 worth of crack cocaine to Downs.

In addition, Hagins' reselling of some of the straw purchased weapons to known gang members in Trenton fortifies this adjustment, pursuant to § 2K2.1(b)(5).

RE: SEAN L. HAGINS

Respectfully submitted,

DANIEL W. BLAHUSCH
Chief U.S. Probation Officer

By: _____

Leslie E. Maxwell
United States Probation Officer

Approved:

Thomas J. Hunt
Supervising U.S. Probation Officer

Date